



**Endarasha Farmers Cooperative Society Ltd v Chief Magistrate’s Court, Nyeri (Miscellaneous Application E001 of 2022) [2022] KEELRC 3899 (KLR) (16 September 2022) (Ruling)**

Neutral citation: [2022] KEELRC 3899 (KLR)

**REPUBLIC OF KENYA  
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI  
MISCELLANEOUS APPLICATION E001 OF 2022**

**DKN MARETE, J  
SEPTEMBER 16, 2022**

**IN THE MATTER OF: AN APPLICATION BY ENDARASHA  
FARMERS COOPERATIVE SOCIETY LTD FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW OF ORDERS/PROCEEDINGS IN  
THE CHIEF MAGISTRATE’S COURT ELRC CAUSE NO.31 OF 2019.**

**AND**

**IN THE MATTER OF: THE DECISION BY THE CHIEF MAGISTRATE’S  
COURT, NYERI IN ELRC CAUSE NO.31 OF 2019, CONDEMNING THE  
APPLICANT UNHEARD AGAINST THE RULES OF NATURAL JUSTICE**

**BETWEEN**

**ENDARASHA FARMERS COOPERATIVE SOCIETY LTD .... EXPARTE  
APPLICANT**

**AND**

**CHIEF MAGISTRATE’S COURT, NYERI ..... RESPONDENT**

**RULING**

1. This is an application dated December 20, 2021 and seeks the following orders of court;
  - a. An order of *certiorari* removing to this honourable court for purposes of being quashed the orders/proceedings/ decree/ and or any subsequent orders thereto by the respondent in Nyeri, Chief Magistrate’s Court ELRC No 31 of 2019 and Nyeri Misc civil application No E042 of 2021.
  - b. The cost of this application be in favour of the applicant and such other orders and directions the court deems fit to grant.



2. The application is based on various grounds and all pointing to maltreatment of the *ex-parte* applicant by the respondent who made adverse orders against her in Nyeri CM ELRC Nos 31 of 2019 and Nyeri CM ELRC E042 of 2021. It is the applicant's contention that these determinations have occasioned her a miscarriage of justice in that as we speak, her lorries and other property are at the risk of being auctioned.
3. It is the further averment and submission of the applicant that the decisions of the respondent were *ultra vires*, irregular, null and void *ab initio* and ought to be removed and quashed by this court.
4. The *ex-parte* applicant in her written submissions dated January 18, 2022 buttresses her case by relying on the authority of *Agutu Wycliffe Nelly v Office of the Registrar of Academic affairs, Dedan Kimathi University of Technology DEKUT* (2016) eKLR, where the court held thus;

“The first step in the judicial review procedure involves the mandatory “leave stage”. At this stage an application for leave to bring judicial review proceedings must first be made. The leave stage is used to identify and filter out, at an early stage, claims which may be trivial or without merit. At the leave stage an applicant must show that he/she has ‘sufficient interest’ in the (4) the matter otherwise known as *locus standi*. In other words, the applicant must demonstrate that he/she is affected in some way by the decision being challenged. An application must also show that he/she has an arguable case and that the case has a reasonable chance of success. The application must be concerned with a public law matter, i.e. the action must be based on some rule of public law.

The decision complained of must have been taken by a public body established by statute or otherwise exercising a public function. Thus, at the leave stage, the applicant has the burden of demonstrating that the decision is illegal, unfair and irrational as discussed above. The applicant must persuade the court that the application raises a serious issue. This is a low threshold. A serious issue is demonstrated if the judge believes that the applicant has raised an arguable issue that can only be resolved by a full hearing of the judicial review application. If the court is not persuaded as aforesaid, leave will be denied and the matter proceeds no further.”

5. She sums this by submitting that the respondent's refusal to consider the applicant in hearing the triable defence and counter claim in the circumstances cannot pass the test of judicial scrutiny.
6. The respondent in her written submissions dated February 8, 2022 rubbishes the application on grounds that through and through, the applicant was indolent in the prosecution of her various matters before the respondent. This is as follows;ELRC Cause No 31 of 2019 was instituted through a claim occasioned by unlawful termination of employment.On June 20, 2019, the ex-parte applicant served with notice of summons to enter appearance and motion on July 16, 2019.On July 16, 2019, both parties attended court and a pre-trial date set for August 13, 2019.On December 3, 2019, a date of March 2, 2021, was taken and served on the applicant's advocate.On March 2, 2021, this matter was heard ex-parte in the absence of the applicant and his counsel, all duly served.There was contagious non-appearance of the applicant on further mentions despite service.Judgment was entered on June 3, 2021 in the following term;
  1. Payment of one month's salary amounting to 48,268 *in lieu* of notice.
  2. Kshs 27,351.90 being salary for seventeen days worked for September 2018.



3. Kshs 579,216 being one year salary as compensation for unlawful and unfair termination.
4. Costs of the suit plus interest at court rates.

Application to set aside judgment on grounds of her right to be heard. Applicant's advocates did not fix a date for the application and abandoned the same. Another application fixed on June 17, 2021 by Mbao Gitahi advocates on behalf of the ex parte applicant. The application sought for stay of execution of the judgment pending hearing of the application. Mbao claimed that the society was never served with the date fixed for hearing on March 2, 2021 and sought that an unconditional leave be granted for the ex parte applicant to tender its defence. The matter was then fixed for mention on August 12, 2021 on which date both parties appeared and a hearing date taken by consent on September 17, 2021. On September 17, 2021 applicant did not attend hearing and it was dismissed. On September 7, 2021 application reinstated on condition that she pays throw away costs of Kshs 6,000.00 which she never did. The applicant did not appear on due date for mention. The application for reinstatement now stands dismissed. Auctioneers and intention to appeal.

7. The respondent/ applicant further submits as follows;

... the reason the ex parte applicant seeks leave to file judicial review is because procedure was never followed. From the facts herein stated, the ex parte applicant has always been given a chance to defend his case but he never does so. Instead, the ex parte applicant changes advocates every time they are not satisfied with a ruling of the court. Allowing the application will lead to unending litigation of a matter that has been heard and determined by courts of competent jurisdiction.

8. It is his penultimate submission that through and through, the applicant was accorded ample opportunity to address her case but failed to do so. He has ignored, disobeyed and disregarded various court orders and directions and is not in any way deserving of the orders sought.
9. In this regard, the respondent seeks to rely on the authority of *John Onger Mariaria & 2 others v Paul Matundura* civil application No Nai 301 of 2003 (2004) 2 EA 163 and *Savings and Loans Limited v Susan Wanjiru Muritu* Nairobi (Milimani) HCCS No 397 of 2002.
10. There is not even display of party diligence in the prosecution of their matter. I agree with the respondents case and submissions on lack of due diligence on the part of the applicant in the prosecution of her various issues before court. This is clearly demonstrated by her inertia and belligerent approach in the litigation of her cases.
11. It is trite law that equity does not come out to aid the indolent. In all the circumstances of this matter, the *ex parte* applicant was exorbitantly negligent in handling her matters. She cannot be heard to want to reap out of her shoddiness and or mischief. She now has to pay the price. The application therefore stands lost for want of merit.
12. I am therefore inclined to dismiss the application with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 16<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**D.K.NJAGI MARETE**

**JUDGE**

Appearances



1. Mr. Karanja instructed by Karanja Maina & Co. Advocates for the Ex-parte Applicant.
2. Ms Mumbi Kiarie instructed by State Law Office for the Respondent.

