



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL SUIT NO. 277 OF 2015

SULTANALI AMIRALI KASSAMALI.....1ST PLAINTIFF/CLAIMANT

MAZLIN SULTANALI KASSAMALI..... 2ND PLAINTIFF/CLAIMANT

V E R S U S –

APEX AFRICA CAPITAL LIMITED.....1ST DEFENDANT

**CENTRAL DEPOSITORY & SETTLEMENT CORPORATION LIMITED..... 2ND
DEFENDANT**

**COMMISSIONER OF CO-OPERATIVE MACHAKOS COUNTY..... 1ST INTERESTED
PARTY**

**DISTRICIT CO-OPERAITVE OFFICER MASINGA SUB-COUNT2ND INTERESTED
PARTY**

RULING

1. The subject matter of this ruling is the motion dated 5.8.2015 taken out by David Muthini Musyoka and Paul Matheka Ndamulu, the claimants herein in which they sought for the following orders:

- 1. The application be certified as urgent and for reasons to be advanced in court service in the 1st instance be dispensed with.***
- 2. An ORDER OF TEMPORARY INJUNCTION restraining the respondents from the illegal collection of levies and calling the meeting scheduled for the 13th August 2015, without notice, or carrying or interfering with the affairs of the society in any manner whatsoever either by themselves, their employees, servants, agents or assigns, including the calling or convening of any meeting of the members, delegates or any form of assembly of members or alleged delegates scheduled for the 13th August, 2015 or any such other date that may be conceived and PENDING THE DETERMINATION OF THIS APPLICATION.***
- 3. An ORDER DOES ISSUE directed at the OFFICER COMMANDING STATION MASINGA POLICE STATION to deliver to this tribunal and or any appointed auditor by this court of the commissioner of co-operatives, all the documents, receipt books, banks statements ledge books and other books of accounts confiscated from the officer of the MASINGAS SAND HARVESTING COOPERATIVE SOCIETY LIMITED.***
- 4. An ORDER DOES ISSUE compelling the respondent official to prepare and render accounts and audit for the year 2013-2014 and 2014-2015 and to file the same with the commissioner for***

co-operative and the tribunal to include all levies and revenue collected fro by and on behalf of the society.

5. ***An ORDER DOES ISSUE directing the interested parties to appoint a caretaker committee to run the affairs of the society until such time as the elections and properly constituted or elected delegates of the society are in place PENDING THE HEARING AND DETERMINATION OF THIS APPLICATION AND OR THE MAIN SUIT.***

6. ***Cost of this application be provided for.***

2. The motion is supported by the affidavits of David Muthini Musyoka. When served the defendants filed a defence to deny the claimant's claim. They however did not file any response to the motion hence the same remains unopposed. What the defendants did is to file written submissions raising preliminary points of law to challenge the motion on the basis that it was filed during the court's vacation without obtaining leave. When the motion came up for interpartes hearing learned counsels recorded a consent order to have the same disposed of by written submissions.

3. I have considered the grounds stated on the face of the motion plus the facts deponed in the affidavits filed in support of the motion. The claimants filed the motion seeking for specific orders. The motion though served has not attracted any response from the defendants and the interested parties.

4. It is the submission of the applicants that the defendants/ respondents are officials of **Masinga Sand Harvesting Cooperative Society Ltd** having been elected in the year 2013. The claimants are accusing the defendants for mismanaging the affairs of the society and it is alleged that despite numerous complaints being lodged, the defendants have continued to call the shots in the management of Masinga Sand Harvesting Cooperative Society Ltd. It is also alleged that the respondents have also continued to plunder the resources of the society. The claimants aver that the by-laws and objectives of the society is empower the society to collect levies from sand transporters and trucks ferrying sand out of Masinga Division Machakos County. It is said that the levies are supposed to be collected by barrier clerks at levying points as per the By-laws which name each collection area of cooperation according to road and sand harvesting areas using official receipts which bear the stamp of the society and which follow a certain numerical serial order. The claimants further argued that the treasurer is required to deposit the levies collected by the levying clerks and to bank the same with cooperative bank. In breach of the By-laws, it is said that, the treasurer and the officials failed to make or render accounts of the monies collected. On or about June 2015, it is averred that fake and suspicious receipts began circulating in non designated levying areas like Iuuma, Ngungi and Kiasa rivers. This was reported to the police. The claimants further complained that no annual general meetings have been convened for the reading of accounts of the previous years and for the presentation of audited accounts for the last one year and seven months. It is also argued that the 21 days notice was not given for the annual general meeting for 13.08.2015, contrary to the By-laws. It is also stated that non-existent delegates were invited to attend the aforesaid meeting.

5. Having keenly considered the submissions from the claimants side, it is apparent that the order seeking to halt the meeting scheduled for 13.08.2015 has been overtaken by events. However, there is the portion of the application which sought for the order of injunction to restrain the respondents from carrying or interfering with the affairs of the society in any manner including the calling or convening of any meeting of the members, delegates or any form of assembly of members of or alleged delegates for the 13th August 2015 or any such other date that may be conceived and pending the determination of the suit. Taking into account the arguments presented I am satisfied that the claimants have shown they have a prima facie case with a probability of success.

6. In the end, I am convinced that the motion dated 5.8.2015 should be allowed in terms of prayers 3 and 4. Costs of the motion to abide the outcome of the suit.

Dated, Signed and Delivered in open court this 27th day of May,

2016

J. K. SERGON

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendant