REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 478 OF 2002

(From the original Civil Suit No.50 of 2002 of Co-operative Tribunal at Nairobi)

SIGOMA FARMERS CO-OPERATIVE SOCIETY

LIMITED AND NINE OTHERS …….. APPELLANT

VERSUS

CHARLES NDUNGU AND TWO OTHERS ……. RESPONDENT

RULING

The application dated 3rd and filed in court on 5th September 2002 seeks this court's order to stay the orders of the Cooperative Tribunal made on 19th August 2002 as well as the decree issued by the same Tribunal on 27th August 2002 or any other consequential orders thereof pending the hearing and determination of High Court Civil Appeal No.478 of 2002.

The application is based on the grounds set out on the body thereof and also the supporting affidavit deponed to by one Benson Munyua the 3rd applicant and honorary secretary of the 1st applicant.

The grounds set our as aforesaid are that the appellant/applicants stand to suffer irreparably because the orders issued by the Tribunal on 19th August 2002 **in that it was one of the income generating activity of the society and self financing and that consumers had refused to pay for the water**; That the society uses a pumping machine which uses electricity to pump water and the electricity so consumed needs to be paid for from the consumers contribution; that the water consumers have started demanding for dividends and other usage of land which they (were) have not even contributed for; that the appellant – applicants' appeal is arguable and has good chances of success upon hearing and which will be rendered nugatory unless these orders are stayed; and that this application has been filed expeditiously and without inordinate delay.

The supporting affidavit has nearly similar grounds those stipulated on the bodily of the application.

In a replying affidavit deponed by the 1st respondent on 9th and filed in this court on 10th September 2002 the respondents disputed the grounds set out on the body of the application and the supporting affidavit and instead blamed the 2nd to 10 applicants for the oppressive and extortionist manner they are rurning the 1st applicant and/or that they had not disclosed real issues affecting the first applicant to this court.

Counsel for the parties appeared in this court on 4th December 2002 to either urge and/or oppose the application.

Counsel for the applicant submitted that the respondents were not members of the 1st applicant because they had not followed the proper procedure to become such members and that the only thing they did was to pay for water connection which was not sufficient to constitute them as members.

That it was unfair for people who had only paid a water connection to be granted full membership of the society so as to enjoy and share in all activities and/or assets thereof.

Counsel submitted that the appeal which had been filed was arguable with high chances of success. Counsel for the respondents, in opposing the appeal, stated that the 1st respondent had a very serious membership crisis with the 1st applicant – caused by other respondents who are members of the management committee and who are trying to change the character of the 1st applicant withan original membership of 37 members and their children. That between 1993 to 1996 the 1st respondent visited many owners of homes on Sigona settlement scheme to join the 1st applicant which had been formed to cater for the welfare of settlers on the land one of which was the supply of water from 3 boreholes owned by the 1st respondent.

According to counsel, a problem arose when the management committee of 1st applicant sought to increase water charges in order to raise money to put up rental flats on its plot.

It would appear those who have resisted the move have had their water disconnected in order to force them to pay the increased charges, hence the dispute which landed at the Tribunal as Tribunal case No.50 of 2002 which gave rise to the Tribunal order dated 19th August 2002 and a decree of 27th August 2002. Counsel did not anticipate any substantial loss to be suffered by the applicants during the pending of the appeal and sought the dismissal of the application.

Apart from the ruling for stay and the decree exhibited on this application, the decision of the court dated 19th August 2002 out of which the appeal subject to this application has been lodged was not annexed thereon. But in an application of this nature, this decision is necessary as it gives the details of what transpired in the case and out of which the court dealing with the application for stay of execution can decide whether the grounds requisite under Order XLI Rule of the Civil Procedure Rules exist.

However, from the decree annexed to the application, some orders and/or declarations were made, including an injunction to restrain the management committee from increasing water tariffs, a declaration that the respondents are members of the 1st applicant, that the purported special general meeting held on 6th April 2002 was not lawful, that the resolutions passed on the same day (6th April 2002) by a purported new membership of the 1st appellant under a purported amended bye laws were null and void and an order for the first appellant to hold a general meeting to which all its shareholders should be invited.

To my mind, the Tribunal ruling was intended to maintain the status quo as had, existed probably since the 1990's which the management committee intended to change by the resolutions of a purported special general meeting held on 6th April 2002. This, however, was not an end to all such intentions by the management committee, because the Tribunal still gave it a chance to call a proper general meeting to which all shareholders would be invited, if only to facilitate, legally, what was intended. If that be the present position, then what do the applicants mean by saying if the order of stay sought in this application is not granted they will suffer substantially? They should have demonstrated what the substantial loss would be.

I am not satisfied this has been demonstrated, or that if the order for stay is not made then the appeal, if successful would be rendered nugatory.

What this application is actually seeking is to achieve what the Tribunal intended to block, but this would inflict greater hardship to the respondents who will stand expelled from the society and/or

forced to pay higher water charges, or else this vital commodity is disconnected from their houses.

The application is selfish and lacks any merit.

I dismiss it with costs.

Delivered this 29th day of January 2003.

D.K.S. AGANYANYA

JUDGE