



**Mwalimu National Sacco Ltd v Murithi & 2 others (Civil Appeal
E244 of 2023) [2024] KEHC 13069 (KLR) (Civ) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13069 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL APPEAL E244 OF 2023

JN MULWA, J

OCTOBER 31, 2024

BETWEEN

MWALIMU NATIONAL SACCO LTD APPELLANT

AND

LINUS LABANSON MURITHI 1ST RESPONDENT

PETER OMONDI OKAL 2ND RESPONDENT

JOSEPH MUSEE KULA 3RD RESPONDENT

(On Notice of Motion Dated 9/5/2024)

RULING

1. This is an appeal arising from the award of the Co-operative Societies Tribunal in Nairobi Cause No. 141 of 2017 delivered on 2/3/2023. The Appellant being dissatisfied with the award lodged this appeal by a Memorandum of Appeal dated 30/3/2023 filed on even date, and amended on 23/10/2023.
2. By a motion dated 9/5/2024 the 1st and 2nd Respondents seek the following orders;
 - a. Spent
 - b. That the Appellant having failed to set down the appeal for hearing for more than 1 year after filing, the same be placed before the judge for dismissal
 - c. That this court be pleased to declare that Francis Kamau, a credit officer of the Appellant was not competent to defend the Appellant at the Co-operative Tribunal as a committee member as demanded under section 28 (3) (b) of the *Co-operatives Societies Act*.



- d. That the Co-operative Tribunal's directive allowing the Appellant to file additional evidence 45 days after judgment was null and void.
- e. That this appeal, filed out of time without leave, 6 years after judgment was first obtained at the Co-operatives Tribunal on 8/1/2018 is an abuse of the process of this court and is hereby dismissed.

The grounds for the application are stated at its face and upon an affidavit sworn by the 1st Respondent on even date.

3. In opposition to the application, the Appellant filed a replying affidavit sworn on 10/6/2024. Parties were directed to file written submissions, but only the Applicants filed their submissions.
4. The court has considered the parties affidavits in support and in opposition to the application and the submissions. Judgment subject of the Appeal herein was delivered on 2/03/2023.
5. The main issue in the court's opinion is in regard to the applicants prayer number 2 being the appellants failure to set down the Appeal for hearing more than one year after it was filed, citing order 42 rule 13 of the Civil Procedure Rules that provide for directions to be taken before the appeal is set down for hearing.
6. A perusal of the court file proceedings show that the above order was duly complied with, and the Record of Appeal filed and the appeal mapped for RRI in April 2024 before this application was filed.
7. The Appellant by its Replying Affidavit confirms that the judgment subject of the appeal is dated 2/3/2023 and therefore filed within the statutory period of 30 days upon its delivery. It has also been shown that the appeal has been actively been progressed by several court attendances by way of mentions, the last such mention being on 4/4/2024, wherein it confirmed filing of the Record of Appeal together with its submissions and only waiting for a judgment date from the court.
8. By the foregoing, it is evident that the Respondents have not been candid in their presentation of material facts pertaining to the appeal before the court in urging its application for dismissal of the appeal. On the other prayers sought by the Applicants, the court makes a finding that they cannot be interrogated and determined in this application but in the appeal during its hearing on merit.
12. The court therefore finds the Respondents application dated 9/5/2024 to be devoid of merit. It is dismissed with costs.
13. Further orders are issued that this Appeal be listed down for mention for further directions before the judge for further directions on 23/01/2025.

Orders accordingly

DATED SIGNED AND DELIVERED IN NAIROBI THIS 31ST DAY OF OCTOBER, 2024.

JANET MULWA

JUDGE

