



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**OF KISII**

**Misc Civil Appli 24 of 2008**

**MARGARET AUMA JUMA ..... APPLICANT**

**VERSUS**

**RONGO DAIRY FARMERS CO-OPERATIVE SOCIETY LTD.....RESPONDENT**

**RULING**

The applicant filed an application by way of notice of motion brought under the provisions of sections 79 G and 3A of the Civil Procedure Act and Order XL1X rule 5 of Civil Procedure Rules. She sought leave to appeal out of time.

The application was supported by an affidavit sworn by the applicant. She deposed that on 23<sup>rd</sup> May, 2006, she filed a suit against the respondent through the firm of Moriasi – Osoro and company advocates. She was seeking refund of her share contributions held by the respondent.

On 23<sup>rd</sup> March 2007, the court struck out the entire suit for want of jurisdiction. The court held that such a dispute could only be handled by the Cooperative Tribunal in terms of the provisions of **Section 76** of the **Co-operative Societies Act, 1997**. The applicant applied for a review of the said ruling and the court delivered a ruling on 11<sup>th</sup> October 2007 dismissing the application for review. The applicant was dissatisfied with the said ruling and instructed her advocates to file an appeal against the same. She paid them a deposit of Kshs.2000/= on 15<sup>th</sup> September 2007. However, the said advocates did not file any appeal.

On 17<sup>th</sup> March 2008, the applicant was served with a bill of costs by the respondent's advocates. Mr. Sagwe for the applicant submitted that the proposed appeal has high chances of success. He added that the applicant stood to suffer irreparable loss if her application is not granted.

Mr. Odhiambo for the respondent, having taken the court through the events that took place before the subordinate court, submitted that the proposed appeal had no chance of success since it was clear that the court had no jurisdiction to handle the plaintiff's claim. He referred to the provisions of Section 76 of the Co-operative Societies Act, 1997.

Mr. Odhiambo added that the applicant had not attached a certificate of delay to her application. He further stated that the provisions of **section 79G** of the Civil Procedure Act had not been complied with. **Section 3A** of the **Civil Procedure Act** was also not applicable in an application of this nature. Counsel cited the decision of Ringera J, (as he then was), in **ADERO AND ANOTHER VS ULINZI SACCO SOCIETY LTD** [2002] 1KLR 577. In that case, the subject matter of the dispute was between a

registered Co-operative Society and its members. The court held that it did not have jurisdiction to deal with the matter by dint of the provisions of **Section 76** of the **Co-operative Societies Act, 1997**.

Under **Section 79G** of the **Civil Procedure Act**, this court has power to admit an appeal out of time if an applicant satisfies the court that he has good and sufficient cause for not having filed the appeal in time. Before the court can exercise that discretion in favour of an applicant, the court has to take into consideration the reason given for the delay, the merits of the intended appeal, the prejudice that the parties are likely to suffer if the application is allowed or rejected and any other relevant factor, see **MUTISO VS MWANGI** Civil appeal No.251 of 1997 at Nairobi.

While the applicant's previous advocates may be to blame for the delay in filing the appeal, my view is that even if they had filed the same in time it would still have been a non-starter. This is in view of the express provisions of Section 76 aforesaid which ousts the jurisdiction of this court or the magistrates' courts from handling any dispute between a registered Co-operative Society and its members. Such a dispute should be filed at the **Co-operative Tribunal** that is established under the **Co-operatives Societies Act, 1997**. I therefore agree with Mr. Odhiambo that the application herein has no merits and I dismiss the same with costs.

**DATED, SIGNED and DELIVERED** at KISII this **16<sup>th</sup>** day of **May, 2008**.

**D. MUSINGA**

**JUDGE.**

Delivered in the open court in the presence of:

Mr. Sagwe for the applicant

Mr. Oguttu H/B for Mr. Odhiambo for the Respondent.

**D. MUSINGA**

**JUDGE**