

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 324 of 2004

MBURU KINANI.....PLAINTIFF

VERSUS

KANYEKI FARMERS COOPERATIVE SOCIETY LTD.....DEFENDANT

RULING

Before me is a notice of motion by the plaintiff made under the provisions of **Section 3A** of the **Civil Procedure Act**, **Section 62 (1)(c)** and **2** of the **Co-operative Society's Act** seeking for the release of the title in respect of L.R. No.3777/890 (*hereinafter referred to as the suit property*) which had earlier been ordered deposited in court pending the hearing and determination of the suit. The plaintiff contends that the defendant, having been de-registered by the commissioner for co-operative development on 26th November, 2007 vide gazette notice No.12469 of 21st December, 2007, had ceased to exist and therefore it could no longer defend the suit. The plaintiff stated that it was now the absolute and indefeasible owner of the suit property and therefore was entitled to possession of the title. The plaintiff contends that since all avenues for appeal by the defendant against the said decision of the commissioner for co-operative development had been closed, it would be just and fair for the said title to be released to the plaintiff. The application is supported by the annexed affidavit of Mburu Kinani, the plaintiff.

The application is opposed. Macharia Kamochio, the vice chairman of the defendant swore a replying affidavit in opposition to the application. It was the defendant's case that it was caught unawares by the order of the commissioner for co-operative development deregistering it without notice. Further an order was not made for the appointment of a liquidator in the event of such de-registration. The defendant states that it had appealed against the decision of the commissioner for co-operative development canceling its registration and the same was pending determination before the minister for co-operative development. He annexed a copy of the appeal in the replying affidavit. He was of the view that it would be in the interest of justice that the *status quo* to be maintained as the defendant seeks to overturn the decision of the commissioner for co-operative development in the appeal before the minister. He urged the court to stay the proceedings in this suit pending the hearing and determination of the appeal by the minister.

At the hearing of the application, I heard rival arguments made by Mr. Odhiambo for the plaintiff and Mr. Kamere for the defendant. I have read the pleadings filed by the parties herein in support of their respective opposing positions. I have also carefully considered the rival submissions made by counsel for the parties to this application. It is common ground that the defendant's registration was canceled by the commissioner for co-operative development on 21st December, 2007 vide gazette notice No.12469 of the same date. The commissioner for co-operatives development canceled the said registration of the defendant pursuant to powers given to him under **Section 62(1)** of the **Co-operative Societies Act**. The commissioner for co-operative development did not give reasons for his cancellation of the registration of the defendant. According to **Section 62 (1)** of the **Co-operative Societies Act**, the commissioner for co-operative development may cancel the registration of a society where the co-operative society has less than the prescribed number of members or has failed to file returns with the commissioner for a period of three years or has failed to achieve its objectives. I do not think the legislature intended that the commissioner for co-operative development de-registers a co-operative society with due process being followed.

It appears that the commissioner, prior to canceling the registration of the defendant, did not issue notice of his intention to cancel the registration. According to the defendant, it became aware of its deregistration when the matter was mentioned before this court on 27th January, 2009. Upon being made aware of its de-registration, pursuant to **Section 62(2)** of the **Co-operative Societies Act**, the defendant filed an appeal to the minister against the decision of the commissioner. Although the plaintiff submitted that such an appeal was untenable in view of the fact that thirty (30) days had expired since the gazettelement of the cancellation, I am of the view that this court cannot render any opinion at this stage as to the validity or otherwise of the appeal to the minister because this court lacks jurisdiction to do so. There is no competent appeal before this court for the court to make such determination.

This court has partly heard evidence in this case. The dispute between the plaintiff and the defendant is seriously contested. There was multiplicity of suits filed in respect of the suit property. This court gave directions which enabled the matters in dispute between the plaintiff and the defendant be heard on merits. I think, in so far as there is a possibility that the defendant may succeed in its appeal to the minister challenging its deregistration, justice demands that the prevailing *status quo* be maintained until it is established as a legal fact that the cancellation of the defendant as a co-operate society stands and cannot be overturned.

In the premises therefore, I hold that the application by the plaintiff cannot at this stage be allowed. The plaintiff will have to be patient and await the decision of the minister in regard to the appeal lodged by the defendant. Thereafter, if the appeal fails, the plaintiff will be at liberty to prosecute an application similar to the present one. The application by the plaintiff for the release of the title of the suit property is dismissed but with no orders as to costs. Meanwhile, I will stay proceedings in this case pending the hearing and determination of the appeal lodged by the defendant to the minister for co-operative development.

It is so ordered.

DATED at NAIROBI this 22ND DAY OF JULY, 2009.

L. KIMARU

JUDGE