



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
MISC. CIVIL APPLICATION NO. 44 OF 2011

OFFICER MUMIAS1ST RESPONDENT

AND

ISAACK ASHUMA 2ND INTERESTED PARTY

WILLIAM KHAKINA 4TH INTERESTED PARTY

VERSUS

WASHINGTON SILVANUS WASHIALI KHWALE

- **JOSEPH ORONJE WANYERA**

RULING

That prerogative orders of certiorari do issue and remove into this court and quash the decision of the 1st respondent to convene a special meeting and instigating the removal of the ex-parte applicants as members of management committee.

- The application is supported by the verifying affidavit sworn on 23/9/2011 by Washington Silvanus Washiali Khwale, one of the ex-parte applicants. It was deponed therein *inter alia* that an impromptu inspection was carried out regarding the affairs of the Mumias Cane Outgrowers Co-operative Society Ltd. between May and July 2011. That pursuant to the said report, the District Co-operative Officer, Mumias (1st respondent) purported to call a special meeting whose notice did not include elections and/or removal of Committee members. That the said District Co-operative Officer proceeded to lead members who were present to remove the office bearers who were the ex-parte applicants. That the District Co-operative Officer exceeded his powers in calling for the special general meeting as he had no powers under Co-operative Societies Act to do so. That the inspection report did not recommend the removal of officials from office.

When the application was served, responses were filed by the respondents through the Attorney General, and also by the interested parties who were listed therein. In effect, the application was opposed.

The interested parties filed a replying affidavit sworn on 17/5/2012 by Alloys Mandu who is one of the interested parties. It was deponed in the said affidavit that the application was fatally defective and an abuse of the process of the court. It was also deponed that the orders sought

would affect or paralyze the operations of the entire organization. It was further deponed that the newly elected board members had taken over the leadership of the Mumias Cane Farmers Co-operative Society and were therefore lawfully in office. Several documents were annexed to this affidavit. In the affidavit, the interested parties annexed documents showing that Silas Chunge and Joseph Oronje had withdrawn from the case. The interested parties also filed notice of preliminary objection through their counsel Ms Wilfrida Osodo advocate.

These are Judicial Review proceedings. The High court has jurisdiction under **Section 8** and **9** of the Law Reform Act (Cap. 26) and **Order 53** of the Civil Procedure Rules, to grant Judicial Review reliefs. Though two of the ex-parte applicants have withdrawn from the proceedings, in my view, as there is one applicant still pursuing the matter, the said withdrawal of the 2 applicants did not terminate the proceedings.

The issues herein are firstly whether the District Co-operative Officer had powers to convene the special meeting under Sec. 27 of the Act. The District Co-operative Officer is the representative of the Commissioner of the Cooperatives. He convened the subject meeting. In my view, he had powers under the law to convene the special general meeting. Therefore, the meeting cannot be said to be unlawful simply because it was convened by the District Cooperative Officer.

“Members contributed or failed its operations particularly lack of budget and lack of meeting to manage the affairs of the society. Observed the DCO to guide on the consequence of the board members not taking an indemnity and filling of Wealth Declaration forms as required by the law. That the Chairman has dictatorial tendencies. That the chairman takes decisions unilaterally without consulting members. That the Chairman has over recruited employees from the firm activities. That the Board does not account for revenues from ploughing and harrowing outside Mumias Sugar Company arrangement. That the treasurer is not a mandatory due to interferences of the chairman. That even the investment committee of 14 members was illegally constituted and is therefore illegal. The members draw allowances/salaries from the society. The secretary, Mr. Oronje Wanyera observed that the operations of the units particularly the costs of fuel consumed 85% of the total income. There is no proper Control process in accounting for expenses. A member Mr. Juvenalis Orao (delegate) proposed the way forward as follows -

1. *That the elections be conducted today without further delay to replace the chairman and other seats.”*

I have taken into account what was held in Kakamega HC Misc. case No. 146 of 2003 **George Dipondo vs The Registrar of Societies** cited by the applicant’s counsel. With due respect, I do not agree with the holding that judicial review applies to private institutions. Judicial review only applies to public officials or institutions. I rely on the case of **Kunster Hotel Ltd.** (supra). In my view, only public institutions or officials in exercising their statutory or public law functions can be subject to judicial review. The decisions of delegates of a registered cooperative society are not from a public institution. They are not amenable to judicial review reliefs. They can be challenged. However, they cannot be challenged through the realm or Judicial Review proceedings.

For the above reasons, I find that this application has no merits. I dismiss the same. The 1st ex-parte applicant Washington Sylvanus Washiilli Khwale will pay the costs of the respondents and the interested parties, as the other applicants withdrew from the case.

George Dulu

<p justify;=""> **JUDGE**