

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NUMBER 229 OF 2005

NEMBU FARMERS CO-OP SOCIETY LTD.....APPELLANT

VERSUS

GATHAGE FARMERS CO-OP SOCIETY LTD.....RESPONDENT

(Being an appeal from the judgment of the Co-operative Tribunal at Nairobi

delivered on the April, 2005 in Tribunal case No. 8 of 2004

Nembu FCS LTD Vs Gathage FCS LTD)

J U D G M E N T

This appeal arises from the decision of Co-operative Tribunal which was delivered on 6th April, 2005 at Nairobi. The appeal was before Otieno J, on 4th September, 2018 whereby the judge made directions that parties file written submissions, subject to highlighting of the same on 16th October, 2018. Subsequently, both advocates abandoned the direction to highlight the submissions and asked that any judge could write the judgment, which was accepted by this court considering that Otieno J, does not sit in Nairobi.

The parties herein have filed written submissions in the prosecution of that appeal. While preparing to write this judgment, I perused the original record of the Tribunal proceedings and also the record of appeal filed thereafter. Upon perusing the record before me ,I noted very serious anomalies which cannot allow me to write any judgment. The original handwritten judgment which is on record is not dated or signed, and does not have the names of the Tribunal panel that heard and determined the dispute. The typed judgment in the record of appeal is equally lacking in those material particulars.

I have also looked at the ruling by the Tribunal following an application for stay of execution, which apparently was delivered on 22nd June, 2005. Unlike the original and typed judgment which is the subject of this appeal, that ruling was signed by the Chairman, Deputy Chairman and three members of the Tribunal.

The Tribunal proceedings, I believe, are governed by the Civil Procedure Rules which provide under Order 21 thereof that, a judgment shall be dated and signed by a judge (in this case the Tribunal members) at the time of pronouncing it. That being the case, in the absence of any date, names and signatures, there is no judgment capable of standing the test of law. It is a nullity.

I have considered the options available in view of the circumstances that have come to light. The parties must go back to the Tribunal. The Tribunal shall exercise two options. The first is that, based on the evidence recorded, they can write a judgment and comply with the Civil Procedure Rules. The second is that, the parties can elect to have the dispute heard *de novo*. The file shall now be returned to the Tribunal for that purpose.

In the meantime, since there is no judgment on record capable of any execution, no execution can be carried out. Each party shall bear their own costs.

Dated, signed and delivered at Nairobi this 27th day of June, 2019.

A. MBOGHOLI MSAGHA

JUDGE