



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO.155 OF 2002

ABERDARE MULTI-PURPOSE CO-OPERATIVE SOCIETY LTD
APPELLANT

VERSUS

NAIVASHA RURAL SAVINGS & CREDIT CO-OPERATIVE SOCIETY LTD
RESPONDENT

RULING

The dispute herein involves two cooperative societies, namely Abardare Multi-purpose Cooperative Society and Naivasha Rural Savings & Credit Cooperative Society Ltd.

On 15th August 2001 the applicant held a meeting in which it was resolved and approved that its membership bye-laws would be amended to change its name from Abardare Rural Savings and Credit Society Limited to Aberdare Multi-purpose Cooperative Society Limited and also to extend its area of operations to include Naivasha Division.

The resolution was sent to the Registrar of Cooperative Societies and opposed on 13th November 2001.

But as the appellant set about and carry out the intention of the amendments, the respondent moved the cooperative Tribunal in Tribunal case No.43 of 2002 on 14th March 2002 to stop the appellants expansion plan and in particular to restrain them from operating the business of accepting deposits from members in form of savings and extending credit facilities to the members within Naivasha sub-district which was the respondent's area of operation. With the filing of the statement of claim, there was also an application by notice of motion seeking a temporary injunction to restrain the applicants from attempting to recruit members from the respondent's area of operation, an order to direct the applicants to remove the sign board erected or posted on the premises on plot number 812 along Naivasha Mai Mahiu Road within the municipality of Naivasha Nakuru District.

There was also a prayer and a restraining order against the applicants/agents and/or servants stopping them to recruit members or accepting deposits in form of savings and extending the same as credit facilities to the members in the Naivasha Sub-district of Nakuru until the hearing.

This application was heard and determined on 27th March 2002 apparently in favour of the respondent. The appellant appealed against their decision to this court and at the same time filed an application to the tribunal in stay of its orders pending the hearing and determination of the appeal.

The application was heard and dismissed on 27th May 2002 hence the present application to this court. The application was placed before me for hearing on 13th June 2002 when consent appealed and either proposed or opposed the application.

Counsel for the applicants argued that its intention was to expand its business and to serve a wider public and that being restrained from doing so would cause it to suffer substantial loss in form of the capital already put in the preparation to start the business in the Naivasha area and in form of loss of faith and confidence in their management by the members

Counsel for the respondent opposed the application on the basis that it is intended to determine the entire suit still pending at the cooperative Tribunal which is yet to be heard.

That there was no evidence that the intended amendment to the applicant's bye-laws had had been tendered to the Registrar of cooperative societies.

That there were contradictions in expenses raised or to be incurred during submissions to the Tribunal and before this court. That the applicants went to do banking business in the area of operation of the respondents. He prayed for the dismissal of the application with costs.

I have heard and recorded the submissions of counsel for both parties and perused all the available documents.

As far as I understand the law Orders of injunction are considered and/or granted on the principles set out in the case of *Giella v. Casmen & Brown Company Ltd* [1973] E.A. 358 and reenforced in the case of *Abel Salim and Another V. And Another* [1976] E.A. KLR 42. These principles are:

1. The establishment of a prima facie case with the probability of success
2. Irreparable injury which cannot be compensated by an award of damages,
3. In case of doubt, on a balance of convenience.

However, when I perused through the grounds on the body of the application as well as the supporting affidavit nothing came out on the basis of the principles enumerated above and through the proceedings of that application were not included in the documents subject to the application and appeal to this court, I have been left wondering what might have been the basis of submissions before the Tribunal if not the pleadings filed thereat; yet those pleadings do not demonstrate any of the principles required for the grant of restraining orders.

The averments in the application and supporting affidavit dwelt on suppositions, and fear of competition which cannot stand in a liberalized economy.

While the Tribunal stated in the ruling that no evidence had been shown to demonstrate substantial loss, it acknowledged that www.kenyalawreports.or.ke applicants had advertised and put a poster or sign post at some premises which they may have rented.

This is the business spirit and does not really go to the money issue. There can be no better substantial loss than killing an institution's business spirit and morale just because one wants to be monopolistic.

Given the set of circumstances outlined herein, it is the courts considered view the appeal filed herein is strongly arguable and that this application for stay of the order of the Tribunal should and are hereby stayed pending the hearing and determination of this appeal.

This order is not intended to put the applicants into business in Naivasha but to maintain the status quo as at 27th May 2002 pending the hearing of the appeal.

The appellants are advised to move expeditiously to facilitate the hearing of the appeal.

Delivered this 4th day of July 2002.

D.K.S. AGANYANYA

JUDGE