

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

COMMERCIAL DIVISION, MILIMANI

Civil Case 134 of 2005(1)

FRANCIS KAIMURU GITU.....PLAINTIFF

VERSUS

**OLBOSSAT SAVINGS AND CREDIT SOCIETY
LIMITED.....DEFENDANT**

R U L I N G

In the ruling herein dated 15th and delivered on 17th June, 2005 I ordered stay of all proceedings in this suit (including execution of decree) for 30 days to enable an appropriate suit to be instituted to determine who the **bona fide** officials of the Defendant were at all material times with appropriate authority to instruct counsel in this suit. As pointed out in that ruling determination of that issue will be relevant for determination of whether or not consent judgment herein was validly and lawfully entered against the Defendant. I also ordered that the group represented by M/s Wachira Nderitu Ngugi & Co, Advocates that is challenging the legitimacy of the group that instructed M/s Ojiambo & Co., Advocates to act for the Defendant herein do institute an appropriate suit in the Civil Division of this Court in the aforesaid regard.

When this matter was mentioned on 18th July, 2005 to see if such suit had been filed Mr. Ngugi reported that appropriate proceedings had been filed before the Cooperative Tribunal in Nairobi, being Tribunal Case No. 308 of 12005, to determine who the **bona fide** officials of the Defendant are. According to Mr. Ngugi the Co-operative Tribunal was the right forum for such dispute under section 35 of the Co-operative Societies (Amendment) Act 2004 (which amended the main Act), and suit could not be filed in any other court of law.

Mr. Ojiambo pointed out that the order of this court was that suit should be filed in the Civil Division of this court. As no such suit had been filed the stay ordered should not be extended. Mr. Njuguna for the Plaintiff/Decree-Holder also opposed extension of the stay. He was of the view that the Plaintiff should not be denied the fruits of his litigation because of an in-house dispute of the Defendant.

I have considered the submissions of the learned counsels. When I directed that the relevant suit be filed in the Civil Division of this Court section 76 of the Co-operative Societies Act (as amended) had not been brought to my attention. I have now read it. It appears that the Co-operative Tribunal would be the appropriate forum for the dispute herein. I am therefore satisfied that the necessary and appropriate suit has been filed as ordered, subject to confirmation by production before this court of copies of the pleadings in the Co-operative Tribunal Case No. 308 of 2005 at or before the next mention of this case. Of course I have sympathy for the position of the Plaintiff/Decree-Holder. But it cannot be lost on him, just as it is not lost on the court, that the legitimacy of the judgment (and decree) that he now holds has been brought into serious question, and that that question shall be properly resolved only after it has been determined if M/s Ojiambo & Co., Advocates had been duly and properly instructed to compromise the suit on behalf of the Defendant and enter judgment for the Plaintiff.

I will therefore extend the stay of execution for a further 60 days. The matter shall be mentioned on 20.9.2005 to see the progress made towards hearing of the Cooperative Tribunal case. It is so ordered. Costs will be in the cause.

DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF JULY, 2005.

H.P.G. WAWERU

JUDGE

DELIVERED THIS 22ND DAY OF JULY, 2005.