



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 166 of 2006

DAVID KIAMBI M'RIMBERIA PLAINTIFF/APPLICANT

VERSUS

NAKURU TEACHERS SAVINGS CREDIT

CO-OPERATIVE SOCIETY..... DEFENDANT/RESPONDENT

RULING

The Plaintiff/Applicant was a member of the Nakuru Teachers Savings Credit Co-operative Society. On 31st January, 2004, the plaintiff was granted by the respondent a loan of kshs.102, 000/= which was to be repaid by monthly installments. According to the applicant the loan was recovered up to March, 2004 after which no further recoveries were made despite his letters addressed the respondent requesting them to recover the loan through deductions of his salary. On 4th June, 2006, the respondent gave the applicant notice requiring him to repay the arrears within **30 days**. However, before the expiration of the said notice, the respondent wrote a letter dated 3rd July, 2006 purporting to expel the plaintiff from the society.

This is what triggered the present suit in which the plaintiff has sought for an order declaring the said expulsion from the society null and void. Simultaneously with the filing of the suit, the applicant filed the present chamber summons in which he had sought for the following two principle orders:

(a) That this Honorable Court may be pleased to order

That the Applicant DAVID KIAMBI M'RIMBERIA do continue with his membership with the Respondent until the hearing and final determination of this application and/or further orders of this Honorable Court.

(b) That pending hearing of this suit an order of injunction do issue restraining the Respondent by itself, its employees, servants and/or agents and anybody else acting on its behalf from taking any action aimed at expelling the plaintiff DAVID KIAMBI M.RIMBERIA from the respondent's membership.

In further arguments counsel for the applicant submitted.

That, although this matter ought to have been filed at co-operative tribunal by dint of a decision in;

HCCC Misc. Application No.30 of 2004 Olkajuado Teachers Savings Vs Chairman Co-operative Tribunal Nairobi, the High Court held that the Co-operative Tribunal cannot implement any decision and therefore it is futile to file a matter there, when there are no rules on how the decision can be executed. That is why this matter was filed in the High Court which has original jurisdiction in all civil matters.

According to Counsel for the plaintiff, the expulsion of the applicant from the society was a blatant breach of the Society's by-laws which sets out the procedure of settling disputes. According to **by-law No.23**, it is only the Annual General Meeting that can expel a member. The management committee can only suspend a member. Further more the applicant complied with the notice requiring him to settle the loan and therefore the expulsion was without basis. Counsel therefore urged this court to grant the orders.

On the part of the respondent, this application was opposed on the grounds that the decision which the applicant seeks to declare null and void was a quasi judicial decision, a suit challenging that decision can be brought by way of judicial review and not a suit. Secondly, Counsel for the respondent submitted that if a member of the society is aggrieved by the decision of the Management Committee, the procedure to invoke is what is provided for, under the **Co-operative Society Act 1997 Act No.12** which establishes a Tribunal to deal with such disputes between a member and the society and between members and the management committee of the society.

A member of a society is supposed to comply with by the Bye- laws and the present application in this case by an applicant who was in violation of the by-laws for a period of two years when he defaulted in the repayment of the loan is without merit. It is after the notices were issued that the applicant rectified the situation albeit in a dishonest manner. The applicant purported to have written letters to the respondent dated 13th July, 2004 instructing the respondent to recover the outstanding loan from his salary. The manager of the respondent **Rose Mogere** swore an affidavit to show that no such letters were received by the respondent and annexed a copy of their register of incoming mail. It was the respondent's case that the plaintiff is less than candid, he has not come to come with clean hands as it is clear it is not the respondent who effects the recovery of the loans but the applicant's own employer and thus the letters were contrived to make a case without any basis.

The issues raised in this application and which calls for determination are, firstly, whether the jurisdiction of this court was properly invoked, secondly, whether the applicant is entitled to the prayers sought. In regard to the first issue, the **Cooperative Society Act 1997 No.12 Section 76** provides how disputes regarding a society must be settled. **Section 77** established a Tribunal where such disputes are to be determined. It is clear in this case that this dispute involves the applicant and the Management Committee and the same should have been filed pursuant to the **Cooperative Society Act**.

Secondly, the plaintiff's application seeks for declaratory orders and restraining orders against a decision made by a quasi -judicial body namely the Management Committee. Although Counsel for the applicant relied on the decision in **Misc. Civil Application No.30 of 2004**, that case was filed by way of **judicial review**. It was between the Society and the Chairman of the Co-operative Tribunal. The applicant is also challenging a decision by the respondent which was purportedly contained in the letter dated **3rd July, 2006**. In my view, the contents of that letter are a communication of the decision of the Management Committee. I am not convinced by the submission that there was no decision to set aside when that decision is contained in the said letter. The applicant ought to have invoked the jurisdiction of this court by filing his claim by way of judicial review.

Finally, I have also looked at the merits of the application especially the by-laws of the respondents and the undisputed fact that the applicant had breached the Bye -law by failing to pay the loan. **By-law No.24** provides for the expulsion of members by the Management Committee after a written notice stating the reasons. The members so expelled are entitled to appeal before the Annual General Meeting. These are all remedies available to the applicant in addition to the fact that he was advised to re-apply for re-admission to the society. In view of the above reasons, I find no merit in the application which I hereby dismiss with costs to the respondent.

It is hereby ordered

Ruling read and signed on 25th day of May, 2007.

M. KOOME

JUDGE