



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL APPEAL NO 193 OF 2014

MAISHA BORA SAVINGS & CREDITCO-OPERATIVE

SOCIETY LIMITEDAPPELLANT

VERSUS

1. JULIUS MAUNDU

2. JOSPEH KIANDO

3. ESTHER NJOROGE

4. GRACE LIAKAY

5. GEOFFREY NGENO.....RESPONDENTS

*(An appeal from the order of B W Mathenge, Deputy Chairperson, in Nairobi Co-operative Tribunal
Case No. 189 of 2014, made on 9th May 2014)*

RULING

1. The background to the application at hand is as follows. The 2nd, 3rd and 4th Respondents are the Chairman, Vice-Chairperson and member of the Board respectively of the Appellant. The 5th Respondent is a member of the Supervisory Committee of the Appellant. The 1st Respondent is a member/shareholder of the Appellant.

2. On 2nd March 2014 the Appellant held its annual general meeting at which one of the items on the agenda was elections of office-bearers to replace the ones that were due to retire. It is stated that the elections were not held because the annual general meeting resolved that all candidates do first undergo a vetting process as required under provisions of the law before they could offer themselves as candidates. The annual general meeting further resolved that the current office-holders do continue in office until new office-bearers were subsequently elected.

3. On 25th April 2014 the 1st Respondent instituted proceedings before the *Co-operatives Tribunal* at

Nairobi against the 2nd, 3rd, 4th and 5th Respondents apparently challenging their continuance in office. He also sought by interlocutory application a temporary injunction to restrain them from continuing in office pending disposal of the case. The Appellant was not joined in the suit and on 6th May 2014 it applied to be joined in the suit before the *Co-operative Tribunal*.

4. On 9th May 2014 the Appellant's learned counsel sought before the Tribunal an order for its application for joinder to be heard before the 1st Respondent's application for temporary injunction. That plea was disallowed and the 1st Respondent's application for temporary injunction was fixed for hearing on 27th May 2014.

5. On 20th May 2014 the Appellant filed the appeal herein challenging the Tribunal's refusal to hear its application for joinder first. On 22nd May 2014 the Appellant sought by **notice of motion dated 20th May 2014** the main order that there be stay of proceedings in the case pending before the Tribunal pending disposal of the appeal. That application is the subject of this ruling. Interim stay was granted pending disposal of the application.

6. The 2nd to 5th Respondents have no objection to the order of stay of proceedings sought. But the 1st Respondent has opposed the application by his **replying affidavit sworn on 30th May but filed on 17th June 2014**. Although he states at paragraph 15 of his replying affidavit that no orders adverse to the Appellant can be made in the case pending before the Tribunal, he stated in his oral submissions at the hearing of the application at hand that he would have no objection to the Appellant being joined as a party in that case. That in effect means that he is unlikely to oppose the appeal at hand and it would appear that an appropriate consent for joinder of the Appellant in the case before the Tribunal can be eventually entered.

7. In the meantime, I am satisfied that it would be in the interest of justice that proceedings before the Tribunal be stayed pending disposal of the appeal herein. I will therefore grant prayer (3) of the notice of motion dated 20th May 2014. Costs of the application shall be in the appeal. It is so ordered.

DATED AND SIGNED AT NAIROBI THIS 15TH DAY OF SEPTEMBER 2014

H P G WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 19TH DAY OF SEPTEMBER 2014