

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 327 OF 2017

KAGAA FARMERS

CO-OPERATIVE SOCIETY.....APPELLANT/APPLICANT

VERSUS

DANIEL KARANJA GATUHA.....1ST RESPONDENT

JOE KARANJA NJOROGE.....2ND RESPONDENT

RULING

The applicant is a cooperative society which was aggrieved by the decision of the Cooperative Tribunal made on 14th March, 2014. The decision of the Tribunal followed a dispute between the claimant and respondent before that Tribunal.

It is the applicant's case that that decision has adverse consequences to it in the event there is no stay of execution. Consequently, on 5th July, 2017 the applicant filed this application by way of Notice of Motion under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A and 3A of the Civil Procedure Act for a stay of execution of the Tribunal's directions made on 14th March, 2014 aforesaid.

The reasons are set out on the face of the application and there is a supporting affidavit sworn by one Joseph Muiruri Njoroge who is a member of the applicant. The application is opposed and there is a replying affidavit sworn by the respondent Daniel Githiora Gatuha. Parties have filed submissions herein which I have noted.

The applicant had moved before the Tribunal seeking to be joined as an interested party. However, that move was denied by the Tribunal. There then followed a Judicial Review application No. 68 of 2015 which was also dismissed on 4th December, 2015.

I have perused the averments by the parties as contained in the affidavits filed by the parties. I have also related the proceedings to the Memorandum of Appeal which is on record. Some of the issues raised may have a direct impact on the appeal which is yet to be heard. It may be true that the objectives of the applicant have collapsed but an order of liquidation a society without a hearing may have drastic and adverse consequences, and especially so if the society has not been heard.

The applicant was not a party before the Tribunal but my assessment of the grounds raised in the Memorandum of Appeal is that, there is an arguable appeal and therefore the applicant should not be left out, especially where the decision may affect it directly. In the circumstances, I am persuaded that there should be a stay of execution of the order of the Tribunal directing liquidation of the applicant. This order shall remain in place until the appeal is heard and finalised.

The costs shall be on appeal.

Dated, signed and delivered at Nairobi this 31st day of May, 2018.

A. MBOGHOLI MSAGHA

JUDGE