



**Mbaru & 4 others v Karani (Deceased) (To be substituted by his legal representative) & another
(Civil Appeal E045 of 2021) [2024] KEHC 1331 (KLR) (14 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1331 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CIVIL APPEAL E045 OF 2021
LM NJUGUNA, J
FEBRUARY 14, 2024**

BETWEEN

**MUTHIKE MBARU 1ST APPELLANT
JOHN NDEGWA GIKURU 2ND APPELLANT
ANTHONY MURIUKI NGIRIGACHA 3RD APPELLANT
PETER MURIUKI GATHUA 4TH APPELLANT
JEREMIAH MUTHIKE MURAGE 5TH APPELLANT**

AND

**JAMES K KARANI (DECEASED) (TO BE SUBSTITUTED BY HIS LEGAL
REPRESENTATIVE) 1ST RESPONDENT
MUTIRA FARMERS CO-OPERATIVE SOCIETY LIMITED . 2ND RESPONDENT**

(An appeal from the decision of the Co-operatives Tribunal delivered by Hon. Mwatsuma Mjeni on 07th October 2021 in Nairobi Co-operative Tribunal Case No. 153 of 2016)

JUDGMENT

1. The appellants have filed memorandum of appeal dated 05th November 2021 seeking the following orders:
 - a. This appeal be allowed;
 - b. The award of the tribunal dated 07th October 2021 be set aside;
 - c. The honourable court be pleased to exercise all the powers of the tribunal as provided by section 81 of the *Co-operative Societies Act* Cap. 490 and grant all the orders prayed by the appellants as follows:



- i. A declaration that the appellants' expulsion from the membership of the respondent society on 18th December 2014, was null and void;
- ii. A declaration that the respondents' decision to close the appellants' account was unprocedural, illegal, null and void;
- iii. A declaration that the respondents' decision to deny the appellants access to the respondents' factory and facilities to market their coffee was unprocedural, illegal, null & void;
- iv. An order directing the respondents to readmit and restore the appellants to their membership with full status and privileges;
- v. An order that the respondents do pay with interest from the date of deprivation, the appellants their claims as pleaded in paragraphs 5 and 8 of the plaint as follows:
 1. 1st claimant- Kshs. 212,040/=
 2. 2nd claimant- Kshs. 272,400/=
 3. 3rd claimant- Kshs. 257,187/=
 4. 4th claimant- Kshs. 218,187/=
 5. 5th claimant- Kshs. 210,000/=
- d. Costs of this appeal.

2. The appeal is premised on the following grounds:

- a. That the tribunal erred in law and procedure when it failed to fully consider the case for the appellants but considered the case for the respondents only;
- b. That the tribunal misdirected itself and erred in law, evidence and procedure when it held that the appellants were not unlawfully expelled as members of the 2nd respondent;
- c. That the tribunal erred and misdirected itself when it dismissed the appellants' claim for monetary losses, membership privileges and damages that naturally flowed from the illegal expulsion, closure of the appellants' accounts and closure of the appellants' rights to use the respondents' coffee factories and other conveniences available to members;
- d. That the tribunal may not be bound by the rules of evidence but it is firmly bound by the Civil Procedure Rules. The tribunal erred in law when it admitted and considered in favour of the respondents and against the appellants, evidence sneaked in by the respondents' counsel in the form of written submissions;
- e. That the tribunal erred and acted against the rules of natural justice when it made its award against the appellant without any reference to the appellants' counsel's submissions and the 5 legal authorities cited; and
- f. That the award (judgment) of the tribunal 07th October 2021 is illegal. The tribunal comprised 3 members during the hearing but the final award was signed by 4 members.

3. The appellants herein filed an amended statement of claim dated 26th February 2019 before the Co-operatives Tribunal in Tribunal case no. 153 of 2016. Through the claim, they sought for the same orders as the ones sought herein, against the respondents. The respondents filed their further amended



statement of defense and counterclaim dated 13th October 2019 opposing the claim. The tribunal considered the claim and the defense and counterclaim and determined that the appellants did not prove their case on a balance of probabilities, and it proceeded to dismiss the claim through its judgment dated 07th October 2021.

4. At the hearing, CW1, the 1st appellant herein relied on his witness statement as his evidence-in-chief. He stated that vide letter dated 03rd December 2014, the 1st respondent convened an annual general meeting for the 2nd respondent. That the letter did not list expulsion of members as part of the agenda. That the appellants attended the meeting and they were expelled from membership of the society, their accounts were closed and they were denied access to the 2nd respondent's factories. That this communication was formally made to them by the 1st respondent who also accused the appellants of forgery and impersonation, which led to criminal proceedings in Kerugoya CM Criminal Case No. 339 of 2015.
5. On cross-examination, he stated that the appellants filed a memorandum of grievances dated 05th November 2014 decrying the reduction in payments. That the respondents expelled them in a bid to silence them. That the members who signed were alive and those who were not were represented by their kin. That the list of deceased members who had allegedly signed the memorandum was added to spoil the memorandum. That the chairperson was advised on the way forward with the grievances but he refused to follow the proposal. That there was no explanation for the expulsion of the appellants from the society.
6. RW1 was the 1st respondent. He adopted his witness statement as evidence-in-chief. He stated that a photocopy of a memorandum of grievances dated 05th November 2015 was filed at the 2nd respondent's office. That upon scrutiny of the signatures, he found out that some signatures belonged to some members who had already died while others had appended signatures although all along they used thumbprints to execute documents. That he asked the appellants to provide the original memorandum but they declined to do so by the time the Annual General Meeting was being held. That the issue was raised with the CID who investigated and advised the respondents to resolve it internally.
7. That the appellants resorted to spreading malicious propaganda about the 2nd respondent and its members and on the day of the annual general meeting on 18th December 2015, the members resolved to expel the appellants. That they were paid all their dues, their accounts were closed and advised to apologize and re-apply for membership. He referred to payments made through cheques to the appellant's various saccos via cheques. That the 1st appellant was paid Kshs. 177,726.20/=, the 2nd appellant was paid Kshs. 180,227.30/=, the 3rd appellant was paid Kshs. 99,586.20/=, the fourth appellant received Kshs. 45,482.55/= and the 5th appellant owes the society Kshs. 10,058/=.
8. RW2 John Munene Kareu and RW3, Esther Muthoni Gakotho adopted their witness statements as their evidence-in chief. RW2 stated that some of the signatures in the memorandum were appended against names of long deceased members, triggering the 2nd respondent to seek investigations from the DCI. RW3 stated that she was surprised to see her name and alleged signatures on the memorandum of grievance yet she is illiterate and does not know how to read and write.
9. The court directed the parties to file their written submissions but only the respondents complied. In their submissions, they stated that the appeal is unmerited and the court must not allow it. Reliance was placed on the case of Abok James Odera t/a AJ Odera & Associates v John Patrick Machira t/a Machira & Co. Associates [2013] eKLR to support the argument that when the tribunal reached its decision, it gave reasons for the findings. That both parties had an opportunity to be heard before the



tribunal and it considered all the documentary and oral evidence adduced. That the removal of the appellants was achieved through a unanimous vote of the 480 members of the society.

10. It was also the respondents' case that Section 80 of the *Co-operative Societies Act* provides that the chairperson and 2 members of the tribunal are sufficient quorum to determine a matter before it, thus the appellant cannot purport that the judgment was illegal because it was not signed by all the members of the tribunal. It was also their argument that the appellants have approached this court with unclean hands and the decision of the tribunal should not be overturned under section 81 of the *Co-operative Societies Act*.
11. The issue for determination is whether the judgment of the tribunal should be overturned.
12. According to the 2nd respondent's bylaws, article 8(c) provides for cessation of membership in the co-operative society following expulsion by the society. Circumstances under which a member may be expelled are laid out under Article 10(b) of the said bylaws. Articles 11 and 12 provide for appeal procedures and repayment of the expelled member's dues. It was the respondents' case that the appellants were expelled for spreading malicious propaganda against the 2nd respondent and its members. Article 10(b) of the bylaws provides:

“The Annual General Meeting may suspend and recommend expulsion of a member who acts in any way prejudicial to the interest of the society such as fictitious kilos, malicious propaganda, buying and selling of coffee from the individual members or the private operator”
13. Article 12 of the bylaws states that when a member ceases to be such, he is to be paid the value of his shares and he loses his bonuses, dividends and interests at the date on which his membership ceases. At the hearing before the tribunal, the respondents produced evidence that the moneys due to the appellants was paid to them through their various saccos. In the case of the 5th appellant, the amount he owed the society was retained.
14. I have perused the minutes of the 2nd respondent's annual general meeting held on 18th December 2015 and note that the memorandum of grievance was discussed and all the members of the society demanded that the original memorandum be presented. The minutes also noted that the appellants were suspended pursuant to Article 10(b) of the bylaws and the management committee was instructed to follow up on the legal measures and disciplinary actions to be taken.
15. I have also perused the minutes of the urgent management committee meeting where the memorandum of grievances was discussed and the committee members were urged to expedite the required action against the appellants since they have resorted to spreading malicious propaganda against the society. It was at this meeting that the appellants' access to the factories and other privileges was denied. On the question of whether the appellants' expulsion from the society was unprocedural, null and void, in my view the same was not irregular and cannot be rendered null and void. According to the evidence presented before the tribunal, the payments were made via cheques.
16. Having found that the appellants were not unlawfully expelled from the society, it follows that their accounts were closed and properly so. The decision to deny the appellants access to membership privileges arose from the management meeting which was prompted at the Annual General Meeting. In my view, the orders sought by the appellants cannot be granted by this court.
17. I find that this appeal lacks merit and it is hereby dismissed with costs to the respondents.
18. It is so ordered.



DELIVERED, DATED AND SIGNED AT EMBU THIS 14TH DAY OF FEBRUARY, 2024.

L. NJUGUNA

JUDGE

.....for the Appellants

.....for the Respondents

