

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Misc Appli 146 of 2003

**GEORGE DIPONDO & 8
OTHERSAPPLICANTS**

V E R S U S

**REGISTRAR CO-OPERATIVE SOCIETIES & 2 OTHERSRES
PONDENTS**

R U L I N G

This is a Ruling in respect of the application dated 17.01.2005 in which the Applicants, George Dipondo and 8 others sought orders for the cancellation of the Special General Meeting of the Mumias Outgrowers Sacco Society Ltd. and an order for the applicants to be confirmed as the bona fide Management Committee members and a prayer for interpretation of the orders of stay of execution.

On 19.11.2004 this court dismissed the Notice of Motion dated 25.11.2003 in which the Applicants had sought an order of certiorari to remove into this court and quash the decision contained in the inquiry report referred to as CS/NO.3109/July/August 2003 and proceedings and decision of the Mumias Outgrowers Sacco Society Ltd. of 4.11.02 and 15.11.2003 and prohibition directed against the Respondents.

When the application dated 17.01.2005 came up for hearing on 21.7.05 the Respondents who had been served were not represented although they had filed a replying affidavit opposing the application. Mr. Fwaya learned counsel for the Applicants urged me to grant the orders sought.

I have carefully perused the application and duly considered the submissions made by Mr. Fwaya. The second prayer in the application is now spent as the date has passed and cannot therefore be granted. With regard to prayer two, this court dismissed on 19.11.04 the Notice of Motion dated 25.11.03 which had sought to quash the decision in the report referred as CS/No.3109 July/August 2003. The order therefore issued at the leave stage on 11.11.2003 that such leave would operate as a stay had no application after the dismissal of the Motion on 19.11.04. Consequently the Applicants cannot on that basis purport to be the bona fide members of the Management Committee of MASACCO. An attempt to use or rely on the order made on 11.11.2003 would be clearly an abuse of the process of the court. No stay is in place and the Applicants are at liberty to pursue their appeal against the Ruling of this court delivered on 19.11.04. The application dated 17/1/05 has no merit and same is hereby dismissed with costs.

Delivered, dated and signed at Kakamega this 7th day of June, 2006.

G. B. M. KARIUKI

J U D G E