

REPUBLIC OF KENYA

High Court at Nairobi (Nairobi Law Courts)

Judicial Review 280 of 2012

REPUBLIC..... APPLICANT

VERSUS

**COMMISSIONER FOR CO-OPERATIVE DEVELOPMENTRESPONDENT
KENYA INSURERS SACCO LIMITED.....PROPOSED INTERESTED PARTY**

EX PARTE:

**MOSES KAMAU MAINA &
DUNCAN MUCHINA KAMAU**

RULING

The Kenya Insurers Sacco Limited (the proposed interested party) is through the notice of motion dated 1st October, 2010 asking this court to make it an interested party in these proceedings. The application is supported by grounds on its face together with the supporting affidavit sworn by its chairman Mr. Philip Masinde on 1st October, 2012. The proposed interested party will henceforth be referred to as the Society.

Briefly, the respondent herein who is the Commissioner for Co-operative Development (the Commissioner) carried out an enquiry into the affairs of the Society and came up with a report which recommended that Moses Kamau Maina and Duncan Muchina Kamau (the ex-parte applicants) be surcharged. Through these judicial review proceedings the ex-parte applicants are challenging the findings and recommendations of the Commissioner. Now the Society seeks to be made a party to these proceedings on the grounds that the inquiry conducted by the Commissioner was done on its behalf and the ex-parte applicants were at all material times its members. The Society also argues that its participation in the proceedings will assist the court to arrive at an informed decision. The advocate for the Society argued that the proceedings before this Court directly affects the Society as the ex-parte applicants seek to quash the decision of the Commissioner contained in the inquiry report and which inquiry was done for the benefit of the Society. The surcharge of the ex-parte applicants would directly benefit the Society. The Society argues that it is better placed to assist the court during the hearing as the documents which formed the basis of the inquiry are in its custody.

Through a replying affidavit sworn on 30th October, 2012 by Duncan Muchina Kamau the ex-parte applicants oppose the application. The ex-parte applicants argue that the application is misconceived as the same has no bearing on the matter in dispute. They also argue that the Society is not a proper party since the proceedings before the court relate to the decision made by the Commissioner and the Society's interests are therefore properly taken care of by the Commissioner. They further contend that the Society has not shown how its input in the proceedings will assist the court to come to a just determination with regard to the decision of the Commissioner and allowing the application will only but delay and embarrass this matter thus going against the principles of sections 1A and 1B of the Civil Procedure Act. The ex-parte applicants further submit that the Society has already filed proceedings before the Co-operative Tribunal (the Tribunal) contrary to the stay order issued by this Court on 13th July, 2012 hence it has no right to be heard having approached the court with unclean hands. Counsel for the ex-parte applicants argued that what they are challenging before this court is the procedural aspect of the inquiry which led to the decision that they be surcharged and their matter has nothing to do with the Society. He relied on the decisions in **KENYA FARM LAND CORPERATIVE SOCIETY LTD V HORTICULTURAL CROPS DEVELOPMENT AUTHORITY H.C.C. Misc. Appl. No. 830 of 1993** and **REPUBLIC V RENT OFFICER SERVICE [1996] 3 ALL ER** to support his argument that

the Society is not a proper party to be enjoined in these proceedings.

When the application came up for hearing on 21st November, 2012 Mr. Maina for the Commissioner indicated that the Commissioner was not opposed to the application.

The question to be answered by this Court is whether the Society is a party directly affected by these proceedings. Order 53 Rule 3(2) of the Civil Procedure Rules provides that the substantive notice of motion shall be served on all persons directly affected. The Society submits that it will be directly affected by the outcome of these proceedings in that the proceeds of the surcharge of the ex-parte applicants would benefit it. The ex-parte applicants argue that the interests of the Society will be taken care of by the Commissioner.

Who is an interested party in judicial review proceedings? In the case of **KENYA FARMNUT CO-OPERATIVE SOCIETY LTD VS HORTICULTURAL DEVELOPMENT AUTHORITY** the court held that an interested party is one who has a legal right that can be protected or asserted. In my view, a party is entitled to be joined as an interested party once it demonstrates that the outcome of the court proceedings will directly affect it. The Society has demonstrated that if the orders sought are granted to the ex-parte applicants then the inquiry report which recommends the surcharge of the ex-parte applicants will not be implemented. The consequence would be that it will suffer loss of income which it would have gained through the surcharge. It will therefore be directly affected by the outcome of these proceedings.

The ex-parte applicants also stated that the Society had filed recovery proceedings before the Tribunal despite the existence of the stay order herein. The Society submits that it became aware of the stay orders later and that is why it filed this application. The fact that the ex-parte applicants are affected by the Society's cases at the Tribunal only serves to confirm the importance of enjoining the Society in these proceedings. For the reasons above-stated, I allow the application. The Society will have 14 days from the date of this ruling within which to file and serve its papers. Costs will be in the cause.

Dated, signed and delivered at Nairobi this 29th day November , 2012.

W. K. KORIR
JUDGE