



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 681 OF 2019

SIMON OTIENO ADEDE.....APPELLANT/APPLICANT

-VERSUS-

MEK SACCO SOCIETY LIMITED.....1ST RESPONDENT

SAMSON OMONDI CHILO.....2ND RESPONDENT

CHRISPIN OTIENO PUDO.....3RD RESPONDENT

FRANCIS OCHIENG OSURE.....4TH RESPONDENT

MARY ANNE AKOTH.....5TH RESPONDENT

ERIC ONYANGO OTIENO.....6TH RESPONDENT

JENIFER MOYOYO.....7TH RESPONDENT

RULING

1. The appellant/applicant herein took out the Notice of Motion dated 18th November, 2020 and sought for an order for leave to lodge an appeal against the ruling and or order delivered by this court on 13th November, 2020, and for the provision of costs of the Motion.
2. The Motion is supported by the grounds set out on its body and the facts stated in the affidavit of Mr. **Absalom Osodo**, learned advocate for the appellant/applicant.
3. When the Motion came up for interparties hearing before this court, **Mr. Osodo** learned counsel for the applicant indicated that he would be relying on the grounds and the affidavit supporting the Motion, whereas **Mr. Nyakiangana**, advocate for the 2nd to 7th respondents indicated that he was not opposing the Motion. The 1st respondent did not file any documents to oppose the Motion and did not also participate at the hearing of the aforesaid Motion.
4. I have considered the grounds laid out on the body of the Motion and the facts deponed in the affidavits supporting the Motion.
5. A brief background of the matter is that the parties herein were previously engaged in a dispute before the Co-operative Tribunal (“the Tribunal”) in Tribunal Case No. 612 of 2017. Upon proceeding with the hearing *ex parte*, the Tribunal entered an *ex parte* judgment in favour of the 1st respondent and against the applicant on 8th January, 2019.
6. Being aggrieved with the *ex parte* judgment, the applicant sought to have the same set aside but that the Tribunal vide the ruling and order made on 7th November, 2019 declined to grant the order sought and dismissed his application.
7. Consequently, the applicant approached this court by way of an appeal against the aforementioned ruling and filed the application dated 22nd November, 2019 seeking an order for a stay of execution of the *ex parte* judgment pending the hearing and determination of the appeal.

8. Upon hearing the parties, this court in its ruling delivered on 13th November, 2020 found that the applicant had not satisfied the conditions for the granting of an order for a stay of execution and consequently dismissed the application with costs to the 1st respondent.

9. The aforesaid ruling has triggered the instant Motion.

10. While it is apparent that the applicant is essentially seeking for leave of this court to lodge an appeal against its ruling in the Motion, I also note that as per the provisions of **Section 81(3)** of the **Co-operative Societies Act No. 12 of 1997**, the decision of the High Court on appeal shall be final.

11. In view of the foregoing provision, it is clear that there is no room for an appeal from the High Court to the Court of Appeal. There is therefore no basis for me to consider the merits of the Motion.

12. The upshot, therefore, is that the Motion is hereby ordered dismissed for being incompetent. On the subject of costs, I hereby order each party to bear its own costs of the Motion.

Dated, Signed and Delivered online via Microsoft Teams at Nairobi this 17th day of December, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant/Applicant

..... for the 1st Respondent

..... for the 2nd to 7th Respondents