



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL SUIT NO. 30 OF 2018

IBRAHIM JUMA.....1ST PLAINTIFF

STEPHEN WALUBI.....2ND PLAINTIFF

FRANCIS MUNGO WASWA.....3RD PLAINTIFF

(Chairman, Organizing Secretary and Chief Executive Officer

of the Kenya National Federation of Sugarcane Farmers, a Society)

VERSUS

JECKONIA OYOO.....1ST DEFENDANT

ESERA OKOTH.....2ND DEFENDANT

STEPHEN OLE NARUPA.....3RD DEFENDANT

RULING

1. The suit herein was commenced, on 1st November 2018, by way of a plaint, dated 31st October 2018, by the plaintiffs, against the defendants, principally seeking a permanent injunction order to stop them from implementing resolutions passed during a meeting held between 12th and 18th October 2018. It was filed simultaneously with a Motion, dated 31st October 2018, under certificate of urgency, seeking a variety of temporary injunctions. From the pleadings, it would appear that both sides were either members or officials of the same organization, the Kenya National Federation of Sugarcane Farmers (KNFS).

2. The 2nd defendant entered appearance. He did not file defence. Instead, he filed an application, dated 7th November 2018, seeking stay of the proceedings and reference of the dispute to arbitration in terms of Article 14:14 of the Constitution and Rules of the Society.

3. Then Rauto & Company, Advocates, entered appearance for all the defendants, on 8th November 2018, together with a notice of preliminary objection, of even date, arguing that the court lacked jurisdiction over the matter by virtue of section 18 of the Societies Act, Cap 108, Laws of Kenya, the matter was *sub judice* as the Registrar of Societies had received a complaint from the plaintiffs, dated 22nd October 2018 and 25th October 2018, and that the the Constitution of the society provided that disputes amongst members should, in the first instance, be referred to a dispute resolution mechanism.

4. Directions were given for disposal of the preliminary objection by way of written submissions. Both sides filed their respective written submissions. Midstream, before the preliminary objection was resolved, the plaintiffs withdrew the case against the 2nd defendant, but the 2nd defendant insisted on being paid costs. Directions were given for written submissions limited to that issue of costs. Eventually, it was agreed that the preliminary issue be canvassed, without abandoning the matter of costs.

5. I have perused through the written submissions and the noted the arguments made by both sides.

6. Section 18 of the Societies Act provides for resolution of disputes as to officers of a society, and requires that where the Registrar of Societies is of the view that a dispute as occurred amongst members as to its officials, and the Registrar is not satisfied as to who the legitimate officials are, he may, by written order, require the society to provide him with evidence of settlement of the dispute, and proper appointment of lawful officers of the society or institution of proceedings for settlement of the dispute. If the order is not complied with within a given period, he may proceed to cancel registration of the society.

7. The dispute herein revolves around the procedure deployed by the society, for the removal of the plaintiffs as officials of the society, which ought to bring the matter squarely within section 18 of the Societies Act.

8. Under Article 14.14 of the Constitution of the Society, any dispute between members should, in the first place, be referred to a dispute resolution committee, and, if that fails, to the Sugar Industry Arbitration Tribunal. The plaintiffs have not demonstrated that they had availed themselves of the same prior to coming to court. .

9. I agree with the defendants, that the plaintiffs ought to exhaust all the mechanisms for dispute resolution, provided for under the Societies Act and the Constitution of their organization, before coming to court. The suit herein is premature, and it is accordingly dismissed with costs. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29th DAY OF October, 2021

W. MUSYOKA

JUDGE