REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

Civil Suit 3619 of 1983

GITHARA CHUCHU & 473 OTHERS ..... PLAINTIFFS/APPLICANTS

VERSUS

GATITU COFFEE GROWERS CO-OPERATIVE SOCIETY LTD ..... 1ST DEFENDANT/RESPONDENT

KENYA PLANTERS CO-OPERATIVE UNION ..... 2ND DEFENDANT/RESPONDENT

RULING

A. APPLICATION AND PRAYERS: THE STORY OF KSHS 13,251,249/95 WHICH CANNOT BE TRACED

The plaintiffs' application by Notice of Motion dated 3rd August, 2004 AND FILED ON 9TH August, 2004 was brought under Order , rule 1 of the Civil Procedure Rules, and S. 3A of the Civil Procedure Act (Cap 21). There were two substantive prayers:

i. That the chairman of the board, or the Managing Director/General Manager and/or the Finance Manager of the Kenya Planters Co-operative Union (2nd defendant) be summoned to Court and thereafter ordered to tell the Court whether,

(a) the 2nd defendant is still holding Kshs13,251,549/95 which belongs to the plaintiffs herein; or (b) whether the 2nd defendant has released the said sum of Kshs.13,251,549/95 to anyone else;

ii. That the representative of the 2nd defendant as aforesaid, so summoned, be required to name the person to whom the 2nd defendant released the said money, and state the date of such release, if the said money has been released.

The application is premised on the following grounds:

a) It is almost 25 years since the commissioner of co-operatives ordered that the 2nd defendant do hold the sum of Kshs13,251,549/95 belonging to the plaintiffs – and the failure by the 2nd defendant to pay

over this sum of money to the plaintiffs was a denial of justice;

b) In the proceedings in Court, of 25th June, 2004 the advocate for the 1st defendant was alleged to have received the said sum of Kshs13,251,549/95 – and this makes it necessary to ascertain where the money is held at the moment;

c) It is necessary to invoke the court's jurisdiction to protect the rights of vulnerable persons in the society, such as the category of small-scale farmers;

d) Many of the plaintiffs are very old, some have died, and their families are so impoverished and economically disempowered, that they are no longer able to continue with coffee farming, even as their money continues to be held by the 2nd defendant who is a stranger to them;

e) The plaintiffs have a right to know where their money is, following their due compliance with an order of the Court of Appeal, relating to the said money, of 31st July, 1987 (Civil Appeal No 46 of 1985)

Evidence in support of the application is found in the depositions made by Njoroge Mburu and Simon Chuchu.

In his affidavit of 5th August, 2004 Njoroge Mburu avers that he is one of the plaintiffs and he has, since the death of Githara Chuchu, been the leader of the plaintiffs, and he swears his affidavit in that capacity.

The deponent avers that the plaintiffs have in the past had difficulties with advocates who were representing, but their duly instructed advocates since 1998 are M/s Nabutete & Company Advocates.

The deponent depones that it is now known tht the 2nd defendant had released the plaintiffs' cheque to the advocates for the 1st defendant, M/s Muchui & Company advocates; and so they would like the said cheque now paid over to M/s Nabutete & Company Advocates, who, working with M/s Chege Wainaina & Company Advocates, will distribute the proceeds of that cheque with interest accrued, to the plaintiffs. The deponent avers that he had taken personal initiatives in following upon the whereabouts of the moneys in dispute herein, through Government offices; and he was surprised that the said moneys had been released to someone other than the plaintiffs themselves of their advocates on record.

The deponent believes to be true the information received from the plaintiffs' advocates, that attempts by the said advocates to obtain a spy of the letter forwarding the said sum of Kshs13,251,549/95 to the 1st defendant or the 1st defendant's advocates (M/s Muchui & Company Advocates), from M/s Hamilton Harrison & Mathews Advocates, who are the 2nd defendant's advocates, had proved unsuccessful. It is deponed that the 2nd defendant had been directed by the commissioner of Co-operatives to hold the moneys in dispute; and therefore the 2nd defendant could not have released the same without informing the commissioner.

Simon Chuchu in his affidavit of 3rd August, 2004 depones that he is the secretary of a group known as Githara Chuchu & 473 others, having been so appointed at a meeting of the plaintiffs held at Giagithu Buying Centre on 10th February, 2003. The deponent avers that he and the other leaders had sought the assistance of the Ministry of Justice and Constitutional Affairs to have the moneys owing to the plaintiff traced and availed to them; and the Ministry requested the Commissioner of co-operatives to follow up on the matter. As the Commissioner was dilatory in taking action, it became necessary for the deponent to take up the matter with the Permanent Secretary in the Ministry of Co-operative Development and Marketing. The Permanent Secretary acted by appointing a two-person inquiry committee to find out why the proceeds of the coffee deliveries had not been released. The Committee established that the sum of Kshs13,251,549/95 had not been paid to the plaintiffs. The committee also recommended tht the plaintiffs tea factories, the Giagithu and Kimathi factories, be registered as an independent society. But the State Counsel concerned, Mrs Kanyoni would not release to the plaintiffs their certificate of registration but stated that the moneys in dispute, Kshs13,251,549/95 were held by the Ministry of Co-operative Development. Yet this position appeared unconfirmed; as the Permanent Secretary later summoned the Managing Director of the 2nd defendant, to attend before him and explain the status of the moneys in

dispute herein; but the said Managing Director declined to attend. It is deponed that later, on 16th April, 2004 the 2nd defendant sent its Financial Manager to a meeting with the said Permanent Secretary; and the Financial Manager stated that the 2nd defendant had in 1998 resolved that the moneys in dispute be released "to the owners." In that meeting the 2nd defendant's Financial Manager was accompanied by the 2nd defendant's Administration Manager, and they stated, on 16th April, 2004 that "if the money [had] not been released to the owners then they [needed] two weeks to find out what [had] happened to it."

It is deponed that there was a subsequent meeting at the Ministry of Co-operative Development and Marketing, on 20th May, 2004 at which the 2nd defendant's advocates, M/s Hamilton Harrison & Mathews, intervened and told the meeting, chaired by the Deputy Commissioner of Co-operatives, that the matter was already before the Court, and so the 2nd defendant would reserve its comments and only speak in Court. It was therefore not possible, the deponent averred, far the Permanent Secretary and the plaintiffs to know where the moneys in dispute were held.

On the 23rd of June, 2004 it is deponed, still another meeting was held, attended by the Permanent Secretary, the Commissioner and Deputy commissioner of Cooperatives, and the deponent. The Commissioner said vaguely at tht meeting, without producing any documentation, that he knew how the moneys in dispute herein had been released.

The deponent averred that there were clear orders of the Court, in H.C. Misc. Civil Application No 81 of 1980; in HCCC No. 3619 of 1983 (judgment dated 31st January, 1985); and in Civil Appeal No. 46 of 1985 which recognized the rights of the plaintiffs to the moneys in question; but to-date the plaintiffs had not been paid the moneys to which they have been entitled since 1983. The deponent averred that, to-date, the plaintiffs do not know whether the 2nd defendant still holds their moneys, or whether the money has been released to someone else and if so, who, and when?

B. TECHNICAL FACADES: THE REPLYING AFFIDAVITS

Peter Njuguna Kimani's affidavit of 22nd October, 2004 is in reply to the supporting affidavits. He avers as follows. He is the legal officer of the 2nd defendant, and is duly authorized to make his depositions. He avers that the plaintiffs suit, filed on 10th October, 1983 had sought inter alia, to restrain the 2nd defendant from parting with the coffee proceeds for deliveries made between September, 1979 and 1983 by the 1st defendant, except to the plaintiffs. The defendant's defences were struck out by an order made by O'Kubasu, J (as he then was) on 31st January, 1985; and judgment was entered as prayed in the plaint. The 2nd defendant was dissatisfied with the Court's ruling of 31st January, 1985 and filed Civil Appeal No. 46 of 1985, which appeal was allowed on 31st July, 1987. On that occasion, the parties were ordered to request the commissioner of Co-operative Development to withdraw the order to withhold payment in respect of the two factories owned by the plaintiffs. The parties thus resorted to the commissioner of Co-operative Development; and from the Commissioner the matter came back to the High Court, as had been anticipated by the Court of Appeal. The High Court ordered that the matter be referred to arbitration, by virtue of s080 of the Co-operative societies Act (cap 490). Mr Daniel Mutiso who had been appointed arbitrator awarded the sum of Kshs8,999,480/- to the plaintiffs. The 1st defendant appealed against this award before the Deputy Commissioner for Co-operative Development, who allowed the appeal, and set aside the arbitrator's award, on 6th February, 1992. The matter was thereafter referred to three arbitrators – Mr G.K. Mariuki (Chairman), Mr Zablon Omari, and Mr George Mugambi. Although the matter was brought before the three-man panel on 1st April, 1992 it is still pending before that panel.

It is deponed that the plaintiffs, by their application of 1st March, 1994 had sought the setting aside of the order of 15th July, 1993 that the matter be referred to a panel of three arbitrators: and indeed the order was set aside by O'Kubasu, J on 4th November, 1994 – on the basis that the dispute should not have come to court when the panel of three arbitrators had not yet given a decision.

It is deponed that the plaintiffs had an application, dated 16th March, 1999 in which they sought an order that Arbitration Case No. 6 of 1992 be revoked, and that the High Court proceed to hear the suit. But the Commissioner for co-operative Development raised a preliminary objection, as to the jurisdiction of the Court to determine the dispute between the parties; which preliminary objection was upheld by the Court

on 6th July, 1999. It is deponed that the plaintiffs then, by an application of 29th October, 1999, sought a review of the order of 6th July, 1999 – and the application was dismissed on 5th June, 2000. Against this dismissal the plaintiffs appealed, in Civil Appeal No 124 of 2001. The appeal was withdrawn, and a Court order issued to that effect, on 11th June, 2004.

It is deponed that this matter is yet to be determined by the panel of arbitrators, and it is

C. FURTHER SUPPORTING AFFIDAVIT

Simon Chuchu, with the leave of the Court granted on 24th November, 2004 swore a further affidavit on 21st February, 2005. He deponed that there was nothing in the past rulings and judgments of the Court referring to the issue of the whereabouts of the funds due to the plaintiffs and held by the 2nd defendant; and in this regard he referred annexures which included decisions in H.C. Misc. Civil Application No.81 of 1980 and HCCC No. 3619 of 1983 dated 19th April, 1983 and 31st January, 1985; and Civil Appeal No. Nai. 46 of 1985 dated 31st July 1987. The deponent averred that there was no Court order to the effect that this matter be referred to arbitration, in civil Appeal No. Nai.46 of 1985; and on this question the order dated 31st July, 1987 is a conclusive. He depones that as far as the Court of Appeal was concerned, this matter had been concluded, and a procedure was prescribed for arriving at a final settlement. The same conclusion, it I averred, was reached in Miscellaneous Civil Application No.81 of 1980 in which it was stated that "this application has come to an end" – a fact which was recognized by the then advocate for the 1st defendant, Mr P.K. Mureithi in his letter to P.S. Gatimu Advocate (for the plaintiffs), dated 19th April, 1983 copied to the Hon. The Attorney- General, the Deputy Registrar of the High Court, and to Gititu Coffee Growers Cooperative Society Ltd. The effect, it is averred, is that the matter had been concluded long before the 1st defendant submitted it to the jurisdiction of the Commissioner of cooperative Development. Mr Ngatia, advocate for the 2nd defendant, is recorded to have reacted to Mr. Gatimu's submissions about the moneys in dispute by acknowledging that only payment of the same remained outstanding.

MORE TECHNICAL FACADES: REPLYING AFFIDAVITS

On 14th June, 2005 Stephen Kihara Muchui, advocate for the 2nd defendant sworn a replying affidavit in which he avers, inter alia, that he has been acting for Gititu Coffee Growers Co-operative Society Ltd since 1988 and he is familiar with the whole matter. He avers that the dispute had been referred to the Commissioner for Co-operative Development under s.80 of the Co-operative Societies Act by Mr Justice Akiwumi OR 11TH September, 1988.

On 20th June, 2005 Linda Wambani of M/s Hamilton Harrison & Mathews, advocates for the 1st defendant, swore an affidavit mainly responding to the averments in the affidavit by the advocate for the 2nd defendant, Stephen Kihara Muchii.

Linda Wambani avers that this matter had come up before Mr Justice Kihara Kariuki on 15th June, 2004 and on that occasion a request by counsel had been made for the firm of Muchui & Company advocates to attend court and give an account of the disbursement of the moneys in dispute herein, which had been paid out by the 1st defendant. The deponent avers: "At no material time did I expressly state or impute that the sum of Kshs13,251,249/95 had been paid directly to Mr Stephen Kihara Muchai or to his firm, Muchui & Company Advocates."

D. WHERE IS THE MONEY, AND DOES IT BELONG TO THE PLAINTIFFS? - SUBMISSIONS FOR THE APPLICANTS

At the first hearing of the application before me, on 12th November, 2004 the applicants were represented by Mr. Nabutete, Mr. Etyang and Mr. Njoroge; the 1st defendant by Mr Wesonga, the 2nd defendant by Ms Ndosi.

Learned counsel Mr. Nabutete stated the gravemen in this long-winded and unending litigation in simple terms: The Kenya Planters Co-operative Union, the 2nd defendant, is holding, since 1983, a principal sum

of more than Kshs. 13 million, which belongs to small-scale coffee farmers, who are the plaintiffs herein. That the said moneys belonged to the plaintiff and ought to have been paid to them, counsel submitted, had always been the position and indeed the order of the Courts. On 31st July, 1987 the Court of Appeal made an order in the following terms:

"The appellant and the respondent to request the Commissioner of Cooperatives to withdraw the order to withhold payment in respect of the factories, Kimathi and Kiagithu."

The above Court directive could not have been intended to be in vain. Indeed, counsel drew this court's attention to follow-up correspondence from the Commissioner for cooperative Development, the officer whose duty it was to withdraw the withholding order or release of the moneys now in dispute, and t the plaintiffs. The said Commissioner, in his letter Ref. C3/424/TEMP/III/70 dated 25th August, 1987 addressed to the Corporation Secretary, Kenya Planters Co-operative Union Ltd and the General Manager, Coffee Board of Kenya and copied to the district Co-operative officer, Kiambu District, the chairman, Gititu Coffee Growers co-operative society Ltd (1st defendant) and Mr. P. Gatimu, Advocates for the plaintiffs herein, stated as follows:-

"The lawyers for the parties [in Civil Appeal No.46 of 1985] have by consent agreed that the proceeds of coffee delivered from Kiagithu and Kimathi factories of Gititu Coffee Growers Co-opeative society Ltd in 1979 – withheld with the instructions of the district Cooperative Officer, Kiambu – may now be released forthwith. Part of the coffee was delivered vide out-turn Nos. 052010 for 620 bags and o52017 for 634 bags.

"The purpose of this letter is to revoke the instructions contained in letter No CS/424/17 dated 16th October, 1979 from the then acting Senior District co-operative Officer, Kiambu and request that payment be made forthwith to the farmers concerned in the normal manner."

To my mind there is no doubt that the commissioner of Co-operative Development was, by his letter quoted above, carrying out the directions of the Court of Appeal. This means, I believe, that there could be no question as to the plaintiffs' entitlement to their money being the proceeds of coffee sales for 1,254 bags of coffee emanating from the plaintiffs' two factories – Kiagithu and Kimathi. It is equally clear that the moneys in question were recognized and acknowledged to be in the custody of he 2nd defendant, and the legal duty to pay rested squarely on the 2nd defendant. As directions in this regard were emanating from the highest court in the land, they must, in law, be regarded as final directions, and, if the 2nd defendant then failed to pay the moneys in question to the plaintiffs, then the 2nd defendant would bear full liability for the damage ensuing. This must be the guiding principle in the review of the very substantial submissions in the instant application, and in disposing of the matter with finally at this level in the judicial process.

The gravamen in this application is that the plaintiffs' moneys have to-date, not been released to them.

As I have noted above, the duty to pay had already crystallized, with the directions of the Court of Appeal, as implemented by the commissioner for co-operatives. In law, I would hold, the Commissioner could not go back on that arrangement, unless he was authorized by a new order made by the Court of Appeal.

When the parties herein appeared before Kihara Kariuki, J on 5th October, 2004 the defendants had denied knowledge of the whereabouts of the moneys in dispute, even though, as I have stated earlier, the 2nd defendant is to be presumed to have custody of the same. It was not, therefore, necessary to look elsewhere and if the moneys were elsewhere, then any dispute that would arise there from can only be resolved in a separate suit initiated by the 2nd defendant, but a suit the mechanics of which have no effect on the long overdue obligations resting on the 2nd defendant to pay up, in favour of the plaintiffs herein.

Continuing with his submissions on 19th April, 2005 Mr Nabutere submitted that the claim in the replying affidavits that this matter had been remitted by the court to arbitration, had no basis – because there was no order referring the matter to arbitration. In the perception of the High Court and the Court of

Appeal, the moneys in dispute were due to the plaintiffs and ought to have been paid to the plaintiffs by the 2nd defendant. This was also the unequivocal ruling of O'Kubasu, J (as he then was), when he heard an application by Chamber Summons brought by the plaintiffs, his ruling being dated 31st January, 1985. The learned Judge held as follows:

"Having considered the orders made in Misc. Application No.81 of 1980 I find that as a result of the conclusion reached, the money which was being held by the defendants herein pending the outcome of that application ought to have been released when the final order was made on 19th April, 1983. KPCU the 2nd defendant was only holding the money in question pending the Misc. Application No. 81 of 1980.

This money clearly belongs to the plaintiffs. There were letters exchanged and statements showing delivery which clearly show how much is owed. Mere denial may in some cases constitute a valid defence but in the present case I am satisfied that the two defendants have no valid defence to the plaintiffs' claim. I grant this application and order that the written statements of defence filed herein be struck out. I now enter judgment as prayed in the plaint."

Learned counsel Mr. Nabutere submitted, and I agree, that the lies of liability in this matter had been neatly determined and conducted by the Courts, and thus the continued invocation of arbitration possibilities by the defendants, can only serve to perpetuate delay, and to wreak injustice towards the plaintiffs. In the words of counsel, "arbitration is used as a vicious circle to keep the plaintiffs running round in vain."

The arbitration argument was anchored on a ruling by Mitey, J in a "preliminary subjection" which came from a non-party to the suit, a State Counsel coming in the name of the commissioner for Co-operative Development. On tht occasion, on 6th July, 1999 quite some time after the lies of liability had been settled by both the High Court and the Court of Appeal, the learned Judge ruled:

"Any disputes relating to co-operative societies ... are dealt with by the [Co-operative] Tribunal and any aggrieved party may appeal to the High Court against the ruling of [the Tribunal]. The Act does not confer upon the Courts original jurisdiction in such disputes. Ad further the Courts do not possess supervisory powers over the Tribunal when it is dealing with disputes placed before it by the litigants. It is in that regard that I find the plaintiffs' application incompetent. The preliminary objection is thus upheld ..."

Learned counsel submitted that since the Commissioner for Co-operative Development had not been a party, it would have been improper for him to come by state counsel and raise such a preliminary objection. On this account, counsel submitted, the ruling on that case should not be taken into account in resolving the dispute in the instant case.

E. DISPUTING THE COURT'S JURISDICTION: SUBMISSIONS FOR THE 1ST DEFENDANT

Learned counsel Mr Muchui for the 1st defendant submitted that although the instant application was against the 2nd defendant and not his client, he needed to make certain clarifications. He submitted that the dispute had been referred to the Commissioner of Co-operatives by an order of Akiwumi, J (as he then was), on 11th September, 1988 after the learned Judge found that the Court had no original jurisdiction to try the matter.

However, on reading the record I found that there was no substantive hearing before Mr. Justice Akiwumi, and his order is dated not 11th September, 1988 but 11th May, 1988. On that occasion Mr. Muriithi for the 1st defendant; Mr. Fraser for the 3rd defendant; Mr. Chapsaignt for the Commissioner of co-operatives. There is no record of a hearing, but only directions as follows:

"This matter, is one that falls to be determined by the Commissioner for Co-operatives by virtue of s.80(1) of Cap 490..."

Although that order by a Judge of the High Court is now being invoked, I think it is being invoked

improperly – because there very clear findings already that the 2nd defendant owed to the plaintiffs the moneys in dispute, and well before the order of Akiwumi, J the Court of Appeal had unequivocally given directions, which had indeed been followed up by action by the Commissioner for Co-operative, for the payment to the plaintiffs of the moneys now in dispute. I am not, therefore, accepting the argument advanced by counsel for the 1st defendant.

F. THE QUESTION OF JURISDICTION: PLAINTIFFS' REJOINDER

Mr. Nbutete submitted that at the time the suit herein was filed, the Co-operative Societies Act of 1966 was in force; but this Act was repealed by an amendment of 1997. Under s.80 of the 1966 Act a matter was required to be placed in the first instance before the Commissioner for Co-operatives only where there was a dispute could also be between members, past members or deceased members, and the co-operative society or an officer of a co-operative society; the dispute could also be between a co-operative society or its committee, and any other registered society. Disputes falling in such categories were required to be referred to the Commissioner in the first place.

Mr Nautere submitted that the instant matter dies fall into such a category of "disputes", so that it must first go before the Commissioner of Co-operatives for resolution: for the plaintiffs are not members of a society entertaining a grievance against tht society. Their claim is against the Kenya Planters Co-operative Union (KPCU) – and membership of KPCU can only be constituted by other registered co-operative societies, and not by individuals. The plaintiffs have come before the Court in their capacity as just individuals, with no claim against the society to which they belong. Counsel submitted that KPCU could not be considered a registered society; it was a "Co-operative Union", as defined in s.5 of the 1966 edition of the Co-operative Societies Act. It had been held by this Court (Mitei, J) in Kibunja v Attorney-General and 12 others [2002] 2 KLR 1 that s.80 of the Co-operative Societies Act (Cap.490) expressly ousts the jurisdiction of the Court in disputes concerning the business of a registered society. The dispute in that case concerned the expulsion of a member of the society.

What is a dispute for purposes of the Co-operative Societies Act (Cap.490)? Tanjui, in George & 15 others v Limuru Pyrethrum Growers Co-operative Ltd & 9 others, [1990] KLR 214 defined the kinds of disputes that might arise, under the Cooperative Societies Act. The learned Judge held (p.214):

"1. It was clear from section 80(I) of the Co-operative Societies Act that where there is a dispute between the members of a society ... and the society and/or its officials or management committee, it is mandatory that the dispute has to be referred to the Commissioner for Co-operative Development.

"2. If there is a dispute as to whether a party is a member of a co-operative society and the co-operative society disputes that, the matter becomes a dispute within the provision of section 80(1) of the Co-operative Societies Act."

It is quite apparent to me, taking into account the decisions in both Kibunja v Attorney- General and George v Limuru Pyrethrum Growers Co-operative Ltd that the kind of dispute contemplated by the Co-operative Societies Act, and which is required I the first place to be taken up before the Commissioner, is a contentious pointed touching on general rights attached to membership, or broad welfare issues – matters which require in the first place the exercise of a discretion by the Commissioner, on the basis of appropriate consultations. I will hold here that the concept of a "dispute", within the framework of the Act, cannot possibly incorporate perceived violations of the protective laws of the land, in matters of crime, tort, trust, etc. For such matters, there is one and only one recourse – the Courts of law. Such matters cannot be amenable to the negotiated on consultation-based exercise of the Commissioner's general management jurisdiction. All beaches of the well defined protective laws of the land, must be resolved only by the Courts.

G. FURTHER ANALYSIS, AND ORDERS

Without any question, this suit represents the well-founded grievance of the plaintiffs. The proceeds of coffee sales, in respect of their 1,254 bags of coffee have been held by the 2nd defendant continuously

since a final order of the Court determined the same to be the correct factual position on 19th April, 1983. This factual position was also recognized by the Court of Appeal, in its order of 31st July 1987. The order of the Court of Appeal set in motion a rectification process which began soon thereafter. Strangely enough, the 2nd defendant took no action, and thereafter began on course of action, apparently supported by the 1st defendant, to complicate the rendering of the plaintiffs' clear legal rights, by inexplicable argumentations and motions invoking administrative jurisdictions of the Commissioner of Co-operatives, and claiming that arbitration was the correct procedure to be followed by the plaintiffs.

I have already suggested in this ruling that the denial of moneys due to the plaintiffs could very well fall within the ambit of both the criminal law and the tort of conversion. Such are not at all matters negotiable, or subject to administrative discretions, within the meaning of disputes as contemplated under the Co-operative Societies Act (cap 490). Such matters can only be resolved within the judicial process. I therefore reject the invocation of the administrative provisions of the Co-operative Societies Act, in the resolution of the issues raised by this case.

I also find that both the High Court and the Court of Appeal had long ago determined the issues of liability in this matter; and it is wrong in law to now purport, as the defendants do, to attribute the issues in dispute to the jurisdiction of the Commissioner for Co-operatives, or that of arbitrators. I hold that this matter is properly before the High Court, and it is on that basis that I will now make the following orders.

H. ORDERS

The records are clear, and they show that the 2nd defendant had been ordered to pay to the plaintiffs the sum of Kshs.13,251,549/95. The proceedings, therefore, could have been finalized with a restatement of that obligation, which can be enforced by a suitable application by the plaintiffs. However, in view of the terms of the plaintiffs' application by Notice of Motion dated 3rd August, 2004 I will limit the scope of my orders, as follows:

1. The Chairman of the Board, or the Managing Director/General Manager and/or Financial Manager of the 2nd defendant/respondent (Kenya Planters Co-operative Union) shall appear before a Judge in the Civil Division of the High Court, to answer the following three questions:

i. Is the Kenya Planters Co-operative Union (2nd defendant) still holding the sum of Kshs.13,251,549/95 which belongs to the plaintiffs herein?

ii. Has the Kenya Planters Co-operative Union (2nd defendant) released the said sum of Kshs.13,251,549/95 to anyone other than the plaintiffs?

iii. If the Kenya Planters Co-operative Union (2nd defendant) has released the said sum of Kshs.13,251,549/95 to someone other than the plaintiffs, then who is that other person, and when was the said sum of money released to that other person?

2. The Court, upon due compliance with the orders herein by the 2nd defendant, shall issue orders for payment to the plaintiffs of the said sum of Kshs.13,251,549/95 with appropriate interests, while providing also for the plaintiffs' costs.

3. The 1st and the 2nd defendants shall jointly and severally bear the plaintiffs' costs in this application.

Orders accordingly.

DATED and DELIVERED at Nairobi this 17th day of February, 2006. J.B. OJWANG JUDGE