



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
JUDICIAL REVIEW NO. 16 OF 2009

BETWEEN

**THE MANAGEMENT COMMITTEE NANDI HEKIMA SACCO SOCIETY
LIMITED.....APPLICANT**

AND

**THE COMMISSIONER FOR CO-OPERATIVE
DEVELOPMENT.....RESPONDENT**

JUDGMENT

The **Management Committee of Nandi Hekima Sacco Society Limited** (“hereinafter the applicant”) sought and was granted leave to apply for orders of *certiorari* and prohibition on 6th April, 2009. In the first prayer the applicant sought to remove into this court and quash the decision of the **Commissioner for Co-operative Development** (hereinafter “the respondent”) dated 20th January, 2009 ordering an inquiry into the By-Laws, working and financial conditions of the **Nandi Tea Growers Co-operative Society Limited** now **Nandi Hekima Sacco Society Limited** (hereinafter the society”). The second order sought was to prohibit the respondent and all his officers from presenting, reaching and implementing the contents of the inquiry report on 7th April, 2009.

The leave so granted was to operate as stay of the said decision of the respondent pending the determination of this motion on Notice which was lodged on 29th April, 2009 pursuant to the said leave. The motion is supported by a statutory statement verified by an affidavit sworn by one **Jackson Chepseng’eny Rotich** who was then the Chairman of the applicant.

The grounds upon which the motion is brought are expressed as follows that:-

- 1) *The Commissioner for Co-operative Development had no power to make the said decision.*
- 2) *The said decision was made without jurisdiction.*
- 3) *The Commissioner's exercise of his powers under section 58 of the Co-operative Societies Act (hereinafter "the Act") was done on his own accord and without the direction of the relevant minister.*
- 4) *The said decision contravenes the mandatory provisions of the Act.*
- 5) *The said decision contravened orders of stay issued on 29th January, 2009 in Nairobi HC Misc. Application No. 61 of 2008.*
- 6) *The Commissioner acted unreasonably in instituting the said inquiry.*
- 7) *The said decision is arbitrary capricious and made in utmost bad faith.*
- 8) *The members of the said society had not complained.*
- 9) *The said decision was extended without gazettelement.*
- 10) *The orders are null and void.*

The verifying affidavit of the said **Jackson Chepseng'eny Rotich** merely elaborated the above grounds.

The motion is opposed and there is a replying affidavit and grounds of opposition. The substance of the opposition is that the respondent in exercising his powers under Section 58 of the Act needed not to have been directed by the Minister for co-operative Development as contended by the applicant. In the premises the motion had no basis and should be denied.

Counsel opted to file written submissions in which they reiterated their clients' respective stand-points taken in their pleadings. I have considered the motion on notice, the supporting papers and the opposition thereto. I have further carefully considered the submissions of counsel and the authorities cited. Having done so, I take the following view of the matter. In **Commissioner of Lands -VS- Kunste Hotel Limited (1997)e KLR (CA NO. 234 of 1995)**. The Court of Appeal stated as follows:-

“But it must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority to which he had been subjected.”

The court there cited with approval the statement of **Lord Hailsham of St. Marylebone** in the case of **Chief Constable of the North Wales Police -VS- Evans (1982) IWLR 1155** as follows:-

“The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority after according fair treatment reaches on a matter which it is authorised by law to decide for itself a conclusion which is correct in the eyes of the court.”

As can be observed, the substance of applicant's complaint is that the respondent in making its his decision to order an inquiry in the affairs of the society did so without jurisdiction. The applicant

contends that the respondent could only make the impugned decision under the direction of the relevant minister whereas the respondent maintains the contrary. Given the interpretations given to the respondent's powers a consideration of section 58 of the Act is pertinent. The section reads as follows:-

“58.

1) The Commissioner may, of his own accord, and shall on the direction of the Minister as the case may be or on the application of no less than one-third of the members present and voting at the meeting of the society

Hold an inquiry or direct any person authorised by him in writing to hold an inquiry, into the bylaws, working and financial conditions of any co-operative society.”

It is plain that under the above section, the commissioner may hold or direct an enquiry into the by-laws, working and financial conditions of any co-operative society in three circumstances.

1) On his own accord;

2) On the direction of the Minister and;

3) On the application of not less than one-third of the members present and voting at a meeting of the society.

It is therefore not correct as contended by the applicant that the respondent's exercise of his powers under the said section can only be under the direction of the minister. That being my view of the matter, it cannot be said that the decision of the respondent to order an inquiry into the affairs of the applicant was without jurisdiction or that the same contravened the provisions of the Act. The respondent clearly had the power and the jurisdiction to make the decision impugned.

There is also no material placed before the court to demonstrate that the respondent acted unreasonably capriciously or in bad faith.

The applicant has also, complained that the respondent's decision contravened the orders of stay issued on 29th January, 2009 in **Nairobi HC Misc. Application No. 61 of 2008** In that regard it has exhibited the said order and an affidavit of service dated 2nd February, 2009. The said affidavit of service shows that the said order was served on 2nd February, 2009. It could not therefore stay the respondent's decision dated 20th January, 2009.

In any event disobedience of the said order would attract contempt proceedings but not a foundation for separate judicial review proceedings

In the end, I find no merit in the applicant's notice of motion dated 27th April, 2009 and lodged on 29th April, 2009. The same is dismissed with costs.

It is so ordered.

DATED AND DELIVERED AT ELDORET THIS 27TH DAY OF SEPTEMBER, 2011

F. AZANGALALA

JUDGE

Read in the absence of the Parties and their advocates. The date having been given in court.

F. AZANGALALA

JUDGE

27TH SEPTEMBER, 2011