

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 750 OF 2004

MUKA MUKUU FARMERS CO-OPERATIVE

SOCIETY LTD.....APPLICANT

VERSUS

THE COMMISSIONER FOR CO-OPERATIVE SOCIETIES,

MINISTRY OF CO-OPERATIVE DEVELOPMENT

AND MARKETINGRESPONDENTS

RULING

I have considered the application herein and submissions by counsel. In the course of the submissions, I posed various questions to the Applicant's advocate.

The Court on a prima facie basis has been made to believe that the Notice dated 7th July, 2004 was received by the Applicant's office on 21.7.2004. The Applicant is not a member but as the corporate body or entity representing the interests of the company and members, it was entitled to be notified of the intended meeting to be held on 28th July, 2004.

According to the Co-operative Societies Act, 1997, "a special general meeting" means a general meeting, other than an ordinary general meeting, of which, at least fifteen clear days written notice of the resolution and of the date, time and place of the meeting has been given to each member.

The Applicant says it was served with the Notice on 21st July 2004. I was shown a stamp showing the said date as the date of receipt. The Applicant complains that this gives it only 7 days to prepare for the meeting. That the agenda is vague and they do not know what is to be discussed. The Applicant says that it has not formally received the alleged complaints presented to the District Cooperative Officer. That there is bad faith and intention in calling for the meeting at such a short notice. That even the Chairman and Committee members have not been served personally or by other means with the Notice as required by law.

That the Management Committee does not know what is intended to be discussed and they apprehend that the intention is to procure the withdrawal of the suit against the Bank through extra judicial means.

I have considered the material presented to me and the law referred to the court. It would appear that the 15 days notice is mandatory. The Committee, members may not have been served as members. This could apply to many others. The company has been given 7 days notice. If proved to be true then this is not only inadequate notice but in apparent breach of law. The agenda, applying the law of meetings is vague and does not give notice of what is to be discussed. The Management Committee must have enough time to prepare and know the particulars of the complaints of the members who referred the matter to the Ministry. They should not be ambushed. This is a company of 30,000 members and the documentations, accounts and any other matter must be substantial. The Management Committee is the duly elected representatives of the members, they must be given proper notice not only to explain the company's position but also their management of the affairs of the company.

Members are also entitled to know the matter to be discussed with particularity so that they can elect to attend or not, canvass or lobby for the resolutions, etc. The purpose and functions of Notice for

meetings is not met by the “Notice” herein, on the face of it.

As a result despite the late application a day before the meeting and having considered all the foregoing, I do hereby exercise my discretion in favour of granting the application. I do hereby grant the Orders applied for in terms of prayer (a), (b), (c), (d) and (e) of the Chamber Summons. The Application shall be filed and served with the next 21 days. Costs in the cause.

Dated and delivered at Nairobi on this 27th day of July, 2004.

MOHAMMED K. IBRAHIM

JUDGE

FURTHER ORDER:

In view of the late hour of this Ruling i.e. 5.30 p.m. and considering the meeting herein is scheduled to take place tomorrow at 10 a.m., I do hereby grant leave to the Applicant to obtain certified copies of this hand-written Ruling and Orders of this court. In order to prevent this order being ineffectual and to ensure compliance of the orders of this court, I do hereby direct that this order may be served with the assistance of the Court Bailiff and the same shall be served on the District Commissioner, Machakos, O.C.P.D. Machakos and District Officer Matungulu Division.

MOHAMMED K. IBRAHIM

JUDGE