



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 229 OF 2001

MURATA FARMERS SACCO SOCIETY LED.....APPELLANT

VERSUS

STANLEY CHARLES MUCHIRIS & 7 OTHERS.....RESPONDENT

RULING

The Appellant and Respondents are parties in the Co-operative Tribunal case no. 48 of 2001. The Co-operative Tribunal was established by section 77(1) of the Co-operative Societies Act – No. 12 of 1997 which commenced on 1.6.98.

According to the statement of claim filed by the Appellant in the Tribunal, the 1st – 7th, an illegal meeting was held on 6.4.2001 in which the 1st – 7th Respondents were elected as members of the interim caretaker committee of the Appellant Society. By that meeting the elected members of the management committee were ousted. The appellant has asked the Tribunal to declare

1. The purported special General meeting of 6.4.2001 as illegal and unlawful.
2. The 1st – 7th Respondents as illegally and unlawfully elected as interim caretaker committee.

The Appellant has also applied for an order of injunction to restrain the 1st – 7th Respondents from assuming the office of a caretaker committee.

And by an interlocutory application, the Appellant asked the Tribunal on 10.4.2001 to restrain the 1st – 8th Respondents from assuming the office of the interim caretaker committee or from conducting the management and business of the Appellant Society until the dispute is determined. The Tribunal gave interim injunctive orders pending the hearing of the application for interlocutory injunction *Inter partes*. The application has not been heard *inter partes*.

Meanwhile the Tribunal on 4.5.2001 appointed three persons as the signatories of the Appellants bank accounts. Pending the hearing of the dispute. It appears that the order appointing signatories to the bank accounts was made after the intervention by the Co-operative Bank – the 8th Respondent and the bankers of the Appellant.

The Appellant being aggrieved by the order appointing three signatories to the bank accounts and by the procedure of dealing with the applications pending in the Tribunal filed the present appeal. The Appellant particularly pray that the order appointing the three signatories to the bank accounts be set aside. The appellant also seeks order directing the Tribunal to hear the various pending applications in the manner suggested in the Memorandum of Appeal.

The Appellant has filed two interlocutory applications. The first is dated 11.5.2001. It seeks ten interlocutory orders. The second application is dated 28.5.2001. It seeks leave to amend the application

dated 11.5.2001 to include a prayer for stay of proceedings in the Co-operative Tribunal pending the determination of the Appeal. The application dated 11.5.2001 seeks various orders briefly as follows:

2 The order appointing the three signatories to the bank accounts be stayed.

3 Former signatories of Appellants bank accounts do continue to serve 4 School fees account be operated by branch managers

5 In the alternative, the Chairman of Appellant, Appellant's General Manager and District Co-operative Officer Murang'a do serve as signatories to school fees account.

6 1st – 7th Respondents be restrained from interfering with the Appellants business until the appeal is heard

7 1st – 7th Respondents be restrained from interfering with Appellants operation of Murang'a and Thika bank accounts.

8 The 8th Respondent be compelled by mandatory injunction to carry out and honour the Appellants instructions relating to operation of the bank accounts

9 The 8th Respondents be restrained from interfering with the Appellants rural banking business

10 Respondents be restrained from assuming the offices of the Appellant as interim caretaker committee of the appellant and from conducting the management and business of the Appellant

The 1st –7th Respondents by an application dated 31.5.2001 pray that the order of the Tribunal dated 4.5.2001 appointing three signatories in the Co-operative Bank accounts be extended to cover five other accounts in various branches of the Kenya Commercial Bank.

The parties have agreed that the three applications be determined in one Ruling

I may observe in passing that the documents filed by the Appellants show that there has been perennial disputes in the management of the appellant society leading to several suits in court.

I deal first with the application dated 28.5.2001 for leave to amend the application dated 11.5.2001 to include prayer II. "By additional prayer the appellant seeks an order that further proceedings in the Tribunal case be stayed until the Appeal is heard and determined. There is no good reasons why I should not allow the amendment to be introduced. I allow that application and amend the application dated 11.5.2001 accordingly.

I have considered the application dated 11.5.2001 as amended and the application dated 31.5.2001. I have also considered the Counsels respective submissions. It should be remembered that the two applications have been made in a pending appeal and are therefore interlocutory in their nature. The prayers sought in the Appeal recognize that the dispute between the appellant and 1st – 7th respondents will ultimately have to be determined by the Co-operative Tribunal and not by the court. It is that Tribunal which by virtue of S. 76(1) have the original jurisdiction to determine the dispute.

By Order XLI Rule 4(1) CP Rules, as amended by Civil Procedure (Amendment) Rules 2000, the Appellate Court has jurisdiction to stay execution of the orders of the Co-operative Tribunal or to stay the proceedings in the Tribunal pending the hearing of the Appeal if there is any sufficient reason to do so. By Order XLI added Rule (6) by the Civil procedure (Amendments) Rules 2000, the Appellate Court has also jurisdiction to grant a temporary injunction pending Appeal on such terms as it thinks just. By S. 78(2) of the CP Act, the Appellate Court has same powers and can perform nearly the same duties as are confirmed and imposed by the Civil Procedure Act on courts original jurisdiction in respect of suits

instituted in those courts. But S. 78 (2) of the CP Act only applies when the court is determining an appeal before it. It follows that S. 78 (2) of the Civil Procedure Act does not apply when the Appellate Court is dealing with interlocutory applications in the appeal. The equivalent of S. 78 (2) of the CP Act is section 81(2) (c) of the Co-operative Societies Act which empowers the High Court upon hearing the Appeal to exercise any of the powers which would have been exercised by the Tribunal.

It seems to me that the High Court has only the power to order stay of execution of the order of the Tribunal or to stay the proceedings or to grant temporary injunction pending the determination of the Appeal from the orders of co-operative Tribunal

The High Court as an Appellate Court has no jurisdiction pending the hearing of the appeal to exercise the original jurisdiction of the Tribunal. It cannot grant orders which the Tribunal has not granted. It cannot give additional orders which the Tribunal should have granted in its original jurisdiction and which it was not asked to grant. It cannot in short usurp the original powers of the Tribunal.

Some of the orders sought by the Appellant in the application dated 11.5.2001 can only be granted by the Tribunal exercising its original jurisdiction. It is implicit from S. 80 (4) of the Co-operative Societies Act that the Tribunal has jurisdiction to deal with interlocutory application and to grant interlocutory orders.

It is my view that the High Court as an Appellate Court has no jurisdiction to grant orders no 4, 5, 6, 7, 8 and 9 of the application as the Cooperative Tribunal has not made any finding on those prayers in exercise of its original jurisdiction. The High court has however powers to deal with prayers no. 2, 3, 10 and 11 of the application.

Similarly the High Court has no power to deal with the prayers sought in the application dated 31.5.2001. The application to vary or expand the orders of the Tribunal should made in the Tribunal which has the original jurisdiction. Is the Appellant entitled to orders prayed for in prayer no. 2, 3,, 10 and 11 pending the determination of the Appeal?

By section 13 of the Co-operative Societies Act, the By Laws of a Cooperative society when registered bind the Co-operative Society and the members to the same extent as if they were signed by each member and contained covenants on the part of each member for himself to observe the provisions of the by laws. The management committee of a Co-operative Society has the duties imposed on it by S. 27 of the Act. It is the Committee of the Society which has a legal duty of running the affairs of the Cooperative Society. Part By Laws of the appellant are annexed to the appellants application. By laws no. 21, 22, 23, 25, and 26 deal with management committee of the Appellant.

By By-law 21 (c) the elected members of the management committee hold office for a period of 3 years and are supposed to retire by rotation as prescribed.

I cannot find any by law authorizing the election of a management committee other than provided for in the By laws. I cannot also find any provisions in the By laws providing for the election of a caretaker management committee. By appointing signatories to the Appellant bank accounts other than the ones authorized by the By Laws the Co-operative Tribunal was prima facie interfering with the By Laws of the Appellant Society at an interlocutory stage. I do not think that the Tribunal has power to alter the By - Laws of the Society when dealing with the disputes. The orders of the Tribunal removing the authorized signatories to the Bank Accounts and replacing them with others had the effect, of placing the accounts of the Society into the hands of persons who are not authorized by the By – Laws to deal with those accounts and who have no statutory responsibility.

In my view the decision of the Co-operative Tribunal removing the elected and authorized signatories at an interlocutory stage has far reaching consequences on the management of the Appellant Society.

It is just in the circumstances that the order of the Tribunal dated 4.5.2001 and the proceeding be stayed pending the determination of the Appeal.

Consequently, I allow the application dated 11.5.2001 as amended to the extent and grant orders in terms of prayer no. 2, 3, 10, 11 of the application as amended until the determination of the Appeal.

I order that the Appeal be processed for hearing on priority basis. Costs in the cause.

E. M. Githinji

Judge

3.7.2001

Dr. Kamau Kuria present

Miss Wangari present

Mr. Ohaga present

Order:

1. By consent mention of the appeal as requested on 10.7. 2001 at 2.30 p.m.

2. Ruling to be typed

E. M. Githinji

Judge

10.7.2001

Githinji J

Dr. Kamau Kuria present

Miss Wangari present

Order:

By consent further mention on 17.7.2001 at 2.30p.m.

E. M. Githinji

Judge

17.7.2001

Githinji J. Dr. Kamau present

Miss Wangari present

Mr. Ohaga absent

Order:

By consent further mention on 23.7.2001 for Directions regarding the Appeal – 2.30p.m.

E. M. Githinji

Judge

23.7.2001

Githinji, J.

Dr. Kamau Kuria for Appellant present

Mr. Kahiga holding brief for Miss Wangari present

Dr. Kamau

We appeared before Tribunal last Thursday They are still typing the proceedings

. Mention next week

Mr. Kahiga

I understand that the proceedings will be ready by next week

Court

As the understanding is that the Appeal has to go on in the normal manner, then there is no need to mention the appeal any further. File should be released to the Registry to follow the requisite steps such as placing filed before a Judge and Directions E. M. Githinji Judge Order: Deputy Registrar to process the Appeal for hearing

E. M. Githinji

Judge