



IN THE HIGH COURT OF KENYA AT MURANG'A

PETITION NO 7 OF 2016

THANGAINI FARMERS CO-OP SOCIETY LTD.....PETITIONER

VERSUS

1. COUNTY ASSEMBLY OF MURANG'A

2. MURANG'A COUNTY EXECUTIVE COMMITTEE

ON CO-OPERATIVES MANAGEMENT.....RESPONDENTS

AND

1. MURANG'A COUNTY CO-OPERATIVE COMMISSIONER

2. DAVID MUGO

3. CHRISTOPHER MWANGI

4. DAVID KARIUKI.....INTERESTED PARTIES

RULING

1. In the petition herein, undated but filed on 29/08/2016, the Petitioner seeks various declaratory and prohibitory orders in connection with the Petitioner, **Thangaini Farmers' Co-operative Societies Limited**, and its proposed split into three different factories.

2. Together with the petition the Petitioner filed **notice of motion dated 24/08/2016** seeking conservatory orders to stay implementation of the reports and resolutions by the Respondents and the 1st Interested Party leading to such split of the Petitioner, pending disposal of the petition. There is a supporting affidavit which is, word for word, the same affidavit as supports the petition.

3. The 1st Respondent, **County Assembly of Murang'a**, has opposed the application by a replying affidavit filed on 29/03/2017 which is sworn by the Speaker thereof, Leonard Nduati Kariuki. Grounds of opposition contained therein include –

(a) That the relevant motion passed by the 1st Respondent was sponsored by the chairperson of the 1st Respondent's **Water, Energy, Forestry, Environment, Natural Resources & Co-operative Committee** based upon the 2nd Report of the committee laid before the assembly on 26/7/2016.

(b) That the aforesaid 2nd Report was actuated by the due constitutional and statutory exercise of Article 195 of the Constitution of Kenya, section 15 of the County Governments Act, 2012 and the

Standing Orders of the 1st Respondent.

(c) That in all the meetings of the aforesaid committee of the 1st Respondent all due procedure was followed and due consideration given to the issues highlighted before the committee.

(d) That the proposal to split the Petitioner came from some of the farmers who petitioned the 1st Respondent through its aforesaid committee. This was in accordance with section 15 of the County Government Act, 2012 as read with Standing Order 198 of the 1st Respondent.

(e) That the issues now raised in the present petition were never raised by anyone in the aforesaid committee's meeting with the Petitioner's management board of 23/07/2015.

(f) That the aforesaid committee made its recommendations to the 1st Respondent within its due mandate.

(g) That the 1st Respondent exercises its due mandate on co-operative societies within its jurisdiction as derived from Part II (7) (e) of the Fourth Schedule to the Constitution of Kenya through its relevant committee. The said committee operates strictly impartially at all times.

(h) That the aforesaid committee of the 1st Respondent based its recommendations upon testimonies adduced before it by representatives from the Petitioner; the Chief Officer, Co-operatives; and members of the Petitioner's management board.

(i) That the aforesaid committee's recommendations contained in its 1st Report dated 16/11/2015 and the 2nd Report dated 14/05/2016 to the 1st Respondent had the interests of the local community served by the Petitioner as its focal point.

(j) That the complaints now made in the present application are specious in nature and devoid of any basis in fact and law.

(k) That the records now mentioned in this present application were never presented to the aforesaid committee of the 1st Respondent at its sittings.

(l) That the fact that the Petitioner had failed to pay any of its employees their wages and salaries for a period exceeding seven (7) months was evidence of blatant mismanagement of its factories, and was a persuasive factor in the recommendations the aforesaid committee made to, and adopted by, the 1st Respondent.

4. The 2nd Respondent also opposed the application by grounds of opposition dated 27/03/2017. Those grounds are –

(a) That “once the motion was passed by the 1st Respondent” there is nothing left to stay.

(b) That the 1st Respondent being the apex law-making body in the county, by the time and event of the passing of the aforesaid motion by the 1st Respondent, all other avenues open to the Petitioner had been exhausted.

(c) That the orders now sought by the Petitioner in the present application are tantamount to asking the court to run the affairs of the Petitioner which has admitted that serious challenges are be-devilling it.

There is no replying affidavit filed by the 2nd Respondent.

5. The 2nd, 3rd and 4th Interested Parties have also opposed the application by a joint replying affidavit filed on 29/03/2017. They state that they do so on behalf, and with the authority, of members of Karia-ini, Mathare-ini and Nguku Factories. Grounds of opposition emerging from their affidavit include –

(a) That the members of the Petitioner who wish to have it split are a minority.

(b) That despite being a minority those members have a higher production of coffee than the majority members, and that the said fact is the main reason why the majority oppose split of the Petitioner.

(c) That the minority's wish for the Petitioner to be split is a fundamental freedom enshrined in the Constitution which should not be defeated by the majority members merely because of numbers.

(d) That section 30 of the Co-operatives Societies Act of the Laws of Kenya is unconstitutional in so far as it purports to put let or hindrance to the constitutionally guaranteed right of association of the minority of the Petitioner.

(e) That the issue of the proposed split of the Petitioner is an issue of the exercise of the constitutionally guaranteed freedom of association.

(f) That the factories in favour of the proposed split of the Petitioner (which are a minority) having the most production, and the burden of expenses of the Petitioner and repayment of its loans being pegged on production, the said minority factories are bearing the greater burden than the majority factories that are producing less, a situation that is manifestly unfair and inequitable.

(g) That in any event the challenge by the Petitioner to the passage of resolutions and motions in the 1st Respondent is misplaced, and the court lacks jurisdiction to interfere with such lawful passage.

(h) That finally, split of the Petitioner in a proper procedural manner shall not be prejudicial to members thereof.

6. I cannot find on the record any papers filed by the 1st Respondent in response to the application.

7. I have considered the submissions of the learned counsels appearing. Quite obviously the various issues raised by the 1st Respondent and the 2nd, 3rd and 4th Interested Parties are issues that can only be properly canvassed and determined at the hearing of the petition itself. They cannot be properly litigated in the present application which, in effect, seeks only conservatory orders to preserve the *status quo* pending disposal of the petition.

8. I cannot quite understand the 2nd Respondent's grounds of opposition; but it appears to concede that the only option left open to the Petitioner was to come to court, as it did.

9. In the circumstances, and without hesitation, I will allow the notice of motion dated 24/08/2016 in prayers 3 and 5 thereof. Costs of the application shall be in the cause. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 22ND DAY OF JUNE 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 23RD DAY OF JUNE 2017