



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 560 OF 2016

ZAKAYO SANG1ST APPELLANT
PAUL KOSKE2ND APPELLANT
BENARD RONO3RD APPELLANT
PAUL TOO 4TH APPELLANT
REUBEN TERER 5TH APPELLANT
PHILIP BII6TH APPELLANT
DANIEL MUTAI7TH APPELLANT
SAMWEL TOWETT8TH APPELLANT
RICHARD LANGAT9TH APPELLANT
RICHARD KIRUI10TH APPELLANT

- V E R S U S -

SOT TEA GROWERS RURAL COOPERATIVE

SAVINGS & CREDIT SOCIETY LIMITED1ST RESPONDENT
JOSEPH MABWAI 2ND RESPONDENT
JOSEPH CHERUIYOT 3RD RESPONDENT
ROBERT K. MUTAI4TH RESPONDENT
JOSEAH KORIR5TH RESPONDENT
JOSEPH KOECH6TH RESPONDENT
SAMMY LANGAT7TH RESPONDENT

PAUL RUTO8TH RESPONDENT

WILSON KAPLELACH9TH RESONDENT

JOSEPH CHEPKWONY10TH RESPONDENT

SAMMY MUTAI11TH RESPONDENT

(Being an appeal from the ruling of the honourable Co-operative Tribunal dated 26th July 2016 by Alex Ithuku-Chairman, C, Kithinji – Deputy Chairman, G. Kitiwa –member between Sot Tea Growers Rurals Co-operative Savings and credit Society Limited, Joseph Mabwai, Joseph Cheruiyot, Robert K. Mutai, Joseah Korir, Joseph Koech, Sammy Langat, Paul Ruto, Wilson Kaplelach, Joseph Chepkwony, Sammy Mutai and Zakayo Sang, Paul Koske, Bernard Rono, Paul Too, Reuben Tere, Philip Bii, Daniel Mutai , Samwel Towett, Richard Langat and Richard Kirui)

JUDGEMENT

1) On 26th July 2016, the Cooperative Tribunal delivered a ruling in which it confirmed the interim orders issued in favour of the respondent. The effect of the ruling was to restrain the appellants from transacting business of **Sot Tea Growers** until the suit filed before the Cooperative Tribunal was heard and finalised. Being aggrieved by the aforesaid decision, the appellants filed this appeal.

2) On appeal, the appellants put forward the following grounds:

1. THAT the ruling of the Co-operative tribunal offends the provision of the Co-operative Societies Act no. 12 of 1997 as amended by Act No. 2 of 2004 in that no award is made in the matter by honourable members of the tribunal.

2. THAT the ruling by members of the Co-operative Tribunal go against the procedure and the very spirit for which the Co-operative Tribunal was established and failed to distinguish the co-operative tribunal from either Civil Court.

3. THAT the ruling delivered on 26th July 2016 is bad in law faulty and irregular in that as at the time of its reading (and to date) it was not signed by all the members that presided at the hearing of the application dated 24th May 2016, 26th May 2016, 2nd June 2016 and notice of preliminary objection dated 26th June 2016 and the appellant will crave the leave of court to swear an affidavit in support.

4. THAT the ruling of the tribunal is defective, null and void ab initio as was prepared and signed by only member of the tribunal contrary to the law.

5. THAT the co-operative tribunal failed to issue to the appellants ruling (if any) signed by all the members contrary to the law, is service charter and the delay aimed at delay of justice to members.

6. THAT the members of the co-operative tribunal erred in the law involving the provision of the Civil Procedure Act and Rules when no such provision to invoke them is provided for under the Act.

7. THAT the members of the co-operative tribunal erred in the law in granted mandatory injunction at interlocutor stage based on evidence adduced from the bar and letters from the commissioner of co-operatives developments.

8. THAT the members of the Co-operative Tribunal erred in law by relying on letters from the commissioner of Co-operatives Development and in the process its decision was biased basing on

the inquiry report tabled on 1st July 2016 confirms the position.

9. THAT the members of the Co-operative Tribunal erred in the law in failing to consider at all the applicants notice of motion for review dated 26th May 2016 seeking to set aside, vary and/or vacate orders and/or the grounds adduced or in support thereof.

10. THAT the members of the Co-operative Tribunal erred in the law in confirming orders granted to the respondents ex-parte and failing to recognize the ineligibility of the respondents to remain in office beyond the interim period and/or order for elections.

11. THAT the members of the Co-operative Tribunal erred in the law, biased and non-partisan in failing to consider the applicants notice of motion dated 2nd June 2016 and by default allowing the respondents to stay in office unlawfully and illegally.

12. THAT the members of the Co-operative Tribunal granted mandatory injunction barring respondents, agents, employees and servants based on evidence adduced from the bar and without the benefit of trial to determine their veracity and authenticity.

13. THAT the ruling of the tribunal goes against well founded principles of co-operatives movements and have endangered and/or threaten to cripple the operations of the appellants Sacco and occasion farmers irreparable loss and financial damages.

14. THAT the Co-operative Tribunal erred in law by adopting the inquiry report which did not give the respondents a fair hearing in its final decision making.

15. THAT the members of the Co-operative Tribunal erred in law ignoring the substance of the preliminary objection raised by the appellant's against the supportive affidavit and orders against nonexistent entity yet they note it was critical in the matter of the practice.

16. THAT the ruling of the Co-operative Tribunal offends the provision of Section 79(4) of the Co-operative Societies Act.

17. THAT the honourable members of the Co-operative Tribunal erred in law and biased in disregarding very key and fundamental issues and arguments raised by the appellants in objecting to the application dated 24th May 2016.

18. THAT the members of the tribunal erred in law in failing to consider the appellants application dated 26th May 2016, 2nd June 2016 and Notice of Preliminary Objection dated 26th June 2016 when directions had been given as to the hearing of the applications together.

19. THAT the ruling of the honourable tribunal at variance and contradiction of its earlier ruling.

3. When the appeal came up for hearing, this court gave directions to have the appeal disposed of by written submissions. At the time of writing this judgment the appellants were the only parties who had filed their submissions. I have re-evaluated the arguments that were presented before the Cooperative Tribunal in support and against the application for injunction. I have further considered the written submissions filed by the appellants. Though the appellant put forward a total of 19 grounds, two main grounds commend themselves for consideration. **First**, is whether or not the decision of Cooperative Tribunal was signed by all the members and if not what is the consequence.

Secondly, whether or not the appellants were given a right of hearing.

4. On the first issue, it is the submission of the appellants that the Tribunal's decision was not signed by the three members who sat as a bench. I have perused at the copy of the Tribunal's ruling presented to

this court vide the record of appeal. It is apparent that the same is shown to have been delivered by three members namely: **Alex Ithuku, chairman, Cecilia Kithinji Deputy Chairman and G. Kitiwa, member.** It is also apparent that the ruling was only signed by one member namely Cecilia Kithinji. With respect, I agree with the submissions of the appellants that the failure by all the members to sign the ruling, renders the whole decision as a nullity.

5. The second ground is whether or not the appellants were heard by the Cooperative Tribunal before the decision was delivered. The appellants submitted before this court that the Cooperative Tribunal issued ex parte interim orders in favour of the respondents and proceeded to confirm the same based on a letter from the commissioner of cooperatives without granting the appellants an opportunity of being heard. The recorded proceedings shows that the appellants were not heard over the motion dated 24th May 2016 plus the preliminary objections. I am satisfied that the tribunal was not justified to proceed in the manner they did.

6. On the basis of the above grounds, I find the appeal to be meritorious. I allow the appeal by setting aside the orders issued on 26th July 2016. A fair order to issue which I hereby do is to remit the motion back to the cooperative Tribunal be reheard afresh and with the participation all the parties. In the circumstances of this case, I direct that each party meets their own costs.

Dated, Signed and Delivered in open court this 26th day of January, 2018.

J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent