



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAMIRA**

**MISC. CIVIL SUIT NO. 40 OF 2019**

1. SAMWEL MARAK.....1<sup>ST</sup> PLAINTIFF
2. ZABLON CHANGE.....2<sup>ND</sup> PLAINTIFF
3. JOSIAH OYARO.....3<sup>RD</sup> PLAINTIFF
4. DAVID NYARIBO.....4<sup>TH</sup> PLAINTIFF
5. ALFRED NYAIRO.....5<sup>TH</sup> PLAINTIFF
6. ZACHARY ONDARA.....6<sup>TH</sup> PLAINTIFF
7. SAMWEL MOSES.....7<sup>TH</sup> PLAINTIFF

**VERSUS**

**THE COMMISSIONER FOR CO-OPERATIVES.....DEFENDANT**

**RULING**

Before me is the Notice of Motion dated 27<sup>th</sup> September 2019 which principally seeks an order that this court be pleased to recall Nyamira HCCC No. 1 of 2018 referred by this court to the Co-operative Tribunal by a ruling dated 14<sup>th</sup> February, 2019. The gist of the application is that the Co-operative Tribunal does not have jurisdiction to hear the dispute between the parties and hence the action of this court was ultra vires. The application is supported by the affidavit of Josiah Oyako sworn on 27<sup>th</sup> September, 2019 in which he deposes that the Co-operative Tribunal has no jurisdiction to dispose this matter and hence the case cannot proceed there.

The application was opposed by way of grounds of opposition filed out of time without leave on 20<sup>th</sup> November 2019 and which in the circumstance this court shall ignore.

On 24<sup>th</sup> October, 2019 this court directed counsel for the parties to file written submissions but by 30<sup>th</sup> January, 2020 and even by the time of writing this ruling only those of the Learned counsel for the applicant had been received. As it were the application is unopposed.

I have nevertheless carefully considered the application and my finding is that the same has no merit. As stated in the impugned ruling this court recognized that the dispute between the parties was not one of those that it was mandatory to refer to the Co-operative Tribunal. Nevertheless, this court referred the dispute there given that its nature was one that can broadly be regarded as **“one concerning the business of a Co-operative Society”** and the Tribunal being the best adjudicator of such disputes and in view of this court’s obligation to promote alternative dispute resolution under Article 159 of the Constitution it was in the interest of justice to do so. The applicant has not by his arguments persuaded this court otherwise and in the premises this court finds no good reason to recall the dispute. The same shall be adjudicated by the Tribunal unless the Tribunal itself informs this court that it has no capacity to dispose of it. This application is accordingly dismissed but there shall be no order for costs given that it was not opposed.

**Signed, dated and delivered in Nyamira this 23<sup>rd</sup> day of April 2020.**

**E. N. MAINA**

**JUDGE**

***This Ruling was delivered electronically in view of the Ministry of Health and the World Health Organization’s guidelines on combating the Covid-19 pandemic, the Advocates for the parties having consented.***