



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Appeal 194 of 2006

OBEDI NDUBI & OTHERS..... APPELLANT

VERSUS

KAMARA FARMERS

COOPERATIVES SOCIETY.....RESPONDENT

R U L I N G

Obedi Ndubi, Gilbert K. Mukungi, Peter Kaburu, Benson Riungu Munithu, Dickson Miriti, Humphrey Maguta, Julian Rocha, and Jones Kamundi (hereinafter referred to as the appellants), have moved this court by way of a notice of motion dated 17th June, 2008 brought under Sections 3A, 63(e) and 78 of the Civil Procedure Act, Order XLI Rule 4(1) of the Civil Procedure Rules, Section 73, 74, 75, 77, 78, 79 and 81 of the Cooperatives Society Act No. 12 of 1997, and Section 33 of the Cooperative Societies (Amendment) Act 2004. The motion seeks inter alia an order of stay of proceedings in Nairobi Cooperative Tribunal Case Nos. 28, 29, 30, 31, 32, 33, 43 and 36 of 2006. There were also other prayers which have either been spent or abandoned.

The respondent to the application, Kamara Farmers Cooperative Society Ltd, objects to the application. Grounds of opposition have been filed contending inter alia, that there has been inordinate delay in bringing the application, that the application lacks merit, is frivolous, vexatious and an abuse of the court process. It is contended that no prejudice will be suffered by the appellant if the hearing of the civil suits proceed.

The facts leading to the motion are essentially not in dispute. The respondent is a duly registered Cooperative Society under the provisions of the Cooperative Act. Sometimes in the year 2000, an inquiry was carried out into the affairs of the respondent. A special meeting was held on 22nd December, 2000 during which recommendations which included surcharging the appellants were passed. Subsequently the appellants were served by the Registrar of Cooperatives with notices of intention to surcharge. The appellants responded to the notice objecting to the surcharge. Nonetheless their objections were overruled by the Registrar of Cooperatives who issued surcharge notices. The appellants appealed to the Minister for Cooperative Development challenging the decision of the Registrar. The appeal was however dismissed as the appellant's advocate failed to appear for the hearing. The appellants instructed another advocate who made an application before the Minister for setting aside of the order of dismissal, but the Minister refused to revisit his decision. The appellants appealed to the Cooperative Tribunal against the Minister's decision. The Tribunal dismissed the appeal as having been lodged out of time, whereupon the appellants moved to this court and filed the current appeals. In the meantime, the respondent filed Tribunal Cases Nos. 28, 29, 30, 31, 32, 33, 43 and 36 of 2006 seeking judgment against

the appellant in terms of the surcharge notices.

The appellants seek to have the proceedings in respect of the cases filed by the respondent in the Tribunal stayed. The appellants contend that they stand to suffer substantial loss in view of the amount claimed, which is Kshs.6,256,077/90. It is contended that unless the proceedings are stayed the respondent will recover the surcharge amount by way of summary proceedings before the appellant's appeal is heard.

I have considered this application. It is evident that Tribunal Cases Nos. 28, 29, 30, 31, 32, 33, 43 and 36 of 2006 are anchored on the surcharge notices which the appellants are disputing in this appeal. If an order for stay of proceedings is not granted the appellants are likely to be prejudiced as the Tribunal Suits are proceeding by way of summary proceedings based on the surcharge notice. The appellants are therefore likely to suffer substantial loss as the amount involved is substantial. Although it was contended that there was inordinate delay in bringing the application, it is clear from the record that the 1st application seeking stay of proceedings was filed on the same date as the appeal. However, there is need for an order for security so as to protect the interests of both parties.

In the circumstances, I make the following orders: -

That an order for stay of proceedings in Nairobi Cooperative Tribunal Case Nos. 28, 29, 30, 31, 32, 33, 43 and 36 of 2006 pending the hearing of this appeal shall issue on the following conditions: -

- (a) That the appellants shall provide security either in the form cash for Kshs.2 million or a bank guarantee for the sum of Kshs.2 million from a reputable financial institution within 30 days from the date hereof.
- (b) That the appellants shall file a record of appeal within 60 days from the date hereof.
- (c) That the appellant shall take all necessary action to facilitate the speedy disposal of this appeal.

Dated and delivered this 28th day of July, 2008

H. M. OKWENGU

JUDGE

In the presence of: -

Mwanyale H/B for Onsando for the appellant

Ngare H/B for Gitonga for the respondent