



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL 27 OF 2011

**FERDNARD WACHIRA MICHEAL WANYIRI
MUTEITHIA GAKURE**
JANE NJAMBI KIMINA.....APPELLANTS
EPRAIM KIBUCHI MACHARIA & 450 OTHERS

VERSUS
RUTUMA AMALGAMATED FARMERS

COOPERATIVE

SOCIETY LTD.....1ST RESPONDENT
MARWA FARMERS CO. LTD.....2ND RESPONDENT
ANDREW KARIITHI.....3RD RESPONDENT
GODFREY KAGO.....4TH RESPONDENT
SIMON MATHENGE NDIRANGU.....5TH RESPONDENT
JOB WAMBUGU.....6TH RESPONDENT
DANIEL WACHIRA.....7TH RESPONDENT
JOHN NDIRITU MUHINDU.....8TH RESPONDENT
EDWARD NDIRANGU KIAMA.....9TH RESPONDENT

RULING

The subject matter of this ruling is the Notice of Motion dated 17th May 2011 taken out by **Ferdnard Wachira and 451 others**, being the appellants in which they applied for the following orders:

- 1. That service of this application in the first instance be dispensed with and the application be heard ex parte.***
- 2. An injunction do issue restraining the 1st respondent from entering or interfering in any way with Marua alias Marwa Coffee Factory premises and management until this appeal is determined.***
- 3. This court do authorize the 451 appellants to enter the premises of Marua alias Marwa Coffee Factory and process, carry away and sell their produce to millers of their choice and manage the factory until this appeal is determined.***
- 4. That the regulatory authority being Coffee board of Kenya do issue relevant permits to the applicants.***
- 5. That this court do authorize the OCS Kiamacimbi to provide security during operation of the***

Marua alias Marwa Coffee Factory.

6. *That costs be provided for.*

Rutuma Amalgamated Farmers Cooperative Society Ltd. and 8 others, the Respondents herein, filed the replying affidavit of Peter Nderitu Githitho to oppose the Motion.

Miss Ann Thungu, learned advocate for the applicants, urged this Court to grant prayers 2-6 of the Motion. It is stated that the Applicants are coffee farmers who used to deliver their coffee to Marwa alias Marua Coffee Factory. The Applicants are said to have withdrawn their membership from Rutuma Amalgamated Farmers Cooperative Ltd. due to mismanagement. Marwa alias Marua Coffee Factory is one of the factories that amalgamated with others to form Rutuma Amalgamated Farmers Cooperative Society Ltd., the 1st respondent herein. The Applicants aver that when they went to deliver Coffee to Marwa alias Marua coffee Factory, they found the same closed on the basis of a court order issued by Karatina Senior Resident Magistrate's Court obtained by the 1st Respondent. The Applicants stated that they were aggrieved by the order since they are unable to process their coffee. The Applicants aver that they attempted to be enjoined as parties to the Karatina Senior Resident Magistrate's Court but their application was dismissed. Being dissatisfied, the Applicants preferred this Appeal. The Applicants have asked this Court to grant the orders sought to enable the farmers to process, mill and sell the coffee independently without interference of the 1st Respondent until the Appeal is heard and determined.

The respondents are of the view that prayers 2, 3 and 4 of the Motion are untenable, against the law and a gross abuse of the Court process because they are not an independent legal entity hence they cannot be given the orders. The 1st Respondent denied obtaining any order closing the factory. It was pointed out that the 2nd to 9th Respondents were the ones who obtained orders from Karatina Senior Resident Magistrate's Court thus bringing the operations of the factory to a halt.

Having considered the rival submissions, I have formed the following view of the matter: It is clear from the outset that Marwa alias Marua factory is one of the assets of the 1st Respondent. If the Applicants want to pull out from the cooperative society they must show that they complied with *Section 30* of the Cooperative Societies Act No. 12 of 1997. It should be known that individual members are not allowed to run a society to market coffee. There are only two ways of marketing coffee i.e. first, through cooperative societies or secondly, through Estate Farming. It is apparent that the 1st Respondent did not close the factory. Actually, the 2nd Defendant was the party who obtained an order closing the factory. With respect, I agree with the submissions of Mr. Ndirangu, learned advocate for the Respondents, that the orders sought will go against the Coffee Act. In any case the order complained of was issued by consent. Until there is a preliminary winding up order, the 1st Respondent shall remain part of Marwa alias Marua Farmers Co. Ltd., the 2nd Respondent.

In the final analysis, I find the Motion to be without merit. It is dismissed with costs.

Dated and delivered at Nyeri this 14th day of October 2011..

J. K. SERGON
JUDGE

In open court in the presence of Miss Thungu for the Applicant and Mr. Ndirangu for the 1st respondent and the other Respondents in person.