



**REPUBLIC OF KENYA**

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

**MISCELLANEOUS CIVIL APPLICATION NO 493 OF 2013**

**USHURU CO-OP SAVINGS & CREDIT SOCIETY LIMITED.....APPLICANT**

**VERSUS**

**KEPHA M. KERAMA.....RESPONDENT**

**RULING**

1. The Applicant's Notice of Motion application dated 6<sup>th</sup> March 2013 and filed on 16<sup>th</sup> October 2013 was brought under the provisions of Section 18, Section 3A of the Civil Procedure Act Cap 21 (Laws of Kenya) and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and all other enabling provisions of the law.
2. It sought orders to transfer **CMCC No 2085 of 2011 Ushuru Co-op Savings & Credit Society Limited vs Kepha M. Kerama** on the ground that the subordinate court lacked jurisdiction to entertain the matter as the same involved a dispute Co-operative Society and its former member.
3. It submitted that the Co-operative Tribunal had exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of a claim by a co-operative society for any debt or demand due to it from a member or a past member.
4. On 29<sup>th</sup> January 2013, the Respondent filed its Grounds of Opposition dated the same date. He conceded that it was only the Co-operative Tribunal that had jurisdiction to determine his dispute with the Applicant.

**LEGAL ANALYSIS**

5. The court directed parties to file their respective written submissions in view of the fact that the Respondent was opposing the Applicant's application. The Applicant's written submissions were dated and filed on 13<sup>th</sup> February 2014. The Respondent did not file and serve his written submissions despite having been given an opportunity to do so.
6. After a careful analysis of the Applicant's application vis-à-vis the Respondent's Grounds of Opposition, the court finds that both parties were in agreement that the Chief Magistrate's Court Milimani Commercial Courts, Nairobi did not have jurisdiction to hear and determine the dispute between them.
7. No value will therefore be added by the court delving into the merits of the Applicant's application save to state that there is no commercial element in this matter. The same should never have been filed in the Chief Magistrate's Court Milimani Commercial Courts, Nairobi in the first place.

**DISPOSITION**

8. Accordingly, the upshot of this court's ruling is that the Applicant's Notice of Motion application dated 6<sup>th</sup> March 2013 and filed on 26<sup>th</sup> November 2013 was merited and the same is allowed in terms of Prayer No (1). There will be no order as to costs as it was the Applicant who filed the suit in the Chief Magistrate's Court Milimani Commercial Courts, Nairobi.
9. It is so ordered.

**DATED and DELIVERED at NAIROBI this 30<sup>th</sup> day of October 2014**

**J. KAMAU**

**JUDGE**