



**Republic v Sacco Societies Regulatory Authority; Moi University Sacco Society Limited  
(Exparte Applicant); County Secretary, Uasin Gishu County (Interested Party) (Miscellaneous  
Application 7 of 2018) [2019] KEHC 10903 (KLR) (21 February 2019) (Ruling)**

*Republic v Sacco Societies Regulatory Authority Exparte Moi University Sacco Society  
Limited; County Secretary Uasin Gishu County (Interested Party) [2019] eKLR*

Neutral citation: [2019] KEHC 10903 (KLR)

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**MISCELLANEOUS APPLICATION 7 OF 2018**  
**OA SEWE, J**  
**FEBRUARY 21, 2019**  
**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**  
**AND**  
**IN THE MATTER OF FAIR ADMINISTRATIVE ACTIONS ACT NO. 4 OF 2015**  
**AND**  
**IN THE MATTER OF THE CO-OPERATIVE**  
**SOCIETIES ACT, CHAPTER ... LAWS OF KENYA**  
**AND**  
**IN THE MATTER OF THE SACCO SOCIETIES REGULATORY**  
**AUTHORITY ACT, CHAPTER 490 OF THE LAWS OF KENYA**  
  
**BETWEEN**  
**REPUBLIC ..... APPLICANT**  
  
**AND**  
**THE SACCO SOCIETIES REGULATORY AUTHORITY ..... RESPONDENT**  
  
**AND**  
**MOI UNIVERSITY SACCO SOCIETY LIMITED ..... EXPARTE APPLICANT**  
  
**AND**  
**COUNTY SECRETARY, UASIN GISHU COUNTY ..... INTERESTED PARTY**



## RULING

1. The Court was moved by Moi University Sacco Society, the *ex parte* Applicant (hereinafter the Applicant), vide the Notice of Motion dated 11 July 2018, for Judicial Review Orders of *Certiorari*, Prohibition and *Mandamus* for the purposes of quashing the decision of the 1<sup>st</sup> Respondent dated 27 June 2018 by which it revoked the Deposit-Taking Business Licence; to prohibit the 1<sup>st</sup> Respondent, the Sacco Societies Regulatory Authority, from publishing in national newspapers or the Kenya Gazette the revocation of the Applicant's Deposit-Taking Licence; and to compel the 1<sup>st</sup> Respondent to rescind their decision revoking the Applicant's Deposit-Taking Licence and to employ due process and substantial administrative justice in the matter.
2. The application for leave to file the application was filed under Certificate of Urgency on 2 July 2018 and was accordingly granted; whereupon the substantive application was filed and served on the 1<sup>st</sup> Respondent. Upon being served with the application, the 1<sup>st</sup> Respondent filed its response by way of a Replying Affidavit and a Notice of Preliminary Objection. A Notice of Appointment of Advocate as well as a Replying Affidavit was also filed on behalf of the Joint Liquidators of the *Ex Parte* Applicant by M/s Joseph C.K. Cheptarus & Company Advocates on 24 July 2018, pursuant to Order 53 Rule 6 of the Civil Procedure Rules, 2010.
3. In the premises, directions were given on 24 July 2018 that the Preliminary Objection be disposed of first; and so written submissions were invited from Learned Counsel for the parties. The written submissions for the 1<sup>st</sup> Respondent, (who I shall simply refer to hereinafter as the Respondent, there being no other Respondent in this matter) were filed on 27 July 2018 while the Interested Party's written submissions were filed on 7 August 2018. The pith of the Respondent's submissions was that since the Applicant did not exhaust the statutory remedies available to it under the *Sacco Societies Act*, No. 14 of 2008, this application is untenable. In addition to that, it was argued by the Respondent that the substantive application is also incompetent because it was commenced without a resolution of the Applicant's Management Committee; that it was commenced in the name of a deregistered entity and that the Supporting Affidavit has been sworn by two deponents and yet has clauses in the first person singular pronoun.
4. The Interested Party lent its support to the Respondent's written submissions and reiterated the points raised by Counsel for the Respondent and added that, since the Liquidation Order has already been published in the Kenya Gazette, vide Gazette Notice No. 6971 of 13 July 2018 and the handing over exercise done with in respect of the assets and liabilities of the Applicant, the application has been overtaken by events and is therefore no longer competent. He urged the Court to uphold the Preliminary Objection dated 20 July 2018 and to strike out the Applicant's Notice of Motion dated 11 July 2018 with costs, including costs to the Liquidators.
5. I have given due consideration to the application, the Supporting and Replying Affidavits filed in respect thereof, as well as the parties' written submissions and authorities relied on by their Learned Counsel. The facts emerging therefrom, and about which there can be no disputation, is that the Applicant was granted a Deposit-Taking Licence by the Respondent in the year 2014; and that it carried on the Sacco business, including deposit-taking and front office banking services as well as lending to its membership until 7 March 2018 when it was served with a Notice of Intention to revoke the Deposit-Taking Licence. Thus the Applicant was thereby called upon to show cause why its licence should not be revoked as proposed.



6. It is further not in dispute that on 22 March 2018, the Applicant responded to the Revocation Notice; or that upon considering the Applicant's response and visiting the offices of the Applicant, the Respondent took a decision to go ahead with the proposed revocation and communicated its decision vide a letter dated 27 June 2018. The point of departure is the contention by the Applicant that after making its response to the Revocation Notice, it wrote an email to the Respondent asking for a hearing before a decision was taken; which opportunity was not availed to it. It was further the contention of the Applicant that the Respondent proceeded to take over its business and assets on the very date of 27 June 2018 when the revocation letter was delivered. Hence, the Applicant averred that, quite apart from the fact that due process was not followed with a view of according it a fair hearing, the Respondent also acted unreasonably, in bad faith and ultra vires its powers. Hence, feeling aggrieved by the decisions and actions of the Respondent, the Applicant took advice from its Counsel and deemed it fit to file the instant application for relief; which application has been objected to on points of law.
7. The application has been attacked by the Respondent and the Interested Party on the following grounds:
- (a) That the Applicant having failed avail itself of and exhaust the alternative redress procedure provided for in the Sacco Societies Act, this Court has no jurisdiction to entertain the Judicial Review Application;
  - (b) That the application is incompetent for the reason that it was commenced without a resolution of the Management Committee of the Applicant;
  - (c) That the proceedings have been brought in the name of an entity that is non-existent, the Applicant having been deregistered pursuant to Section 62 of the Co-operative Societies Act.
  - (d) That the Joint Supporting Affidavit is incurably defective.
8. In determining what is the proper subject of a Preliminary Objection, it was held in *Mukisa Biscuits Manufacturing Co. Ltd v. West End Distributors* [1969] EA 696 that:
- “... a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
9. Accordingly, whereas Ground [a] would pass muster, the same cannot be said of Grounds [b], [c] and [d], for the simple reason that they cannot be resolved without a consideration of the evidence placed on record by the Applicant. As was opined by Sir Charles Newbold, P. in the *Mukisa Biscuits Manufacturing Co. Ltd Cas*:
- “...A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
10. The same position was adopted by Hon. Ojwang, J. (as he then was) in *Oraro v. Mbaja* [2005] 1 KLR 141, thus:
- “...The principle is abundantly clear. A "preliminary objection" correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with



factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed... Where a court needs to investigate facts, a matter cannot be raised as a preliminary point...Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence..."

11. Accordingly, the only issue that presents itself for the Court's determination is whether this Court has the jurisdiction to entertain the Judicial Review Application in the circumstances, granted that the Applicant rushed to Court without exhausting the redress mechanism provided for in Section 27 of the Sacco Societies Act. Section 27(1) of the Sacco Societies Act stipulates that:

"The Authority may, by notice in writing to a Sacco society, revoke the licence if the Sacco society--

- (a) ceases to carry on deposit-taking business in Kenya or goes into liquidation or is wound up or is otherwise dissolved or deregistered under the Co-operative Societies Act, 1997; or
- (b) fails to comply with this Act, or any rules, regulations, orders or directions issued under the Act or any condition of the licence;
- (c) fails to pay the annual licence fee as required under section 25(3);
- (d) does not hold at least fifty percent of the capital requirements prescribed in Section 30 and the Second Schedule;
- (e) has knowingly engaged in serious criminal or fraudulent acts that are likely to cause insolvency, substantial dissipation of assets or earnings or may otherwise weaken the deposit-taking Sacco Society's condition or seriously prejudice the interests of the deposit taking Sacco society's members...";

And Section 27(5) is explicit that:

"An aggrieved Sacco society may appeal to the Minister in respect of a revocation of its licence within 30 days after being notified of the revocation."

12. Besides the Sacco Societies Act, the Co-operative Societies Act also provides, in Section 76(1) thereof, that any dispute concerning the business of a cooperative society be referred to the Cooperatives Tribunal. The seriousness with which Parliament has taken this edict is further emphasized by the fact that it found it necessary to explicitly make a provision in Section 9(3) and (4) of the Fair Administrative Actions Act, No. 4 of 2015 that:

- (3) The High Court or a subordinate Court shall, if it is not satisfied that the remedies referred to in subsection (2) have been exhausted, direct that the applicant shall first exhaust such remedy before instituting proceedings under subsection (1)
- (4) Notwithstanding subsection (3), the High Court or a subordinate Court may, in exceptional circumstances and on application by the applicant, exempt such



person from the obligation to exhaust any remedy if the court considers such exemption to be in the interest of justice."

13. It is now trite therefore that where there is a clear procedure for the redress of a grievance provided for by either the Constitution or an Act of Parliament, such as the two statutes aforementioned, it is inappropriate for the Court to entertain that dispute even though it has jurisdiction to so to do. In the Speaker of the National Assembly v. James Njenga Karume [1992] eKLR for instance, it was held thus by the Court of Appeal:

"...in our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed..."

14. Likewise, in Republic v. National Environment Management Authority (NEMA) [2011] eKLR the Court of Appeal restated thus after reviewing the authorities on the point:

"The principle running through these cases is where there was an alternative remedy and especially where Parliament had provided a statutory appeal procedure, it is only in exceptional circumstances that an order for judicial review would be granted, and that in determining whether an exception should be made and judicial review granted, it was necessary for the court to look carefully at the suitability of the statutory appeal in the context of the particular case and ask itself what, in the context of the statutory powers, was the real issue to be determined and whether the statutory appeal procedure was suitable to determine it - see for example R v. Birmingham City Council, ex parte Ferrero Ltd. Case. The learned trial judge, in our respectful view, considered these strictures and came to the conclusion that the Appellant had failed to demonstrate to her what exceptional circumstances existed in its case which would remove it from the appeal process set out in the statute. With respect we agree with the Judge."

15. Evidently, the Applicant neither appealed the revocation to the Cabinet Secretary nor did it refer the dispute to the Cooperatives Tribunal. Moreover, in its ex parte application for leave, no prayer was made, and therefore no justification given, to warrant exemption from the strictures of Section 9 aforementioned. Similarly, in its response to the instant application, no reference was made and no effort was made to justify the skipping of the set procedure in the Sacco Societies Act and the Co-operative Societies Act. There is therefore absolutely no justification as to why the Applicant evaded the statutory procedure set out for redress in favour of judicial review.

16. The foregoing being my view of the matter, I would uphold the Preliminary Objection dated 20 July 2018 and strike out the application dated 11 July 2018 with costs. The Applicant is accordingly directed, pursuant to Section 9(3) of the Fair Administrative Actions Act, to first exhaust the alternative remedies available before seeking the remedy of judicial review.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2019**

**OLGA SEWE**

**JUDGE**

