



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL DIVISION**

**CIVIL CASE NO. 524 OF 2013**

**MUTITHI FARMERS CO-OPERATIVE**

**SOCIETY LTD .....PLAINTIFF**

**V E R S U S**

**1. THE COMMISSIONER OF CO-OPERATIVES,**

**MURANGA SUB COUNTY**

**2. THE COMMISSIONER OF CO-OPERATIVES,**

**THIKA SUB COUNTY .....DEFENDANTS**

**R U L I N G**

1. The Defendants are public officers subordinate to the **Commissioner of Co-operatives** created under **section 3** of the **Co-operative Societies Act, Cap 490**.
2. Under **subsection (1)** of **section 3** the Commissioner is an officer in the **Public Service**. He has not been accorded capacity to sue or be sued. So, how can his subordinates have that capacity?
3. It has not been demonstrated that the Defendants have under the law, such capacity. This is an ordinary suit commenced by plaintiff. It is not a judicial review application or a constitutional petition.
4. Pleadings as filed, and the representations made by the two learned counsels, both purporting to act for the Plaintiff, disclose a **dispute over the management of the Plaintiff co-operative** between two opposing groups of members of the co-operative. Such dispute cannot be resolved by suing the **Commissioner for Co-operatives** or his subordinates.
5. The Plaintiff is non-suited against the Defendants. The Defendants are not proper parties in the suit.
6. In the result the suit is hereby struck out with no order as to costs. It is so ordered.

**DATED AND SIGNED AT NAIROBI THIS 13<sup>th</sup> DAY OF FEBRUARY 2014**

**H.P.G. WAWERU**

**JUDGE**

**DELIVERED THIS 21<sup>ST</sup> DAY OF FEBRUARY 2014**