



Biashara Sacco Society Limited v Sacco Society Regulatory Authority (Miscellaneous Civil Application 40 of 2011) [2012] KEHC 5412 (KLR) (17 August 2012) (Ruling)

Biashara Sacco Society Limited v Sacco Society Regulatory Authority [2012] eKLR

Neutral citation: [2012] KEHC 5412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL APPLICATION 40 OF 2011**

**JK SERGON, J
AUGUST 17, 2012**

BETWEEN

BIASHARA SACCO SOCIETY LIMITED APPLICANT

AND

SACCO SOCIETY REGULATORY AUTHORITY RESPONDENT

RULING

1. This ruling is the outcome of the Motion dated 27th September 2011 in which Biashara Sacco Society Limited, sought for the following orders:
 - “ 1. An order of certiorari do issue to remove into the High Court and quash the decision of the Sacco Societies Regulatory Authority dated the 15th August, 2011 in so far as it relates to the Applicant.
 2. An order of prohibition do issue forbidding the Sacco Societies Regulatory Authority from demanding Kshs.136,603.00 as Sacco Societies levy to bind the Respondent now and in the future.
 3. That the costs of this application be borne by the Respondent.”
2. The Motion is supported by the Verifying Affidavit of Joseph Kamau Njamuku and accompanied by the Statutory Statement of Facts. The Sacco Societies Regulatory Authority, the Respondent herein filed the Replying Affidavit of Carilus Ademba to oppose the Motion.
3. I have considered the oral submissions presented by Learned Counsels from both sides plus the material placed before this court. It is the submission of Mr. Ng'ang'a Learned Advocate for Biashara Sacco Society Limited, the Applicant herein, that since the Applicant has paid the licence fee, it should



not be required to pay an extra levy before being consulted together with other stakeholders. The Applicant further avers that the depositors expect to receive their money back intact. In a nutshell, Mr. Ng'ang'a stated that the affected parties must be involved in consultations before decisions affecting them can be effected. Mr. Ligunya, Learned Advocate for Respondent urged this court to dismiss the Motion on the basis that the same is challenging that the merits of the decision yet Judicial Review Proceedings is concerned with the decision making process. The Learned Advocate argued that the decision imposed was done under Section 15 of the *Sacco Societies Act*. The Respondent further pointed out that consultations took place on 20th August 2010 and in fact sensitization seminars were done. The officials of the Applicant were said to be in attendance. The Respondent stated that consultation was so intense that the proposed levy of 0.15% was reduced to 0.1%.

4. After a careful consideration of the rival submissions, I have come to the conclusion that before the Respondent can exercise its power to impose a levy under Section 15 of the *Sacco Societies Act*, the Applicant and other affected there must be prior consultation. In other words, the principle of natural justice is one of the considerations to be taken into account before taking an action to impose a levy. The only question to be determined here is whether or not that principle was applied by the Applicant before imposing a levy as complained by the Applicant. The law enjoins the Respondent to publish in the Kenya Gazette or through any other of media of its intention to levy a given levy. By so doing, the stakeholders and those likely to be affected by the levy will give their views before a final levy is imposed and published through the Kenya Gazette. In the matter before this court, it would appear the Respondent simply exercised its power by imposing 0.15% on all deposits held by Sacco Societies vide Legal Notice No.208 of 27th December 2010. That Gazette Notice was questioned by those affected by the decision. The objectors prompted the Respondent to invite comments leading them to review the rate downwards from 0.15%. I think I agree with the submissions of Mr. Ng'ang'a that the Respondent did not make prior consultations before imposing the levy. The Respondent therefore breached the rule of natural principle when it purported to impose 0.15% levy on the deposits. It is not correct to state that the Applicant is challenging the merits of the decision. The Applicant in my view is challenging the manner in which the Respondent acted unilaterally and without consultation. In short, the Applicant challenged the Respondent's decision making process.
5. In the end, I find the Motion to be well founded. It is allowed as prayed.

DATED AND DELIVERED THIS 17 DAY OF AUGUST 2012.

J. K. SERGON

JUDGE

