

REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT NAIROBI
MISC.APP.NO.664 OF 1998

STEPHEN KARANJA WAWERU::::::::::::::::::PLAINTIFF

V E R S U S

MANGU COFFEE GROWERS

CO-OPERATIVE SOCIETY LTD::::::::::::::::::DEFENDANT

RULING

When this application by way of Chamber Summons of 16- 10-2001 came for hearing Mr. Wanjau Counsel for the applicant raised an objection to the effect that the decree is being executed not upon the cooperative society but upon its officials.

Mr. Nyangau counsel for the applicant / respondent opposes this application saying first that Mr. Wanjau has no locus standi as he comes without leave under O.3 Rule 9A of the Civil Procedure Rules. He also raised other points.

But for me the single question I need to answer is whether the decree to be executed must be on the one against whom it subsists.

Under S.12 of the Cooperative Societies Act 1997 (Act 12 of 1997) it is provided thus:-

“Upon registration every society shall become a body corporate by the name under which it is registered with perpetual succession and a common seal and with power to which immovable property of every description to enter into contract to sue and to be sued and to do all things necessary for the purpose of or in accordance with its bye - law.”

With this clear provision of the law I do not see how management members who must be distinct from the cooperative society can be made to be liable in a suit against the society”.

In my judgment the decree against the society cannot be executed against the members of the management as they are not the parties to the suit and there was no judgment against them.

Preliminary point succeeds with costs.

Dated 22nd April 2002

A. I. HAYANGA
JUDGE

Read to Mr. Wanjau for Applicant
Read to Mr. Nyangau for Respondent