



**Omondi v Maseno University Sacco Society Limited (Miscellaneous Civil Application E028 of 2023) [2023] KEHC 19472 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19472 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CIVIL APPLICATION E028 OF 2023**

**MS SHARIFF, J**

**JUNE 30, 2023**

**BETWEEN**

**PIUS OUMA OMONDI ..... APPLICANT**

**AND**

**MASENO UNIVERSITY SACCO SOCIETY LIMITED ..... RESPONDENT**

**RULING**

1. The applicant's notice of motion dated February 23, 2023 seeks the following orders;
  - a. The honourable court be pleased to stay the warrants of committal of the applicant to civil jail at Kodiaga Maximum Prison for a further 90 days and all other consequential order thereto pending the inter parties hearing and determination of this application.
  - b. The honourable court be pleased to set aside the order of keeping the applicant in prison for 90 days pending the hearing and determination of the instant application.
  - c. The honourable court be pleased to order the unconditional release of the applicant on such judicious terms or upon execution of reasonable bond terms pending the hearing and determination of this instant application.
  - d. Costs of the reference be provided for.
2. The application is grounded on the affidavits of Alego Wilson, counsel in conduct of the mater for the applicant sworn on February 23, 2023 and April 11, 2023 where learned counsel depones that the matter was coming up for mention on a notice to show cause on 1/11/2022 where the applicant was committed to civil jail for a period of 14 days. The mater came up again on November 17, 2022 for a mention where he was committed once again to civil jail for a further 15 days. On February 6, 2023, the matter came up for mention before the cooperative tribunal and the applicant was committed to



jail for 90 days. In all these instances, there was no formal application made by the respondent save for the oral applications.

3. Counsel depones that notice to show cause can only be extended upon a formal application by a party and in the instant case, the due process was not followed. He further depones that the continued detention in prison will cause harm since the applicant is sickly and is due for surgery which the prison facilities cannot afford. He is also apprehensive that the applicant will lose his job if the detention is continued.
4. The application is opposed through the replying affidavit of prof Andrew Oduor, the respondent's treasurer who depones inter alia that on 1/1/2022, the applicant and others were ordered by the cooperative tribunal to make part payment of Kshs 300,000/- which he failed to honour thus the committal to civil jail by the court on November 17, 2022 for a period of 14 days.
5. He depones that on 6/2/2023, the matter came up again in court for a notice to show cause hearing and the applicant having made no payment, he was committed to jail for 90 days upon application by counsel. He depones that despite the order that the applicant pays part of the decretal sum, he has so far paid nothing.
6. The application was disposed of by way of written submissions. Both parties complied. Their respective arguments have been considered.
7. In the submissions filed, the respondent raised a preliminary objection that the motion offends the provisions of Section 74 of the *Cooperative Societies Act* and the court is therefore without jurisdiction.
8. In the circumstances, it is prudent to determined the objection as without jurisdiction, the court ought not to take one further step as was stated in the celebrated case of *Motor Vessel Lilian S Vs Caltex Oil (K) Ltd* (1989) eKLR.
9. Accordingly, Section 74(2) of the *Cooperative Societies Act* provides;

"(2) A party aggrieved by the decision of the Tribunal may within thirty days appeal to the High Court on matters of law."
10. The application under consideration is one seeking a reversal of the orders of the cooperative tribunal in an ongoing matter under that tribunal. The applicant seeks to have the orders of committal to civil jail reversed by this court.
11. The above provisions of the law were considered in *Alfayo Nyairo v Nyabomite Farmers Co-op Society Limited* [2021] eKLR where Maina J held;

"Once the Commissioner makes an inquiry whether on his own motion or on the application of a liquidator, creditor or member of a society and he considers it appropriate to make an order for a surcharge the person affected can only have the order set aside upon an appeal first to the Co-operative Tribunal within thirty days and if not satisfied with the decision of the Tribunal to the High Court within thirty days on matters of law. The procedure is not only simple but clear. In essence it leaves no doubt that the law contemplated that one must first appeal to the Co-operative Tribunal before coming to the High Court. The aggrieved party only comes to the High Court by way of an appeal against the decision of the Tribunal but not otherwise."
12. In this case, the matter before this court is not an appeal but an application seeking orders of setting aside of the tribunal's order. Based on the above authority, I find that this court lacks jurisdiction to



entertain the matter for violation of legally set statutory guidelines. The Act is very elaborate on what the applicant ought to have done if unsatisfied by the orders of the tribunal.

13. Flowing the above, I find that without jurisdiction, I cannot take a further step in this matter and proceed to dismiss the application dated February 23, 2023 with costs to the respondent.
14. Consequently, the orders earlier given in the matter releasing the applicant from civil prison are hereby vacated.

**DELIVERED, DATED AND SIGNED AT KISUMU THIS 30<sup>TH</sup> DAY OF JUNE 2023.**

**MWANAISHA. S.SHARIFF**

**JUDGE**

**In the presence of:**

Miss Ariga for the Respondent

Mr Alego Wilson holding brief for Ms Kosewe for the Applicant

