IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: WAKI, MUSINGA & ODEK, JJ.A)

CIVIL APPEAL NO. 300 OF 201

BETWEEN

SAMURU GITUTO FARMERS

CO-OPERATIVE SOCIETY LIMITED .....APPELLANT

AND

CHIEF MAGISTRATE'S COURT AT THIKA ……...1ST RESPONDENT

THE REGISTRAR OF TITLES …….…….....2ND RESPONDENT

THE ATTORNEY GENERAL ……..…3RD RESPONDENT

JOHN MBAU …….....4TH RESPONDENT

MONICA WAMBUI …….....5TH RESPONDENT

JOSEPH KARUMBA …….....…..6TH RESPONDENT

HANNAH MARUGU …….....7TH RESPONDENT

SIMON NGUGI KAMAU …….....…8TH RESPONDENT

PAUL WANYOIKE ……...9TH RESPONDENT

JOAN NJERI ……....10TH RESPONDENT

BONIFACE MWANA ……..11TH RESPONDENT

FRANCIS MAINA ……12TH RESPONDENT

COMMISSIONER OF CO-OPERATIVE

DEVELOPMENT ……..13TH RESPONDENT

FRANCIS NDUNG'U MWAURA ……....14TH RESPONDENT

PETER NDUATI MBUA ……...15TH RESPONDENT

SIMON NGURE KING'U …….....16TH RESPONDENT

(An appeal from the Judgment and Order of the High Court of Kenya

at Nairobi (R. Wendoh, J) dated 19th April, 2010

in

H. C. Constitutional Appl. No. 30 of 2009)

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JUDGMENT OF THE COURT

1. This is yet another conundrum precipitated by persons masquerading as leaders of Co-operative Societies and land-buying companies, in the process causing considerable pain and hardship to humble and poor *wananchi*, whose only sin was to get together and pool their meagre resources to buy and share land. Invariably, the motivating factor for the leadership squabbles is the greed for power and influence, or simply put, corruption. Sadly, in this unholy mix are lawyers who are expected to assist the parties and shed light on the law but instead end up complicating matters even further.

2. This time round it is **Samuru Gituto Farmers Co-operative Society Ltd (the Society)** which is embroiled in squabbles. From the record of appeal and additional evidence allowed by this Court on 1st July, 2016, the factual matrix of the case emerges and may be stated briefly.

3. The society is said to have more than 4,500 members. It owned in excess of 500 Acres of LR NO.10743 situate in Thika, which was subdivided into 11 parcels. Part of the land was sold by the Cooperative Bank of Kenya **(Coop Bank)** to offset the Society's indebtedness, leaving some 301 Acres which the bank kept as security. At some point, the loans were written off on instructions of the Government and Coop bank discharged and forwarded the documents of Title to the Society's lawyers, M/s Gitonga Muriuki & Company, Advocates.

4. Up until the year 2006, the Society had no leadership problems. In its Special General Meeting **(SGM)** held on 21st June, 2005, eight members led by their Chairman, Hiram Kamau Ng'ang'a **(Hiram group)** were elected into office and were duly registered as the *bona fide* officials of the management committee by the office of the Commissioner for Co-operative Development **(CCD).** Before us, the Hiram group is essentially the appellants in the name of the Society. The CCD is the 10th respondent.

5. According to the Hiram group, hell broke loose when an Assistant Minister in the Ministry of Cooperative Development, the late David Mwenje, happened on the scene. On 21st September, 2006, he is said to have presided over an irregularly convened SGM of a small group of members and non members of the Society which purported to conduct elections and elected nine persons as the new officials **(Mwenje group)**. The Hiram group thought the CCD was in cahoots with the Mwenje group and they filed a civil suit in the Chief Magistrates Court in Thika against the Mwenje group and the CCD **(CMCC 792/06)** seeking to stop the registration of the new group. The court **(Were, Esq, SRM)** issued an *ex parte* order on 26th September, 2006 stopping the CCD from confirming the Mwenje group and set the *inter partes* hearing of the application for 9th October, 2006 **(the Were Order)**. The order was extended when the matter came up on 9th October, 2006. The CCD complied with the order and did not register the Mwenje group. Before us, the Mwenje group is the 4th to 12th, and 13th to 16th respondents.

6. The Hiram group also filed a Judicial Review **(JR)** application in the High Court - **JR 20/2017** - against the DCO, Thika to stop him from interfering with the operation of the Society's bank account with Coop Bank. Leave was granted on 18th January, 2007, but there is no record of any motion having been filed thereafter. Only the order for leave is exhibited.

7. The Mwenje group (4th to 12th respondents) was served with summons to enter appearance in CMCC 792/06 and they entered appearance. But they did not file any defence, and therefore, on application, interlocutory judgment was entered against them on 1st November, 2007. The matter was to proceed on formal proof which was scheduled for 1st December, 2008.

8. Before then, however, the Mwenje group changed gears. They somehow obtained a letter dated **1st August, 2008** purportedly signed by the District Cooperative Officer **(DCO),** Thika. It was addressed *'To whom it may concern'* and confirmed that three of the Mwenje group members (14th to 16th respondents) were the *bona fide* Chairman, Secretary and Treasurer, respectively, of the Society (hereinafter **'the executive trio'**). When the DCO got wind of the purported letter, he wrote to the CCD on 8th August, 2008 disclaiming it and declaring it as a forgery. He further declared that the executive trio was never elected in any SGM presided over by him as the law required, and copied the letter to the District Criminal Investigation Officer **(DCIO)** for investigations. The DCIO appears to have taken action and the executive trio Chairman **(Francis Ndungu Mwaura)** was arrested on 27th February, 2009 to face several charges including forgery and uttering a false document. The Charge sheet in **Criminal Case No. 849 of 2009** is exhibited but not the result of the case, if any.

9. Before his arrest, the chairman had led the Mwenje group to the Chief Magistrates' court on 20th August, 2008 where, on the strength of the DCO letter of 1st August, 2008, they filed a chamber summons in CMCC 792/06 seeking the following orders:

> ***"(a) THAT this application be certified as urgent and service of the same be dispensed with at the first instance due to its urgency.***
>
> ***(b) THAT this Honourable Court do confirm by an Order that: - Francis Ndung'u Mwaura, Boniface Mwaura, Hannah Makungu, Simon Ngure, Peter Nduati, Monicah Mukuri, Philip Koigi, John Mbau, and Joseph Karumba as the Management Committee Members of the Plaintiff Society."***

At the time of making the application, the executive trio were not parties to the suit and did not seek to be enjoined therein.

10. The Resident Magistrate **(P. K. Kariuki, Esq)** issued the two orders forthwith pending the hearing of the application *inter partes* on 3rd

September, 2008. On the strength of those orders, the chairman returned to the same magistrate nine days later on 29th August, 2008 and applied for three more *ex parte* orders which were promptly granted as follows:-

> ***"1. That this application be certified as urgent and service of the same be dispensed with in the first instance.***
>
> ***2. That the honourable court order that the old management committee for the plaintiffs company namely 1st up to 9th defendants (sic) do handle (sic) over all the company documents in the (sic) possession including the original title deed, company seal, receipt books amongst other items to the new management committee and the new committee be allowed to operate the bank account at Co-operative Bank, Thika.***
>
> ***3. That this honourable court issued (sic) further, orders barring the old management committee namely the 1st up to 9th defendants (sic) from interfering in any manner with the running and/or operations of the plaintiffs company.***
>
> ***4. That the cost of this application be provided for."***

We shall refer to the two orders as (**the Kariuki orders)**.

11. The Hiram group was alarmed by those developments. Even more so when the executive trio and the Mwenje group started flashing the court orders to all and sundry claiming the rightful leadership of the Society and demanding release of the Title deeds of the Society's land to themselves. The CCD was also alarmed as there was no record of the Mwenje group or the executive trio in his office and the person who obtained the court orders was not a party to the suit. He applied on 12th September, 2008 to have the Kariuki orders set aside, and also for the letter relied on to obtain the orders investigated. That application came up before **Mrs. L. W. Wachira, SRM** who heard it and delivered a ruling in the absence of the parties on 9th December, 2008 **(the Wachira orders).** The SRM refused to re-examine the *locus standi* of the executive trio in obtaining the impugned orders, reasoning thus:

> *"As the applications were not argued before me and I have no instructions and or directions to write the ruling to determine the status of the three strangers, I shall not do so".*

12. The SRM also declined to deal with the prayer for setting aside the Kariuki orders, reasoning that there were no submissions made by counsel on that prayer. As for the prayer for investigation of the letter dated 1st August, 2008, the SRM declined to make any order reasoning thus:-

> *"I have looked at this document with my naked eye. I am not the best placed person to comment as I am neither a handwriting expert nor a document examiner."*

The application was dismissed and the Kariuki orders remained undisturbed. An appeal filed by CCD against that decision - **HCCA No. 618 of 2008 -** was struck out on 18th June, 2015 for want of prosecution.

13. For its part, the Hiram group headed to the High Court on 19th December, 2008 and sought leave to seek JR orders against the Commissioner of Lands, Director of Surveys, the CCD, and the executive trio to quash an intended issuance of duplicate Deed plans to the Mwenje group and to stop further interference with the Society land. **Misc. Application No. 815 of 2008** was filed and **Khamoni, J.** granted leave on 22nd December. 2008. The JR Motion was subsequently filed on 12th January, 2009 but there is nothing to show that it was finalized.

14. Indeed, it seems to have been abandoned in favour of a Constitutional Application which the Hiram group filed before the High Court on 19th January, 2009, enjoining the Chief Magistrates Court, Thika; the Attorney General; the Registrar of Titles; all the parties in CMCC 792/06; and the executive trio - **Constitutional Application No. 30/2009.** They invoked **section 65 (2)** of the retired Constitution on the supervisory jurisdiction of the High Court. In their view, the Kariuki and the Wachira orders were an egregious assault on the justice system of this country, and the High Court had the power to supervise them by nullifying the orders. The Magistrates failed to note that there was an interlocutory judgment in the suit; allowed strangers who were not parties to the suit to obtain orders; issued *ex parte* orders which were final and beyond 14 days; issued final orders without notice to the other parties; issued contradictory orders in the same matter; and shirked the responsibility of dealing with the issues placed before them. The Hiram group felt that the two Magistrates' orders were actuated by external interference, hence the prayer for removal of the pending case from those magistrates.

15. On 19th January, 2009, **Nyamu, J**. granted them the following orders:-

> ***"1. <u>THAT</u> preservatory and conservatory orders be and are hereby issued restricting:-***
>
> ***(a) The 14th, 15th and 16th Respondents and or any other person from entering into any dealings affecting the Applicants' proprietory interests in L.R 10743 THIKA measuring 301 acres for the purposes of any transaction sale, charge or otherwise on the strength of the Orders made by HON KARIUKI RM on 20th and 29th August, and Hon. L. WACHIRA (MRS) SRM on 9th December, 2008 in Chief Magistrates Court Thika in Civil Suit NO. 792 of 2006 - SAMURU GITUTO Farmers Co-operative Society Limited - Versus John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development for 21 days only.***
>
> ***(b) The Registrar of Titles from entertaining and or making of any entries affecting the applicants proprietory interests in L. R. 10743 THIKA measuring 301 acres on the strength of the orders made by Hon. KARIUKI RM on 20th and 29th August, and***

Hon. L. Wachira (Mrs) SRM pm 9th December, 2008 in Chief Magistrates Court Thika in Civil Suit No. 792 of 2006 - Samuru Gituto Farmers Co-operative Society Limited versus John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development for 21 days only.

2. THAT the originating notice of motion be served for hearing inter partes of prayer 2 (a) (b) and prayer 4 on 9th February, 2009 at 9.00 am i.e. as to whether the temporary order should be terminated, varied or discharged."

16. The Mwenje group and the executive trio reacted by filing grounds of objection to the application on the grounds that it was in abuse of court process owing to the pendency of **CMCC 792/06, HCCA 696/08,** and **Misc. App. No. 815/08.** When the matter came up for *inter partes* hearing on 9th February, 2009, the preservatory and conservatory orders were extended. Despite the extension, however, the executive trio and the Mwenje group continued to process Titles in respect of the Society land. The Chief Land Registrar, the Commissioner of Lands and the Director of Surveys were also reluctant to register the conservatory orders against the Title. The Attorney General for them filed grounds of opposition and skeleton submissions in the matter contending that the application was defective and an abuse of court process; that the filing of a multiplicity of cases was prejudicial; that the challenge on the Kariuki and Wachira orders through a Constitutional application was misguided since an appeal or review should have been filed in the same case; that under ***section 6*** of the **Judicature Act** a judicial officer has immunity against civil and criminal prosecution in the discharge of judicial functions; that the Hiram group was attempting to obtain JR and Constitutional remedies simultaneously; and that the real dispute was about the leadership of the Society, in which case the matter should have been filed before the Cooperative Tribunal.

17. Neither the Mwenje group nor the executive trio filed any submissions on the constitutional application. After some skirmishes relating to contempt of court issues, the matter fell before **Wendoh, J.** on 15th February, 2010 and was heard in the absence of the Mwenje group, the executive trio, and the CCD who were all served with hearing notices. The CCD had, however, filed an affidavit supporting the orders sought in the Constitutional application.

18. After considering the matter and the submissions of counsel, Wendoh, J. delivered her ruling on 19th April, 2010, dismissing the application. The learned Judge was of the view, and found, that the supervisory jurisdiction of the High Court under ***section 65*** was limited to public law remedies against public bodies; that the Mwenje group and the executive trio were private individuals who were not amenable to the remedies sought; that there was no full record of **CMCC 792/06** before the court and it was not possible to appreciate what took place before the impugned orders were granted; that judging by the orders issued, the case was about stopping the Mwenje group from claiming leadership of the society; that the complaint should not have been raised by the Society but by the individuals who sought declaration as the *bona fide* leaders; that **CMCC 792/06** has not been heard and therefore the leadership of the society was moot; that ***section 76 (b)*** and ***77*** of the **Cooperative Societies Act (the Act)** was applicable, in which case the proper forum for resolution of the dispute was the Cooperative Tribunal; that it was the Hiram group that was in abuse of court process by filing CMCC 792/06 instead of going before the Tribunal and it cannot blame anyone for the delay and confusion that has ensued since then; that the issue of the executive trio obtaining court orders through a fraudulent process was an allegation yet to be proved as the outcome of the criminal case filed against the chairman was not before the court; that the result of the appeal filed by the CCD - **HCCA 696/08** - was also pending and was capable of reversing the Kariuki and Wachira orders; that there were JR applications - **JR 20/07** and **JR 815/08** - filed by the Hiram group which were still pending determination; that the filing of all those suits was an abuse of court process; that all the parties involved in the suits had dirty hands and had acted *mala fides*; and finally that the court would not assist any of the parties to perpetuate illegal acts and abuse the process of the court. The Hiram group and the CCD were urged to pursue their pending appeal and Judicial Review applications.

19. The Hiram group was aggrieved by that decision which is now the subject of the appeal before us.

20. At the hearing of the appeal, the appellants were represented by learned counsel **Mr. G. K. Muriuki** assisted by **S. M. Muli** both instructed by M/s Gitonga Muriuki & Company Advocates; the 1st, 2nd, & 3rd respondents were represented by **Mr. Thande Kuria,** Senior State Counsel, instructed by the Attorney General; learned counsel **Mr. K. Kang'iri** appeared for the 4th to 12th, and 14th to 16th respondents; and learned counsel **Mr. Odongo** appeared for an affected party, M/s Makindi Banks Ltd, who was enjoined in the appeal on application. The 13th respondent, CCD, was not represented despite service of hearing notice, but written submissions were filed on his behalf.

21. Eighteen grounds are set out in the memorandum of appeal but they are rather prolix and repetitive**. Rule 86** of the Court's Rules was obviously not strictly adhered to. It is no wonder that the appellant's counsel did not urge them *seriatim*, but in a broad manner in their 22-page written submissions. Mr. Muriuki made short oral highlights of the written submissions.

22. A major plank of the complaints raised against the trial court was that it did not understand or appreciate the nature of the application made before it. It was not a Judicial Review application where the court had a discretion to exercise, as it erroneously stated. It was a constitutional matter where the court was obligated to use its coercive power granted under ***section 65*** of the retired Constitution, to reign in recalcitrant or wayward subordinate courts. In this case, counsel observed, there were glaring misdeeds resulting in the Kariuki and Wachira orders where contradictory orders were made; illegal orders were granted to strangers who were not parties to the suit and did not seek to be enjoined; the orders issued were against the Mwenje group but strangely, enforcement was directed against the Hiram group; *ex parte* final orders were granted beyond 14 days contrary to the law; the right to a fair hearing was trashed since no hearing notices were served on the other parties. In counsel's view, there was an avalanche of *'abnormalities, arbitrariness, irregularity, illegality, fraud, malpractices, impunity and contradictions'* which cried out for judicial remedy. And the remedy for such serious transgressions was constitutional, as opposed to an ordinary appeal, he submitted.

23. Counsel particularly singled out the right to a fair hearing and breach of the rules of natural justice as a strong basis for issuing supervisory orders nullifying decisions of lower courts, and cited several authorities on the centrality of natural justice, and the supervisory jurisdiction of the High Court in shepherding the principle. They include:- ***Kiai Mbaki & 2 Others vs Gichuhi Macharia & Another [2005] eKLR; J M K vs M W M & Another [2015] eKLR; Judicial Service Commission vs Mbalu Mutava & Another [2015] eKLR; Defence Forces Council & 6 Others vs Gabriel Kirigha Chawana & 26 Others [2015] eKLR;*** and ***Law Society of Kenya vs Centre for Human Rights and Democracy & 13 Others [2013] eKLR.***

24. The other major plank in counsel's arguments was that the decision of the trial court was based on erroneous findings of fact. For example:

a) the finding that the appellant did not disclose the existence of JR 815/08,while it was disclosed in the appellant's affidavit and indeed, the same Judge had issued an order staying the hearing of the JR pending the determination of the constitutional application.

b) the finding that CA 696/08 was filed by the appellant when it was clear that it was filed by the CCD, and it was only the CCD who could appeal against the dismissal of his application.

c) the finding that the dispute in CMCC 792/06 fell under section 76 of the Act, when one of the defendants was the CCD under whom the Cooperative Tribunal lay.

d) the finding that section 76 applied when the case involved non-members of the Society and was not therefore, purely about the business of the Society and its members.

e) the finding that the Mwenje group was claiming leadership of the society when it did not produce any genuine documents under the Act to support the claim, and were in any event not acknowledged by the CCD as officials of the Society.

f) the finding that the appellant was in abuse of court process for filing a multiplicity of cases when each case dealt with different parties and different issues.

25. To underscore the consequence of the failure by the trial court to consider the weight and gravity of the matter and supervise the subordinate court, counsel drew our attention to the damage caused to the property of the society which has been alienated without the consent of the 4,500 members of the Society. In counsel's submissions, there was enough evidence on record in form of letters exchanged with the Director of Surveys, the DCO, Thika, the CCD, the Coop Bank; Police abstract reports; and correspondence between the respective advocates of the parties, all of which material made it plain that the Society land was up for grabbing at the expense of the members. Counsel referred to the supplementary record of appeal filed on 15th July, 2016 confirming that several parcels of the Society land have been sold by the Mwenje group and the executive trio for millions of shillings, but not a single shilling has been credited to the account of the Society. In his view, the trial court in its decision not to issue any orders, left the property of the society in further danger of alienation with impunity.

26. Finally, counsel submitted that there was no dispute on the leadership of the Society and there was no reason for the trial court to ascertain who was rightly in leadership. According to counsel, there were enough documents on record to show who the leaders of the Society were, including:- the forged letter of 1st August, 2008 which was denied by its alleged author; uncontroverted affidavit evidence of the CCD disowning the Mwenje group and the executive trio as elected officials of the society; and an official search confirming the Hiram group as the *bona fide* officials of the Society at the material time. As there was no dispute between members of a cooperative society, or former members or cooperative societies, as laid out in ***section 76,*** submitted counsel, the finding that the dispute lay under the section was a misapprehension of facts and the law. He cited several authorities which have construed the application of ***section 76***, including:- ***Ernest Muiruri Njoroge & 28 Others vs Kabiru Karanja & 4 Others [1997] eKLR; Gatanga Coffee Growers Cooperative Society Ltd vs Gitau (1970) EA 361;*** and ***Murata Farmers Sacco Society Ltd vs Co-operative Bank of Kenya Ltd [2001] eKLR.***

27. In the end, we were invited to revisit the facts and the law afresh, set aside the trial court's orders, and grant orders quashing the Kariuki and Wachira orders in CMCC 492/06; quash the transfers and alterations made by the Mwenje group in LR No. 10743; and stop any dealings or further dealing with the land without approval by the Commissioner for Cooperative Development.

28. Supporting the appeal was the 13th respondent (CCD) who only filed written submissions. He stated that he was an independent arbiter in cases of disputes between the Society and its members, guided by the provisions of the Act. He stated that the meeting presided over by the Assistant Minister for Cooperatives, the late David Mwenje, was a mere *'baraza'* and was not an SGM convened by the members or by the Commissioner under ***section 27*** of the Act. Neither the Minister nor his Assistant had any role in the registration, supervision, advise or regulation of cooperative societies let alone overseeing an election of its officials. In his view, the basic minimum for elections were not met and therefore there could not have been any elections as purportedly held on 21st September, 2006. Counsel observed that the CCD had presented sworn testimony regarding the invalidity of the purported elections and confirmed that the Mwenje group had not been registered with the CCD's office. There was also a search certificate confirming the Hiram group as the *bona fide* officials. That evidence had not been controverted and, in counsel's view, there was no issue about who the officials of the Society were. The Hiram group had every right to use the Society's name in filing the suit under ***section 12*** of the Act.

29. Indeed, observed counsel, the CCD had challenged the Kariuki and Wachira orders and pursued the fraud perpetrated by the Mwenje group in making and uttering a false letter from the DCO dated 1st August, 2008 which assisted them to obtain illegal court orders. The CCD had been sued, together with others, in other suits by the Hiram group for different remedies. Citing the case of ***John Githinji Wangondu Kariuki Kiboi vs Othaya Farmers Co-operative Society Limited, The Commissioner of Co-operative Development [1999] eKLR***, he submitted that the matter before the Magistrate's court was beyond ***section 76*** of the Act since the CCD cannot be a party to disputes before the Cooperative Tribunal. Counsel further submitted that the trial court erred in failing to weigh the gravity of the matter before it which had glaring abnormalities, irregularities and illegalities, and grant permanent preservatory orders to prevent the transfer of the Society's land to speculaters, brokers and fraudsters, as indeed happened without any money going into the Society's bank account.

30. Finally, counsel submitted that in declaring that there was a leadership dispute the trial court was wrongly choosing for the members who should be their management committee. The case of ***Kandara Farmers Cooperative Society Ltd & Nine Others vs Joseph Kanyua & 18 Others (HCCC No. 2646 of 1998)*** was cited in aid. As for the orders appropriate for redressing the illegalities committed by the respondents who have since sold and transferred various lands of the Society, as confirmed in the supplementary record of appeal, counsel submitted that an order be issued cancelling the Titles to LR Nos. **10743/2, 10743/6, 10743/8, 10743/10** and **10743/11**. He relied on the case

of ***PWK vs JKG [2015] eKLR*** where this Court made orders transferring registered Titles to the winning party.

31. Also supporting the appeal was the interested party who purchased LR No. 10743/8 from the Society and took possession in the year 2000, but the respondents subsequently resold it to a third party in 2008. M/s Nyambura & Associates, Advocates, filed written submissions submitting that the trial court ought to have considered the interests of innocent parties who would be affected by the court's refusal to issue any orders of protection. The interested party had filed its own suit against the Society to protect its interests under ***Article 40*** of the **Constitution**.

32. Counsel submitted that the trial court erred in failing to deal with the legality of the orders issued by the Magistrate's court without sitting on appeal on those orders. The objective is to examine and determine whether the orders complained about were issued following due process, without looking at the merits or the conduct of the parties, but the conduct of the court. The cases of ***Law Society of Kenya vs Centre for Human Rights and Democracy & 13 Others [2013] eKLR, Republic vs Douglas Patrick Barasa & Another [2014] eKLR*** and ***Republic vs James Kiarie Mutungei [2017] eKLR*** were relied on.

33. In response, Mr. Thande Kuria for the Attorney General, relied on the written submissions without any oral highlights. Counsel supported the finding of the trial court that it did not have jurisdiction to deal with the constitutional application since there was another remedy for determining leadership disputes in cooperative societies; and that ***sections 76*** and ***77*** of Act were applicable to oust the court's jurisdiction. The case of ***Speaker of National Assembly vs Njenga Karume [2008] 1KLR 425*** was cited for the proposition that a party must first exhaust other processes availed by other dispute resolution organs established by law, before moving to the High court by way of constitutional petitions.

34. Secondly, it was submitted that, even if the High Court had jurisdiction, the threshold set under ***section 65 (2)*** of the retired constitution was not met. Counsel relied on the Indian Supreme Court case of ***Deputy Commercial Tax Officer, Madras vs Rayalaseema Construction 9[(1966)17 STC505]*** which construed ***section 226*** of the **Indian Constitution** on the supervisory jurisdiction of the High Court and held that *"it is to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion."*

35. Lastly, it was argued that the trial court was right in holding that the suit was filed in abuse of court process since there were other suits filed, but not disclosed, by the Hiram group on the same subject matter; that the parties had come to court with unclean hands; and that the parties were intent on perpetuating an illegality through the courts. In such circumstances, urged counsel, the court had the inherent discretionary power to make any orders necessary for the ends of justice or to prevent the abuse of process. The case of

Kenya Power & Lighting Company Limited vs Benzene Holdings Limited t/a Wyco Paints [2016] eKLR which cited the following excerpt from **Halsbury's Laws of England, 4th Edn. Vol. 37 Para. 14** was relied on:-

> ***"The jurisdiction of the court which is comprised within the term "inherent" is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process … In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."***

With that, we were asked to dismiss the appeal.

36. For the 4th to 12th respondents, written submissions were filed by **M/s Karanja Kang'iri & Company** advocates opposing the appeal. They asserted that they, together with the 14th to 16th respondents (the executive trio) were elected in an SGM convened by the DCO, Thika, on 21st September, 2006 but the Hiram group did not attend. Instead the Hiram group filed CMCC 792/06 seeking orders declaring the SGM unlawful and illegal; an order declaring the election as illegal; and an order restraining the CCD from confirming the 4th to 12th respondents as members of the Society. The Hiram group did not sue the executive trio although they were also elected in the same SGM. After the Hiram group obtained temporary orders which were extended until the hearing of the main suit, they did not fix the main suit for hearing for two years. That is why the executive trio went to court on 20th August, 2008 and sought orders against the Hiram group to hand over all Society's management documents, Title Deeds and Bank accounts. *Ex parte* orders were issued accordingly and were implemented.

37. According to counsel, there were only four issues in this appeal: firstly, whether the 4th to 12th and 14th to 16th respondents were legally elected as officials of the Society. The answer was in the affirmative since there was an SGM duly convened by the DCO under ***sections 27*** of the Act, and the minimum number of members necessary for an election which was 47 members was present.

38. The second issue was whether the decision of the trial court not to nullify the Kariuki and Wachira Orders was correct. And the answer was yes, because the trial court was exercising a discretion and did so judiciously. The appellants had remedies in other suits before other courts but had gone to sleep. They should not be allowed to file suits and abandon them half way. The case of ***Mbogo vs Shah [1968] EA 93*** was relied on. In counsels' view, the Kariuki and Wachira Orders effectively set aside the Were Order which had barred the Mwenje group from taking office, and there was no reason to disturb them. Counsel further submitted that judicial supervisory jurisdiction requires a higher threshold than common judicial review remedies.

39. Thirdly, the issue was whether the executive trio had the *locus standi* to appear before the Magistrate's court and obtain the orders they did. The answer again was yes, because they were the newly elected officials of the Society. The Hiram group had filed the case without their knowledge and left out necessary parties and so, the court was at liberty to enjoin and hear them *suo motu*. The Hiram group had no right to file the suit and since they were in disobedience of the Kariuki and Wachira orders, they ought not to be given any favourable court order.

40. Fourthly, whether the constitutional application was filed in abuse of court process. And the answer is, yes. The Hiram group had obtained a court order and failed to prosecute the main suit; they had filed a suit which was frivolous and vexatious; and filed other suits without prosecuting them, thus harassing the respondents with a multiplicity of suits. The cases of ***Utalii Transport Company Limited & 3 Others vs Nic Bank Limited & Another [2014] eKLR*** and ***Pop-In (Kenya) Ltd & 3 Others vs Habib Bank AG Zurich [1990] eKLR*** were relied for those submissions.

For those reasons we were urged to dismiss the appeal and lift the orders which have hampered the 4th to 12th and 14th to 16th respondents from running the affairs of the Society.

41. We have anxiously considered the grounds of appeal, the illuminating submissions by all learned counsel, the lists of authorities cited and the law. As guided by ***rule 29 (1) (a)*** of the Court's Rules, we have done so in the manner of a retrial in order to arrive at our own conclusions. As we do so, we must administer the usual caution that findings of fact made by the trial court are entitled to deference at the first appellate level. But an appellate court will not hesitate to interfere with such findings where they are 'based on no evidence or on a misapprehension of the evidence or the trial court is shown demonstrably to have acted on wrong principles in reaching the findings'. In the case of ***Mwangi vs Wambugu [1984] KLR 453,*** this Court stated thus:

> ***"An appellate court is not bound to accept a trial judge's finding of fact if it appears either that he has clearly failed on some material point to take account of particular circumstances or probabilities material to an estimate of the evidence, or if the impression based on the demeanour of a witness is inconsistent with the evidence in the case generally."***

The impugned decision in this matter was not based on oral evidence but on documentary evidence which both courts have had an equal opportunity to evaluate. The only added advantage for this Court is the supplementary documentary evidence admitted by the Court on 1st July, 2016.

42. In our view, the germane issues that emerge for our determination are these:

> ***(i) Whether the Constitutional Application was properly filed before the High Court or, put another way, whether the supervisory jurisdiction of the High Court was properly invoked.***
>
> ***(ii) Whether the Constitutional application was filed in abuse of court process.***
>
> ***(iii) Whether section 76 of the Cooperative Societies Act was applicable.***
>
> ***(iv) What orders should be made in the appeal.***

43. On the first issue, the argument by the Attorney General and the Mwenje group is that the Hiram group should have followed the appellate process to challenge the Kariuki and Wachira Orders, which they did not, and, therefore, the Constitutional Application was improper. The counter argument was that, owing to the egregious nature of the Orders made by the two magistrates, only the supervisory jurisdiction of the High Court could redress the injustice.

44. The Constitutional Application was taken out by way of an **"Originating Notice of Motion"** and was premised on ***section 65 (2)*** of the retired **Constitution** and ***rule 2*** and ***29*** of the ***Constitution of Kenya (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual)*** **(the Gicheru Rules).** There is no issue about the procedure adopted since *rule 2* of the Gicheru rules provided for it. The **"Judicature"** was set up in **Chapter IV** of the Constitution. **Part 1** set up the High Court and the Court of Appeal, while **Part 2**, set up *'other courts'* known as 'subordinate courts' to be established by Parliament. The High Court which is set up under ***section 60 (1)*** was given *'unlimited original jurisdiction in civil and criminal matters and such other jurisdiction and powers as may be conferred on it by this Constitution or any other law.'* In other words, the powers may only be added to, not reduced.

45. There is no argument that Parliament enacted the **Subordinate Courts Act** which governs the magistracy, and in ***section 65 (1)*** and ***(2)*** the Constitution gave the High Court the power to supervise them. It states:

> ***"65 (1) Parliament may establish courts subordinate to the High Court and courts-martial, and a court so established shall, subject to this Constitution, have such jurisdiction and powers as may be conferred on it by any law.***
>
> ***(2) The High Court shall have jurisdiction to supervise any civil or criminal proceedings before a subordinate court or court-martial, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of ensuring that justice is duly administered by those courts.*** [Emphasis added].

The same power was carried over to the new Constitution, 2010 in ***Article 165 (6)*** which provides:-

> ***"The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court."***

So what is this power, the extent of it and the application of it?

46. Unlike the retired Constitution, the new Constitution is elaborate on what the High Court may do in the exercise of the power. ***Article 165 (7)*** states:-

> ***"For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice".***

The record may be called for any number of reasons, but basically for examining the propriety, legality, regularity, justness or correctness of any order, or proceedings in the said record. Clearly, this is a jurisdiction well beyond the appellate jurisdiction of the same court.

47. Before the new Constitution, the view taken by the House of Lords on the supervisory jurisdiction of the High Court, 40 years earlier, was this:

> ***"…For that reason the courts will intervene when it is manifest from the record that the tribunal, though keeping within its mandated area of jurisdiction, comes to an erroneous decision through an error of law. In such a case the courts have intervened to correct the error. The courts have, however, always been careful to distinguish their intervention whether on excess of jurisdiction or error of law from an appellate function. Their jurisdiction over inferior tribunals is supervision, not review. That supervision goes to two points: one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise… If the tribunal is intended, on a true construction of the Act, to enquire into and finally decide questions within a certain area, the courts' supervisory duty is to see that it makes the authorised enquiry according to natural justice and arrives at a decision whether right or wrong. They will intervene if the tribunal asks itself the wrong questions (that is questions other than those which Parliament directed it to ask itself). But if it directs itself to the right enquiry, asking the right questions, they will not intervene merely because it has or may have come to the wrong answer, provided that this is an answer that lies within its jurisdiction."*** [Emphasis added].
>
> See ***The Anisminic Ltd vs The Foreign Compensation Commission*** & ***Another*** ***[1969] 2 A.C 147, (1969)2 W.L.R. 163, (1969) I ALL E.R. 208 (House of Lords).***

48. In the case of ***Defence Forces Council & 6 Others vs Gabriel Kirigha Chawana & 26 Others [2015] eKLR***, this Court opined thus:-

> ***"Thus in its supervisory jurisdiction, the High Court must maintain a delicate balance, distinguishing its role of an arbiter from that of an overseer whose mandate is to consider and review the procedure and conduct of proceedings in the subordinate courts with a view to determining the legality or otherwise of the process, including any actions undertaken without jurisdiction. The supervisory jurisdiction is not intended to usurp the role of the tribunal but to ensure that the inferior tribunal acts within its bounds."***

49. **Prof. Odek, JA,** in the case of ***Law Society of Kenya vs Centre for Human Rights and Democracy & 13 Others [2013] eKLR,*** explained the jurisdiction more graphically as follows:-

> ***"If it is proved that the tribunal, person or authority has deviated from the established and set beacons or pathway or legal criteria as delineated and demarcated for it and has run wild and amok, and at worst has gone on a frolic of its own, become an unruly horse and engaged in caprice, malice, witch-hunting and a wild goose chase running*** **helter-skelter,** ***it is the duty of the High Court through its supervisory jurisdiction to pull the leash and firmly point the delineated legal path that the tribunal, person or authority is enjoined by law to tread and to follow. The supervisory jurisdiction of the High Court is the leash and bridle that affirms and ensures that all tribunals, persons or authority are subject to the Constitution, rule of law, natural justice and good governance. It ensures that there is no trampling and aberration of the fundamental rights of the citizen. The supervisory jurisdiction is an in-built internal check and balance within the judicial system. It is the king pin upon which the cog and wheels of justice revolve and without it, untrammeled exercise of discretion reigns supreme.."***

50. In the case before us, the Hiram group was complaining, *inter alia*, that it had obtained injunctive orders against the CCD and the 4th to 12th respondents on 26th September, 2006 and the order was extended on 9th October, 2006 pending the hearing of the suit. They had indeed obtained interlocutory judgment in default of defence and the case was due for formal proof. Without setting aside the injunction or interlocutory judgment, the same court, differently constituted, issued contradictory orders negating the first order and overriding the interlocutory judgment. To make matters worse, the persons who sought and were granted the orders were not parties to the suit and they did not seek to be enjoined before the orders were made. Additionally the orders were made *ex parte* without compliance with the rules of natural justice, and they lasted beyond 14 days without extension. The same court, again differently constituted, was asked by the CCD to revisit the earlier orders but shirked that responsibility with the result that the *ex parte* orders stood. From the record before us, those complaints are not seriously controverted.

51. Of all the complaints made by the Hiram group, the most serious, which was not debunked by the Attorney General or the Mwenje group, was the breach of rules of natural justice. As **Kiage, JA** stated in the ***Law Society of Kenya case (supra)***:

> ***"It has long been settled law that a decision affecting legal rights of an individual which is arrived at by a procedure which offends against the principles of natural justice is outside the jurisdiction of the decision making authority."***

In ***Kiai Mbaki & 2 Others vs Gichuhi Macharia & Another [2005] eKLR,*** this Court stated thus:

> ***"The right to be heard is a valued right. It would offend all notions of justice if the rights of a party were to be prejudiced or affected without the party being afforded an opportunity to be heard. This Court has indeed reiterated that principle on many occasions."***

Lastly, to underscore the gravity of the breach, a five-Judge bench of this Court in ***Judicial Service Commission vs Mbalu Mutava & Another [2015] eKLR,*** stated as follows:

> ***"..the rules of natural justice, in particular right to fair hearing,*** *(audi alteram partem rule)* ***applied not only to bodies having a duty to act judicially but also to the bodies exercising administrative duties. In that case, Lord Hodson at page 132 identified three features of natural justice as: (1) the right to be heard by an unbiased tribunal, (2) the right to have notice of charges of misconduct, (3) the right to be heard in answer to those charges..... The right to fair hearing as a rule of natural justice, a part of the common law, has in modern times been variously described as "fair play in action", "justice of the common law"; "common fairness" "fairness of procedure" or simply as "duty to act fairly."***

There is no question that the subordinate court had a duty to comply with the rules of natural justice and to act fairly.

52. We think, with respect, that in making the Kariuki and Wachira Orders, the subordinate court '*deviated from the established and set beacons or pathway or legal criteria as delineated and demarcated for it and has run wild and amok, and at worst has gone on a frolic of its own, become an unruly horse and engaged in caprice, malice, witch-hunting and a wild goose chase running* helter- skelter.' In those circumstances, the Hiram group, on behalf of the Society, was entitled to invoke, and properly invoked, the supervisory jurisdiction of the High Court. We so find on the first issue.

53. The second issue is premised on the argument that the constitutional application was filed in abuse of court process on account of a multiplicity of other suits. Abuse of court process is, of course, a transgression which any court cannot countenance as it goes to the very root of the administration of justice and the rule of law. In coming to the conclusion that the Hiram group was in abuse of court process, the trial court followed the decision of Lord Bingham, the Lord Chief Justice in the case of the ***Attorney General vs Baker, The Times, March 7, 2000*** where he said:

> ***"Although the term abuse of the court process is not defined in the rules or practice direction it has been explained in another context as -***
>
> ***"using that process for a purpose or in a way significantly different from its ordinary and proper use." It is an abuse to bring vexatious proceedings i.e. two or more sets of proceedings in respect of the same subject matter which amount to harassment of the defendant in order to make him fight the same battle more than once with the attendant multiplication of costs, time and stress. In this context it is immaterial whether the proceedings are bought concurrently or severally."***

54. The suits which the trial court found to have been in abuse of court process were: **JR 20/2007**; **JR 815/2008**, **HCCA 696/2008,** and **Constitutional Application 30/09**. Needless to say, if those cases were by the same plaintiff/Applicant against the same defendant/respondent on the same subject matter and were calculated to harass the defendant/respondent, they would amount to abuse, whether filed concurrently or severally. Was that the position in this matter?

55. The trial court did not carry out any analysis of the cases although there was enough material on record to determine who filed the suits, against whom and for what purpose. Having done so ourselves, we are not satisfied that there was proper basis for the finding that the cases were filed in abuse of court process. The context before the filing of **JR 20/07** was that the subordinate court had issued patently illegal, and certainly irregular, orders to strangers in the original suit CMCC 792/06. The orders were used to interfere with the Society's Bank account with Coop Bank and the DCO Thika, appears to have stopped the operation of the account. The document exhibited on JR 20/07 shows that the parties to that suit were only the Society suing the DCO, and the order issued on 19th January, 2007 was against the DCO only.

56. **HCCA 696/08** was erroneously ascribed to the Hiram group by the trial court. The appeal arose from the dismissal of an application filed by the CCD to challenge the dismissal of his application dated 12th September, 2008 in CMCC 792/06. The appeal was not by the Hiram group as it had not filed the application. By the time the judgment in this matter was delivered on 19th April, 2010, the appeal was still pending, but was subsequently struck out for want of prosecution.

57. The next matter was **JR 815/08** which the trial court, again erroneously, stated had not been disclosed. It was indeed disclosed in the Affidavit of Hiram and the Judge herself had made an order staying further hearing until the constitutional application was finalised. The context before taking out the JR was that the executive trio had embarked on a campaign to fraudulently obtain duplicate Deed plans for the Society's land on the false pretext that the originals were lost when, in fact and to their knowledge, they had been handed over to, and were held by the Society's lawyers. According to the supplementary record of appeal, a report was made to the police and warrants of arrest were issued against the executive trio. The JR was directed at the Government offices that were being pressurized by the executive trio to hand over the Deed plans, that is to say: the Commissioner of Lands, Director of Surveys, Chief Registrar of Titles, the Commissioner of Cooperative Development & Marketing. Necessarily, it enjoined the executive trio who were instrumental in pushing the land agenda. Conservatory orders were necessary to stop alienation of the Society land and were issued accordingly. Surprisingly, despite the court orders, and numerous complaints laid before the Government offices who were reluctant to register the court orders and caveats against the Titles, the supplementary record shows that Duplicate Deed plans were issued and sales of the Society land were processed.

58. The last matter was the Constitutional application which invoked the supervisory jurisdiction of the court. As earlier found, this was a special jurisdiction.

59. In light of the above analysis, it is our view that the basis upon which the trial court relied to make the finding on abuse of court process was shaky, to say the least, and is not supportable. We answer the second issue in the negative.

60. The third issue arises from the finding by the trial court that it did not have the jurisdiction to determine the disputed leadership of the Society as this fell squarely within the jurisdiction of the Cooperative Tribunal. The court stated as follows:-

> ***"Since it is clear to the court that there was a dispute over leadership in the Applicant Society and hence who should be in control of the LR 10743 measuring 301 acres, the officials of the society or the Applicant knew exactly where to go for resolution of their dispute, that is, the Co-operative Tribunal which is special tribunal set up under the Co-operative Society's Act to deal with disputes arising from the business of Co-operatives. S 77 of the Co-operative Societies Act sets up the Tribunal, its Composition and S 76 provides for the nature of the Disputes to be adjudicated over by the Tribunal.....***
>
> ***What was before the Chief Magistrate's Court in CMCC 742/06 fell within S 76 (b) i.e. a dispute between members or between members and the Society: It was all about the business of the Applicant Society and it fell squarely under the jurisdiction of the Co-operative Tribunal."***

61. The counter argument was that the CCD was a party to the original suit and he could not have been taken before the same Tribunal under him. Secondly, it was contended that there was no leadership dispute in the Society. We have carefully perused the record of appeal and we are persuaded that the alleged leadership dispute is a red herring, tailored at masking the scramble for the fraudulent alienation of the Society's land.

62. The starting point is the election of the Hiram group on 21st June, 2005 which is acknowledged by the Mwenje group as they refer to them as the 'former management committee' members. The CCD, in sworn affidavits has verified that position and confirmed, through an official search, that the Hiram group was duly registered in his office. The power to register, supervise, regulate and generally give technical assistance and advise to cooperative societies lies with the CCD. In law therefore, the *prima facie* leadership of the Society is that emanating from the office of the CCD unless there was a lawful change. It was the Mwenje group that was aggrieved by the failure by the CCD to register them as the new office bearers. They ought to have registered a dispute and referred it to the Cooperative Tribunal, but they did not. Instead they embarked on a process of imposing themselves in leadership which was patently an abuse of court process.

63. The process was based on a purported letter written by the DCO on 1st August, 2008 which the DCO himself disclaimed and there is evidence of criminal proceedings relating to that letter. The criminal proceedings commenced in February 2009 and it is a sad commentary on our criminal justice system that the case has not been concluded 10 years hence. Despite the presumption of innocence which the law imports in criminal matters, a civil court is entitled to examine and evaluate the documents presented before it on a balance of probability. The controversy surrounding the letter had not been resolved before it was used to obtain court orders and Deed plans which have endangered the existence of the Society land and the rights of 4,500 members.

64. Secondly, as correctly submitted by the appellant, the CCD was a party to the suit which questioned the claim of leadership by the Mwenje group. It was not expected that the Tribunal would handle the case as it was not purely a matter within ***section 76*** of the Act.

65. Having found that the constitutional application was properly invoked; that it was not filed in abuse of the court process; and that the *prima facie* leadership of the Society at the time material to the original suit was the Hiram group, it only remains for us to find that this appeal is meritorious. The trial court declined to make any orders favourable to any party upon the finding that they were all acting *mala fides* and in abuse of the court process. The order left, not only the parties, but also the 4,500 members of the Society in limbo. So, what are the appropriate orders to be made in the matter. That is the final issue.

66. As correctly found by the trial court, the supervisory orders prayed for can only issue against the subordinate court under ***section 65 (2)*** of the Constitution. We grant that order with the result that the Orders made by P. K. Kariuki, Esq. RM on 20th and 29th August, 2008, and the orders made by Mrs. L. W. Wachira, SRM, on 9th December, 2008 in CMCC 792/06, are declared a nullity and are hereby set aside. The proceedings in that case shall proceed in the manner and procedure prescribed by law. The constitutional application is not efficacious in supporting **prayers (ii)** and **(iii)** made in the memorandum of appeal. The prayers relate to alienation of the land of the Society which other pending suits are addressing. It would be prejudicial to the courts handling those matters if we made definitive orders as sought. We decline the invitation to do so.

67. The upshot is that the appeal is allowed to the extent stated above. For the avoidance of doubt, the following shall be the **final orders** of this Court:-

> ***(i) The Orders made by P. K. Kariuki, Esq. RM on 20th and 29th August, 2008, and the orders made by Mrs. L. W. Wachira, SRM, on 9th December, 2008 in CMCC 792/06, are declared a nullity and are hereby set aside. The proceedings in that case shall proceed in the manner and procedure prescribed by law.***
>
> ***(ii) As there are pending suits relating to transfers and alterations made in Land Parcel No. 10743 and the subdivisions made therein, prayers (ii) and (iii) made in the memorandum of appeal are not granted. The pending suits relating to the land shall proceed to hearing and determination in accordance with the law.***
>
> ***(iii) Pending the hearing and determination of CMCC 792/06, and all pending suits relating to the land, the following orders issued by Nyamu, J. on 19th January 2009, as amended by this Court, shall remain in force and shall be registered against the Title(s) forthwith:***
>
> ***"1. <u>THAT</u> preservatory and conservatory orders be and are hereby issued restraining:-***
>
> ***(a) The 14th, 15th and 16th Respondents and or any other person from entering into any dealings affecting the Appellants' proprietory interests in L.R 10743 THIKA measuring 301 acres, or any sub-division thereof, for the purposes of any transaction***

sale, charge or otherwise on the strength of the Orders made by HON KARUIKI, RM on 20th and 29th August, and Hon. L. WACHIRA (MRS) SRM on 9th December, 2008 in Chief Magistrates Court Thika in Civil Suit No. 792 of 2006 - SAMURU GITUTO

Farmers Co-operative Society Limited - versus John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development.

(b) The Registrar of Titles from entertaining and or making of any entries affecting the appellants' proprietory interests in L. R. 10743 THIKA measuring 301 acres, or any sub- division thereof, on the strength of the orders made by Hon. KARIUKI, RM on 20th and 29th August, and Hon. L. Wachira (Mrs) SRM pm 9th December, 2008 in Chief Magistrates Court Thika in Civil Suit No. 792 of 2006 - Samuru Gituto Farmers Co-operative Society Limited versus John Mbau, Monica Wambui, Joseph Karumba, Hannah Marugu, Simon Ngugi Kamau, Paul Wanyoike, Joan Njeri, Boniface Mwana and Commissioner of Co-operative Development.

(iv) The appellant shall have half the costs of this appeal and of the court below.

Dated and delivered at Nairobi this 22nd day of March, 2019.

P. N. WAKI

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JUDGE OF APPEAL

D. K. MUSINGA

.....

JUDGE OF APPEAL

J. OTIENO-ODEK

.....

JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR