



Kenya National Police DT Sacco v Directorate of Criminal Investigations & another; Sacco Societies Regulatory Authority & another (Interested Parties) (Miscellaneous Criminal Revision E1769 of 2024) [2025] KEHC 10293 (KLR) (Crim) (10 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10293 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
MISCELLANEOUS CRIMINAL REVISION E1769 OF 2024
AM MUTETI, J
JULY 10, 2025**

BETWEEN

KENYA NATIONAL POLICE DT SACCO APPLICANT

AND

**DIRECTORATE OF CRIMINAL INVESTIGATIONS 1ST RESPONDENT
THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS 2ND
RESPONDENT**

AND

**SACCO SOCIETIES REGULATORY AUTHORITY INTERESTED PARTY
COMMISSIONER OF COOPERATIVES DEVELOPMENT INTERESTED
PARTY**

RULING

1. The Kenya National Police DT Sacco by way of a Notice of motion dated 15th December 2024 moved to this court seeking to revise an order issued by the lower court granting the 1st respondent warrants to access, inspect, investigate, obtain information and lift and carry away exhibits enumerated in the order a copy of which is annexed to the affidavit in support of the application.
2. The orders sought by the applicants are :-
 - i. That this application be certified as urgent, service thereof be dispensed with and be heard ex-parte in the first instance.
 - ii. That the Honourable Court be pleased to review its orders issued on the 14th January, 2025.



- iii. That this Honourable court do issue prayer number 7 as prayed in our revision application dated 13th December 2024
 - iv. That this Honourable court do set aside order number (d) issued on the 14th January,2025.
 - v. That this Honourable court do discharge the orders issued in Milimani Criminal Application No. E4502 of 2024 Republic vs Kenya National Police DT Sacco pending hearing and determination of this application.
 - vi. That this Honourable be pleased to issue an order referring the complaint raised in Milimani Criminal Application No. E4502 of 2024 Republic vs Kenya National Police DT Sacco to the Sacco Societies Fraud Investigations Unit for investigation.
 - vii. That this Honorable Court be pleased to grant any other or further order or relief it may deem fit and just in the circumstance.
 - viii. That the costs of this application be provided for.
3. The applicants have set out grounds in support of the motion as follows:-
- a. That the Applicant is a deposit-taking institution with 73,000 members who have deposited over Kshs. 50,000,000,000/= in savings, making it a vital institution within the Kenyan financial sector.
 - b. That on 2nd December 2024, the 1st Respondent served the Applicant with a letter dated 2nd December 2024, attaching a court order dated 28th November 2024.
 - c. That the 1st Respondent had filed an application in Milimani Criminal Application No. E4502 of 2024, Republic vs. Kenya National Police DT Sacco, seeking a warrant to investigate the records of the Applicant.
 - d. That the Honorable Court through an order dated 28th November 2024 issued a warrant authorizing an officer of the 1st Respondent IP Duncan Maina to have to, inspect/investigate, obtain information and lift and carry away as exhibits certified copies of the following documents:
 - i. List of the names of all members of the current Board of Directors of the Kenya National Police DT Sacco and their particulars, including ID Numbers and personal accounts domiciled at the Kenya National Police DT Sacco.
 - ii. List of all tenders awarded by the Kenya National Police DT Sacco for the period between 1st January 2019 to 30th October 2024, with sufficient particulars, including tender numbers, tender titles and contractors awarded.
 - iii. List of Corporate Social Responsibility projects implemented by the Respondent herein for the period between 1st January 2019 to 30th October 2024.
 - iv. Minutes and resolution of the Board of Directors for the purchase and installation of the Respondent's M-Tawi system.
 - v. Board of Directors' approval and all procurement documents relating to the purchase, installation and maintenance of the said M-Tawi system.
 - vi. Financial statements for the financial years; 2019-2020, 2020-2021, 2021- 2022, 2022-2023.



- vii. Declared dividends period between 1st January 2019 and 30th October 2024. Audits reports for the period between 1st January 2019 and 30th October 2024.
 - viii. Copies of duly filled Wealth Declaration Forms for all members of the respondent's Board of Directors for the period between 1st January 2019 to 30th October 2024 and.
 - ix. Any other relevant documents that may aid the Applicant complete investigations on suspected case of mismanagement, embezzlement and misuse of funds by Board of Directors Kenya National Police DT Sacco.
- e. That the Honorable Court through an order dated 28th November 2024 ordered the CEO of the Applicant to nominate an authorized person to provide a certificate of production of electronic evidence under Section 106B(4) of the *Evidence Act*.
 - f. That the Honorable Court through an order dated 28th November 2024 ordered that an authorized person be nominated to provide a witness statement as evidential account in support of the documents given to the 1st Respondent.
 - g. That the Applicant herein filed a Criminal Revision dated 13th December, 2024 to this court seeking Revision of the orders in Milimani Criminal Application No. E4502 of 2024, *Republic vs. Kenya National Police DT Sacco*
 - h. That this court subsequently partially granted the prayers sought by the Applicant herein but failed to issue prayer number 7 in Criminal revision No E1769 of 2024 dated 13th December, 2024 which requested that the complaint be referred to the Sacco Societies Fraud Investigations Unit for investigation.
 - i. That the orders issued on the 14 Day of January, 2025 in Criminal revision No E1769 of 2024, order number (d) gives liberty to the Respondents to continue with the investigations which is not within their mandate.
 - j. That the inspection of the Applicant's documents falls within the mandate of Sasra, under Section 48(2) and 49(1) & (3) of the *Sacco Societies Act*, which grants Sasra the authority to inspect Sacco records.
 - k. That the Sacco Societies Fraud Investigations Unit (SSFIU), established by Sasra in 2020, is mandated to detect, prevent, and address fraudulent activities within. Saccos, as per the Kenya Gazette Notice of 3rd December 2021, page 667 5. 12. That the if prayer number 7 in our Application dated 13th December, 2024 is not issued then our Criminal revision No E1769 of 2024 and prayers sought therein will be rendered nugatory.
 - l. That the Applicant's rights to confidentiality and protection of its members' personal and financial data under the *Data Protection Act, 2019* are at risk of being breached, as the orders would lead to the unauthorized dissemination of sensitive information.
 - m. That due to the sensitive nature of the Applicant being a deposit taking institution the power granted to Sasra to investigate is ideal to protect depositors.
 - n. That the orders 28th November 2024 and 14th January, 2025 have far-reaching implications and expose the Applicant to potential operational disruption, financial instability, and erosion of public confidence and should therefore be discharged. 16. that it will be in the interest of justice if the Orders sought are granted.



4. The applicants aver that due to the issues of confidentiality and protection of members personal and financial data under the [Data Protection Act 2019](#), the orders by the Magistrate's Court are likely to lead to a breach of Data Protection Act.
5. The applicant further is concerned that the disclosure of some of the information sought by the 1st respondent may amount to unauthorized disclosure of personal data.
6. The applicants have also contended that if the order is executed fully a sit is, there is bound to be disruption of the operations of the Sacco, financial instability and erosion of public confidence in the Sacco.
7. The respondents have filed responses arguing that the application has no basis in law and that all that the applicants are trying to do is to seek to prevent the 1st respondent from executing their lawful statutory and constitutional mandate under Article 245 of the [Constitution](#) as read together with Section 38 of the [National Police Service Act](#).
8. The respondents have argued that it is not for the applicant to choose who is to investigate them.
9. The respondents however conceded that the officers serving in the Sacco Societies Fraud Investigation Unit are officers seconded by DCI to the Sasra.
10. The applicants contention is that the officers serving in the Sacco Societies Fraud Investigation Unit being officers of Criminal Investigation Department, and taking into account that the complaint was initially made to them, they remain the proper officers to investigate the issues that the 1st respondent seek to bring in an entirely new team to investigate.
11. It is important to point out that the applicant have maintained throughout that they are not opposed to being investigated. The concern they have is that there is a well choreographed by the 1st respondent to avoid using the officers deployed to SSFIU to investigate the matter.
12. The applicants have urged this court to find that there is a gazette Notice establishing SSFIU a fact admitted by the respondents.
13. The SSFIU is a unit that is embedded I the 1st Interested Party.
14. The SSFIU being officers of the DCI carry out investigations.
15. The applications further argue that the powers of the Unit are drawn from the DCI's mandate and the provisions of Sections 48 (2) and 49 (1) and 50 of the [Sacco Societies Act](#).
16. The three Sections provide as follows :
Regulation and supervision of Sacco societies
 - (1) The Authority shall be responsible for the regulation and supervision of Sacco societies to which this Act applies.
 - (2) Without prejudice to the generality of subsection (1), the Authority shall—
 - (a) prescribe prudential standards to be adhered to by Sacco societies;
 - (b) undertake inspections or require a Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition;



- (c) require or oversee Sacco societies' workout plan to avert or alleviate financial difficulties;
- (d) prescribe the maximum number of years an external auditor may serve the same Sacco society;
- (e) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under this Act.

49. Powers of the Authority to inspect

- (1) The Authority may, at any time and from time to time, and shall, if so directed by the Cabinet Secretary, cause an inspection to be made by any person authorized by the Authority in writing of any Sacco society and of its books, accounts and records.
- (2) The Authority shall assist any investigative authority regarding matters of suspected fraud or malpractice in Sacco societies either by identification of such matters for referral or at the request of such authority.
- (3) Where an inspection is made under subsection (1), the society concerned and every officer or employee thereof shall produce and make available to the person making the inspection, all books, accounts, records and other documents of the Sacco society and such correspondence, statements and information relating to the society as the person making the inspection may require, and within such period as he may direct in writing.
- (4) A person who fails to produce any books, accounts, records, documents, correspondence, statements or the information required under subsection (2), within the period specified in the relevant direction, commits an offence.
- (5) The person making the inspection shall prepare and submit a report to the Authority, and the report shall state—
 - (a) any breach or contravention of any of provisions of this Act or any regulations made under this Act;
 - (b) any irregularity in the manner of conduct of the inspected society;
 - (c) any mismanagement of a Sacco society; and
 - (d) any other matter relating to a Sacco society not consistent with sound and prudent business practice.
- (6) A copy of the report of the findings of an inspection under subsection (1) shall be submitted by the Authority to the Commissioner.
- (7) A report of the findings of an inspection under subsection (1) shall, in addition to any action that may be taken under the Co-operative



Societies Act (Cap. 490) be presented by the Authority to the board of directors of the Sacco society. [*Act No. 16 of 2018*, s. 2.]

50. Powers of the Authority to advise and direct

- (1) If, at any time, the Authority has reason to believe that—
 - (a) the business of a Sacco society is being conducted in a manner contrary to or not in compliance with the requirements of this Act or of any regulations made thereunder or in any manner detrimental to or not in the best interest of its members or members of the public, or
 - (b) a Sacco society, any of its officers or any other person participating in the management of the society is engaged in any practice likely to occasion a contravention of any of the provisions of this Act or any regulations made thereunder, or any other Act, the Authority may—
 - (i) give advice and make recommendations to the Sacco society with regard to the conduct of its business generally;
 - (ii) issue directions regarding measures to be taken to improve the management or business methods of the society or to secure or improve compliance with the requirements of this Act, any regulations made thereunder or any other written law or regulations
 - (iii) in any case to which paragraph 3b applies, issue directions to the Sacco society, officer or other person to cease such practice;
 - (iv) appoint a person, suitably qualified and competent in the opinion of the Authority, to advise and assist the Sacco society generally or for the purposes of implementing any directions under subparagraphs ii and iii.
- (2) The advice of a person appointed under subsection 1(b)(iv) shall have the same force and effect as a direction made under subsection 1(b) (ii) and (iii) and shall be deemed to be a direction of the Authority under this section.
- (3) The Authority shall, before issuing a direction under subsection (1), serve upon the Sacco society, officer or other person, a notice of such intent specifying the reasons therefor and requiring the Sacco society, officer or other persons, within such period as may be specified in the notice, to show cause why such direction should not be issued.
- (4) A Sacco society which receives a direction under this section shall comply with the direction within such period as may be specified in the direction and, if so required, shall produce evidence that it has done so.



- (5) The Authority may issue directions to a Sacco society generally, and where appropriate provide exceptions to those directions to be detailed at time of issuance for the better carrying out of its functions under this Act and in particular, with respect to—(a)the prudential standards to be adhered to by a Sacco society in the conduct of its business in Kenya; and(b)regulations to be adhered to by Sacco societies in order to maintain a stable and efficient deposit-taking Sacco movement and financial system.
- (6) A person who fails to comply with any direction under this section commits an offence and shall, in addition to the penalty prescribed under this Act, be liable to such additional penalty as may be prescribed for each day or part thereof during which the offence continues.(7)The Authority may impose minimum standards on significant members and officers of a Sacco society as prescribed.

17. According to the applicants the inspection of Sacco records is a the responsibility of the 1st Interested party.
18. Once a Sacco is inspected and fraud is detected the same is then forwarded to the 1st respondent to investigate.
19. It is this procedural anomaly where DCI seeks to move in even before inspection is done that the applicants are unhappy with and they read mischief in the DCI's move.
20. In support of the argument the applicant cited the case of *Kenya Union of Savings and Credit Co. Ltd Vs Sacco Societies Regulatory Authority (Sasra)* 2019 eKLR in which the court held that :-
“inspection of Sacco records is a statutory function exclusively reserved to Sasra under section 48 (2), 49(1), and 50 of the *Sacco Societies Act*.”
21. It is argued for the applicant that to allow the first respondent to start up parallel investigation would be offensive to the doctrine of exhaustion.
22. MR. Miller counsel for the applicant informed the court that the investigations had already been commenced by the SSFIU thus there was absolutely no need to allow the 1st respondent to commence parallel investigation.
23. Counsel went further to argue that if the 1st respondent has a problem with the officers currently deployed to SSFIU, the answer is not to cherry pick files but to overhaul the units otherwise the idea of some investigations being done by the SSFIU whereas others are done from CID has portends a chaotic scenario for deposit taking institutions such as the applicant.
24. The applicant emphasized the need for protection of regulatory frameworks .
25. The applicant relied on the case of *Stephen Mburu Gitiba Vs. Nicholas Ruthiru Getoto and 2 Others* (2017) eKLR where the court recognized That regulatory actions affecting financial institutions must be proportionate legal and subject to judicial scrutiny to avert financial instability.
26. It is the applicant case that is a reputable Sacco they stand to suffer if regulatory framework is not followed.



27. The applicants are apprehensive that there is likely to be investor panics which would greatly prejudice them.
28. The application was supported by the affidavit of one Solomon Atsiaya CEO Police Sacco sworn on 24th April 2025 In which he has elaborately set out the rope of the SSFIU.
29. The court has duly considered the contents of the affidavit in detail.
30. The applicants have also taken issue with the DCI's attempt to wrestle investigations from SSFIU without stating the reasons for doing so.
31. The applicant reads mischief in the 1st respondent's move.
32. The applicants closed their argument by stating that they were ready to be investigated in the manner prescribed in the [Sacco Societies Act](#).
33. The respondents on the other hand claim that there are no investigation that the SSFIU is undertaking. Counsel for the respondents cited the order earlier on issued by this court as the reason for there being no investigations.
34. Counsel for the respondent in her submissions as far as suggesting that the order issued earlier on directed to SSFIU to investigate had created/caused In paralysis in the Sacco investigations.
35. It is not clear to this court why the respondents would take such a position if at all the investigations intended to be undertaken were being done in good faith and above board.
36. The court did not restrain the SSFIU from investigating any Sacco including the applicant.
37. It is in this court's view an attempt on the part of the respondents to make it appear as though they are helpless on all matters involving the investigation of Saccos suspected of being involved in any criminal acts.
38. The respondents have admitted that the officer deployed to SSFIU are DCI officers.
39. Mr. Omondi and MS. Ogega Who appeared for the respondent were not able to tell this court why the SSFIU could not be trusted with the investigation.
40. All that this court heard them state is that the choice of who is to investigate a certain matter is a preserve for the DCI and by extension the Inspector General of Police .
41. According to counsel for the respondents the DCI /IGP could decide to allocate any matter to any officer to investigate.
42. Whereas that argument has some truth in it viewed exclusively from the standpoint of the respondents interpretation of article 245 of the [Constitution](#) Counsel fails to realize by creating special investigation units by whatever name they may come the DCI/ IGP have as a matter of policy and design chosen to place investigation of certain offenses in those units of the police.
43. The specialized units are not just there by name but by design they serve a particular purpose in investigations touching on certain categories of offenses.
44. This court pressed counsel for the respondents to explain what is the function of the Sacco Societies Fraud Investigation Unit(SSFIU) but the two kept evading the question.



45. At least the court got to establish that officer serving in the SSFIU are drawn from the DCI and one only needs to look at the statutory mandate of the DCI to discern the role of SSFIU in the context of Sacco investigation.
46. It is by no accident that the officers serving in the SSFIU are officers from DCI and they are deployed to Sasra to assist in the discharge of its mandate of regulating Saccos.
47. The applicant has expressly stated that they have no problem being investigated. The respondents have not given any reason why SSFIU cannot undertake their investigation.
48. Interestingly in the course of argument it turned out that this matter was actually reported to SSFIU at the EACC.
49. The court was not told what happened to the report made to the SSFIU or EACC.
50. The respondents skirted around the issue and provided no concrete answer thus leaving the court with the position as stated by the applicants that indeed investigations are ongoing.
51. If as contended by the applicant investigations are underway , the proper deal for the responding to do is to allow the same to be concluded and if the DCI who in any event the SSFIU officers report is not satisfied with the depth of investigations nothing prevents them from undertaking other investigations.
52. The established structure must be respected and followed.
53. Public resources which include human capital must be spent prudently.
54. The court cannot imagine that there is a whole lot of DCI officers within the SSFIU who are deployed to Sasra for cosmetic purposes. The duty of those officers as law enforcement officers includes the detection, prevention, investigation and disruption of crime within SaccoS.
55. The unit must be allowed to function and discharge its mandate. the Constitution of Kenya under Article 201 provides;-
The following principles shall guide all aspects of public finance in the Republic—
 - (a) there shall be openness and accountability, including public participation in financial matters;
 - (b) the public finance system shall promote an equitable society, and in particular— (i) (ii) (iii) the burden of taxation shall be shared fairly; revenue raised nationally shall be shared equitably among national and county governments; and expenditure shall promote the equitable development of the country, including by making special provision for marginalised groups and areas;
 - (c) the burden and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;
 - (d) public money shall be used in a prudent and responsible way; and
 - (e) financial management shall be responsible, and fiscal reporting shall be clear (emphasis mine).
56. The deployment of police officers is a matter that concerns the use of public money. It cannot be argued therefore that since the Inspector General of police has the operational command discretion to deploy officers, he should be let to deploy officers to units or areas that they are not required to perform police duties. That would be abuse of authority and power vested in the Inspector General of Police. The public must get value for their money thus our police officers deployed must be deployed to discharged the functions assigned to them under Article 244 of the Constitution.



57. The Article provides;-
Objects and functions of the National Police Service. 244. The National Police Service shall—
- (a) strive for the highest standards of professionalism and discipline among its members;
 - (b) prevent corruption and promote and practice transparency and accountability;
 - (c) comply with constitutional standards of human rights and fundamental freedoms;
 - (d) train staff to the highest possible standards of competence and integrity and to respect human rights and fundamental freedoms and dignity; and
 - (e) foster and promote relationships with the broader society (emphasis mine).
58. The process of deployment to specialized units of police must be transparent and must be accompanied by a degree of accountability on the part of the Inspector General of Police. It cannot be possibly argued as Ms Ogega and Mr, Omondi for the respondents attempted to do, that the Inspector General of Police can deploy an entire Unit of officers to an agency and in the event of the need to investigate an offence arising, the Inspector General of Police or the DCI whimsically elect to assign a team of other officers to move in and investigate the offence without assigning any reason for doing so. The decision to leave out the specialized unit from such investigations cannot escape the criticism of lack of objectivity and the intention to achieve a predetermined end in the investigation.
59. The process of investigations must be objective at all times. It must proceed on the basis of reasonable suspicion of the commission of an offense and it would legitimately be expected that where a specialized unit exists and a report is made to them, naturally that would be the first port of call for purposes of investigation. In the instant matter the respondents have conceded that the SSFIU received the first report and there has not been any explanation why the Unit could not be allowed to investigate the matter.
60. The exercise of state power must be in line with the principles of good governance, integrity, transparency and accountability in line with Article 10 of the *Constitution*. The respondents should have told this court why the SSFIU would not be the proper authority or body to investigate the Sacco. To argue that the DCI can delegate the responsibility to any officer to investigate is to trivialize a very important constitutional concern of Fair Administrative Action and the transparency in the exercise of executive authority to investigate.
61. The inclusion of Article 10 principles in the *Constitution* was not a mere aspiration by Kenyans but there was an urgent need in the country to set standards that would be used to measure performance by public officials entrusted with public duty.
62. In *Commissioner of Police and Director of Criminal Investigations Department vs. Kenya Commercial Bank and others* [2013] eKLR, it was stated that:emphasis mine).
- “While the law (section 193A of the *Criminal Procedure Code*) allows the concurrent litigation of civil and criminal proceedings arising from the same issues, and while it is the prerogative of the police to investigate crime, we reiterate that the power must be exercised responsibly, in accordance with the laws of the land and in good faith ... It is not in the public interest or in the interest of administrative justice to use criminal justice process as a pawn in civil disputes. It is unconscionable and a travesty of justice for the police to be involved in the settlement of what is purely dispute litigated in court.” (



63. It is this aspect of fairness in the exercise of the police power to investigate that the applicant demands in this case and the respondents have obviously been unable to persuade this court why the SSFIU was sidestepped despite their being officers deployed by the DCI to Sasra. The respondents counsel were unable to explain to the court why the SSFIU was constituted in the first place.
64. In *Investments & Mortgages Bank Limited (I&M) vs. Commissioner of Police and the Director of Criminal Investigations Department & DPP, & 2 others* [2013] eKLR, the court asserted its duty to ensure that its processes are not abused or otherwise used to perpetuate injustice or for improper motives. The process of investigations is so important that good faith must be manifest throughout investigations and the citizen must never be put in a position that they begin to question the motive behind the involvement of a particular set of officers when the DCI has already put in place a specialized unit. The accusation of improper motive in investigation cannot be ignored in such circumstances.
65. The process of investigation may result in the arrests and charging of suspected persons. The liberty of individuals immediately becomes a concern for all those that are involved. In *Republic v Danson Mgunya & Another* [2010] eKLR where Justice Ibrahim (as he then was) rendered that:
- “Liberty is precious and no one’s liberty should be denied without lawful reasons and in accordance with the law. Liberty should not be taken for granted. I will never take liberty for grantedwe must interpret the Constitution in enhancing the rights and freedoms granted and enshrined rather than in a manner that curtails them. Each case must be decided in its own circumstances, touch and context.”
66. The learned judge was discussing the issue of liberty in the context of the right to bail but the principle that emerges here is that the Constitution must be interpreted in a manner that enhances the rights and freedoms guaranteed in the Constitution.
67. The right to Fair Administrative Action under Article 47 must be protected and promoted. The Article provides;-
- Fair administrative action.
- (1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
 - (2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.
 - (3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall— (a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and (b) promote efficient administration.
68. The respondents should have in keeping with this Article provided reasons to the applicants why the matter was moved from SSFIU to the CID headquarters. That Constitutional expectation was not met and even when the respondents swore their affidavit in response to the application the reasons were not succinctly set out.
69. The applicants repeatedly told this court that they are not averse to investigations but all that they seek is fairness in the process. The question therefore that this court need to answer is whether the demand by the applicants amounts to them choosing who is to investigate them as has been urged by the respondents. I do not think so, because SSFIU is a Unit of the Police and has all the necessary police powers. The Unit was formed by the respondents and attached to Sasra it must have been intended that they perform police duties within Sasra and nothing in their power is against the investigative



power of the Inspector General of Police and the DCI. It follows therefore that the Unit since it was admitted that they were the first together with EACC to receive the complaint, they must be allowed to complete that which they had started.

70. In *Anthony Murimi Waigwe v Attorney General & 4 others* [2020] eKLR, it was held that in a democratic society like ours no one should be charged without the authorities conducting proper investigation. The investigations should thus be objective.

71. Further, the Court in *Bitange Ndemo v Director of Public Prosecutions & 4 others* [2016] eKLR held that statutory power donated to any organ is not to be exercised in an unreasonable manner. It relied on the case of *Republic v Commissioner of Co-operatives ex parte Kirinyaga Tea Growers Cooperative Savings & Credit Society Ltd* CA 39/97 119991 EALR 245 where the Court of Appeal warned that:

...it is axiomatic that statutory powers can only be exercised validly if they are exercised reasonably. No statute ever allowed anyone on whom it confers power to exercise such power arbitrarily, capriciously or in bad faith....

72. It is the applicant's complaint that the respondents are exercising their investigative power arbitrarily and capriciously. The respondents as stated earlier in the ruling did not provide reasons for failing to involve the SSFIU in the investigations.

73. Sections 48 and 49 of the *Sacco Societies Act* provides:-

48. Regulation and supervision of Sacco societies

(1) The Authority shall be responsible for the regulation and supervision of Sacco societies to which this Act applies.

(2) Without prejudice to the generality of subsection (1), the Authority shall—

(a) prescribe prudential standards to be adhered to by Sacco societies;

(b) undertake inspections or require a Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition;

(c) require or oversee Sacco societies' workout plan to avert or alleviate financial difficulties; prescribe the maximum number of years an external auditor may serve the same Sacco society;

(d) exercise such incidental powers as may be necessary or requisite to enable it to effectively carry out its functions under this Act.

49. Powers of the Authority to inspect

(1) The Authority may, at any time and from time to time, and shall, if so directed by the Minister, cause an inspection to be made by any person authorized by the Authority in writing of any Sacco society and of its books, accounts and records.

(2) The Authority shall assist any investigative authority regarding matters of suspected fraud or malpractice in Sacco societies either by identification of such matters for referral or at the request of such authority.

(3) Where an inspection is made under subsection (1), the society concerned and every officer or employee thereof shall produce and make available to the person making the inspection, all books, accounts, records and other documents of the Sacco society



and such correspondence, statements and information relating to the society as the person making the inspection may require, and within such period as he may direct in writing. (4) A person who fails to produce any books, accounts, records, documents, correspondence, statements or the information required under subsection (2), within the period specified in the relevant direction, commits an offence.

- (5) The person making the inspection shall prepare and submit a report to the Authority, and the report shall state—
 - (a) any breach or contravention of any of the provisions of this Act or any regulations made under this Act;
 - (b) any irregularity in the manner of conduct of the inspected society;
 - (c) any mismanagement of a Sacco society;
 - (d) and any other matter relating to a Sacco society not consistent with sound and prudent business practice.
- (6) A copy of the report of the findings of an inspection under subsection (1) shall be submitted by the Authority to the Commissioner.
- (7) A report of the findings of an inspection under subsection (1) shall, in addition to any action that may be taken under the Co-operative Societies Act, 1997 be presented by the Authority to the board of directors of the Sacco society

74. The two sections clearly the duty to supervise and regulate Saccos upon the Sacco Societies Regulatory Authority. The Sacco Fraud Investigation Unit is within Sasra thus the Authority in the supervision of Saccos through the SSFIU can facilitate investigations as part of its supervisory function.
75. The SSFIU does not answer to Sasra and remains a Unit of the Police. The unit has absolutely no reason not to undertake investigation and nothing stops them from reporting to the DCI on their findings. The public must get value for their money that funds the unit.
76. The respondents having failed to provide reasons why the unit cannot investigate the applicant, this court finds that the application by the applicants has merit, the same is allowed. It is hereby ordered that the intended investigations shall undertaken by the SSFIU who shall thereafter be at liberty to recommend whatever action is to be taken by the Commissioner.
77. In the event that fraud is disclosed the Unit shall comply with their internal investigation protocols and forward the file to the Director of Public Prosecutions as is required under the law for appropriate action. The Unit must perform the function for which they were set up otherwise they should be disbanded if the respondents find no value in it.
78. That would amount to prudent utilization of public resources both monetary and human capital.
79. The investigations must be undertaken expeditiously considering that the applicant is a deposit taking Sacco whose stability is a matter of great public interest.
80. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 10TH DAY OF JULY 2025.

A. M. MUTETI

JUDGE



In the Presence of
Court Assistant: Kiptoo
Mutua holding brief Miller for Applicants
Ms Ogega for Respondent

