



**Nyangute v Board of Directors of Harambee Co-operative Savings & Credit & 3 others
(Civil Appeal E661 of 2021) [2024] KEHC 1281 (KLR) (Civ) (16 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CIVIL
CIVIL APPEAL E661 OF 2021
AN ONGERI, J
FEBRUARY 16, 2024**

BETWEEN

MESHACK ODERO NYANGUTE APPELLANT

AND

**BOARD OF DIRECTORS OF HARAMBEE CO-OPERATIVE SAVINGS &
CREDIT 1ST RESPONDENT
HARAMBEE CO-OPERATIVE SAVINGS & CREDIT 2ND RESPONDENT
SACCO SOCIETY REGULATORY AUTHORITY 3RD RESPONDENT
COMMISSIONER FOR CO-OPERATIVE DEVELOPMENT .. 4TH RESPONDENT**

*(Being an appeal from the ruling of the Cooperative Tribunal Hon. B .Kimemia
(chairman) Hon. Muratsama Njeril (Deputy Chairman) Boniface Akusal and
P. Gichuki (Members) in Tribunal Case no. 745 of 2019 delivered on 7/10/2021)*

JUDGMENT

1. The appellant herein, Meshack Odero Nyangute made an application before the Cooperative Tribunal under certificate of urgency dated 9/12/2019 seeking the following orders;
 - i. This application be certified urgent and heard ex-parte in the first instance;
 - ii. An order be and is hereby made lifting forthwith the suspension of the applicant herein, Mesahck Odero Nyangute, as a delegate of the Harambee Co-operative Savings & Credit Society Limited, pending the hearing and determination of this application.



- iii. An order be and is hereby made lifting forthwith the suspension of the applicant herein, Meshack Odero Nyangute, as a delegate of the Harambee Co-operative Savings and Credit Limited pending the hearing and determination of the claim herein.
 - iv. Pending the hearing and determination of the claim herein, an order be and is hereby made, directing the Board of Directors of Harambee Co-operative Savings & Credit Society Limited, to forthwith furnish the applicant herein, Meshack Odero Nyangute, with a copy of the Sacco Society Regulatory Authority Report prepared subsequent to an inspection of the books, accounts and records of Harambee Co-operative Savings and Credit Society Limited in the month of August, the year 2018.
 - v. In the alternative to prayer (iv) above, ending the hearing and determination of the claim herein, an order be and is hereby made, directing the Sacco Society Regulatory Authority to forthwith furnish the applicant herein, Meshack Odero Nyangute, with a copy of the report it prepared subsequent to an inspection of the books, accounts and records of Harambee Co-operative Savings and Credit Society Limited in the month of August, the year 2018.
 - vi. In the alternative to prayer (iv), pending the hearing and determination of the claim herein, an order be and is hereby made, directing the commissioner for Co-operative Development forthwith furnish the applicant herein, Meshack Odero Nyangute, with a copy of the Sacco Society Regulatory Authority Report prepared subsequent to an inspection of the books, accounts and records of Harambee Co-operative Savings and Credit Society Limited in the month of August, the year 2018.
 - vii. A date be appointed on priority basis for the hearing of this application inter parties.
 - viii. The costs of this application be provided for; and
 - ix. Any further or other orders or directions the Honourable court considers appropriate in the circumstance.
2. The appellant was first elected a delegate of the 2nd respondent on 15/4/1997 to represent KIPi Zone.
 3. Thereafter the appellant was a board member in 2001 and national Treasurer till 25/4/2018.
 4. On 11/3/2019, the appellant was suspended as a delegate of the 2nd respondent on the basis of circulating a draft inspection report prepared by Sasra via whatsapp.
 5. The appellant did not deny that he circulated the report. He said the members of the 2nd respondent were entitled to access to the said information which did not qualify as a confidential report and further that no damage was caused to the 2nd respondent.
 6. The respondents submitted that the appellant was informed of his suspension vide letter dated 11/3/2019 and he responded vide letters dated 29/3/2019 and 13/3/2020.
 7. An Administrative Inquiry Committee was established to review the appellant's case and he was given a hearing on 17/4/2019 where he admitted having circulated the report. The suspension was upheld and the appellant was informed vide letter dated 16/10/2019.
 8. The respondents further submitted that the findings of an inspection report are only obligated to be released to the commissioner and not any other person or authority.
 9. The tribunal in its ruling dated 7/10/2021 found that the appellant had not established the condition for grant of an injunction at interlocutory stage.



10. The tribunal found that the appellant contravened Clause 39.8.1 of the 1st and 2nd respondent's by-laws and was suspended under Clause 39.9.
11. The appellant has now appealed to this court on the following grounds;
 - i. That the Co-operative tribunal erred in law and fact by dismissing the appellant's application dated 9th December 2019 and filed on 16th December 2019 vide a ruling delivered on 7th October 2021 for lacking merit.
 - ii. That the Co-operative tribunal erred in law and fact by failing to determine the critical issues raised in the appellant's application dated 9th December 2019 being-
 - a. Directing the 1st and 2nd respondents to furnish the appellant with a copy of the August 2018 inspection report prepared by the 3rd respondent subsequent to an inspection of the books, accounts and records of 2nd respondent in the month of August, the year 2018.
 - b. In the alternative directing the 3rd respondent to furnish the appellant with a copy of the Sacco society Regulatory Authority Report prepared subsequent to an inspection of the books, accounts and records of Harambee Co-operative Savings and Credit Society Limited in the month of August, the year 2018.
 - c. In the alternative, directing the 4th respondent to furnish the appellant with a copy of the Sacco society Regulatory Authority Report prepared subsequent to an inspection of the books, accounts and records of Harambee Co-operative Savings and Credit Society Limited in the month of August, the year 2018.
 - iii. That the Co-operative tribunal erred in law and fact by misdirecting itself on the appellant's failure to exhaust the internal dispute resolution mechanism before filing his claim.
 - iv. That the Co-operative tribunal erred in law and fact by misdirecting itself on the principles behind establishing a prima facie case.
 - v. That the Co-operative tribunal erred in law and fact by failing to consider that the 3rd respondent herein through paragraph 11 of its replying affidavit sworn on 4th February 2020 had discharged its duty pursuant to Section 49(6) & (7) of the Sacco Act (2008).
 - vi. That the Co-operative tribunal erred in law and fact by contravening the direct provisions of Section 14(ix) of the revised Harambee Savings and Credit Co-operative Society By-Laws (2016) as read with Section 21(d) of the revised [Co-operative Societies Act](#) (2012).
 - vii. That the Co-operative tribunal erred in law and fact by declining to order the 1st and 2nd respondent to furnish the appellant with a copy of the 3rd respondents August 2018 inspection report.
 - viii. That the Co-operative tribunal erred in law and fact by failing to consider the 3rd respondent's August 2018 inspection report which was central to the dispute herein.
12. The parties filed written submissions as follows; the appellant submitted that the proceedings conducted by the administrative inquiry committee was not conducted fairly thus an injustice occurred since the board had already condemned the appellant, as a result the administrative inquiry committee could not arrive at a finding contrary to the board expectations. The board acted with bias, malice and had a conflict of interest during the proceedings thus the appellant could not get a fair judgement.



13. The appellant submitted that the Administrative Inquiry Committee formed by the Board to investigate the allegations leveled against him had predetermined outcome to kick him out as a delegate thus the Appellant was suspended unfairly. The Tribunal however failed to rectify the illegality done by the Board and administrative Inquiry committee which violated the provisions of Article 47 (1) of *the Constitution* of Kenya, 2010 which provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. The status of fair administrative action in Kenya's constitutional and jurisprudential framework was discussed by Onguto, J in Kenya Human Rights Commission vs. Non-Governmental Organizations Co-ordination Board [2016] eKLR a case in which the powers of the same Respondent were in question, in which the learned Judge expressed himself inter alia as follows:

“ Thus, a person whose interests and rights are likely to be affected by an administrative action has a reasonable expectation that they will be given a hearing before any adverse action is taken as well as reasons for the adverse administrative action as provided under Article 47 (2) of *the Constitution*.

Generally, one expects that all the precepts of natural justices are to be observed before a decision affecting his substantive rights or interest is reached. It is however also clear that in exercising its powers to superintend bodies and tribunals with a view to ensuring that Article 47 is promoted the court is not limited to the traditional judicial review grounds. The *Fair Administrative Action Act*, 2015 must be viewed in that light.”

14. The appellant further submitted that on 28/3/2019 the 2nd respondent's board of directors resolved to establish an Administrative Inquiry Committee to review the Appellant's case in accordance with Clause 39.10 (ii) of the Society's By- Laws. The Appellant was subsequently heard on 17/4/2019 by the Administrative Inquiry Committee where he was eventually suspended unfairly. It is there evident that the Appellant went through an Internal Dispute Resolution mechanism prior to filing his claim before the Cooperative Tribunal to seek further assistance.

15. The appellant argued that there was no damage that was brought to the attention of the tribunal. It was therefore unfair for the 1st and 2nd respondent to claim that the appellant made up his own report. The Appellant therefore requested that the 1st, 2nd and 3rd Respondents provide the Report in their custody before the honorable tribunal for comparison purposes which request was rendered futile.

16. The appellant argued that he was well within his rights to share the report with other members and delegates as Article 35 of *the Constitution* of Kenya, 2010 as read, Respondent had the right as indicated to have access to any such information available in the purview of the Society. Section 21 (d) of the *Co-operative Societies Act* Cap 490 is clear that as a member and delegate of a particular society, they are entitled to all information relating to the Sacco. This section therefore makes the Chairman of the 1st Respondent a custodian of all information, but should release the same as at when it is required by its members. The 1st and 2nd Respondent therefore had no right to suspend the Appellant for supplying members with an Inspection Report as published by the 3rd Respondent to the members and delegates of the 2nd Respondent.

17. The appellant submitted that it is important that the 1st and 2nd Respondent be ordered and directed to produce the 3rd Respondent's Inspection report prepared in the month of August 2018. It's the Appellant's belief that the production of the said Inspection Report will aid to the achieving of a fair trial in the appeal and proving his case.



18. The 1st and 2nd respondent submitted that a cursory read into the appellant's submission reveals an attempt at trial by stealth. The appellants argument begins with a fault to the tribunal for finding his application dated 9/12/2019 to be lacking in merit. The same argument forms the first ground of appeal which the appellant addresses based on strange assertions that seek to mislead this court into deciding issues not ripe for appeal.
19. The 1st and 2nd respondent contended that the allegation of violation of the appellants right to fair administrative action was neither precisely nor clearly pleaded. The appellant admitted to the clarity of the 1st respondents by laws regarding the election, suspension and/or expulsion of delegates. It is not in dispute that procedure was followed in suspending the appellant was in accordance with the by laws and the issue of fair administrative action was not presented for consideration by the tribunal.
20. The 1st and 2nd respondent argued that this court can therefore only make a finding on issues as presented by the parties based on their pleadings and submissions and in support cited the supreme court in Francis Kariuki Muruatetu & another v Republic & 5 others [2016] eKLR where it was stated

“(42) Therefore, in every case, whether some parties are enjoined as interested parties or not, the issues to be determined by the Court will always remain the issues as presented by the principal parties, or as framed by the Court from the pleadings and submissions of the principal parties.”
21. On account of exhaustion of internal dispute resolution mechanism, the 1st and 2nd respondent submitted that the Appellant was informed in his suspension letter of his right to appeal his suspension to the Annual General Meeting as provided by the Society's By-Laws. The Appellant therefore jumped the gun by moving the Tribunal by way of a claim before exhausting the internal mechanisms as set out in Clause 39.10 of the 2nd Respondent's By-Laws.
22. Further, that upon confirmation of the Appellant's suspension, the next stage would require the Appellant to await the verdict of the Annual Delegates Meeting which the Appellant chose to ignore. As a consequence, the claim filed before the Tribunal was therefore premature and without basis as the Appellant had and has not to date, exhausted the Society's internal disciplinary mechanisms.
23. On the ground of a failure by the Tribunal to make a finding that the 3rd Respondent had discharged its duty pursuant to Section 49 (6) & (7) of the Sacco Act (2008), the 1st and 2nd respondent submitted that the Appellant has failed to show how the same affects the Ruling of the Tribunal which primarily determined whether the Appellant was entitled to the injunctive relief as well as the prayers sought in his application. The issue of whether the 3rd Respondent had discharged its duty is therefore irrelevant.
24. Concerning the report the 1st and 2nd respondent submitted that the Appellant is engaging in a fishing expedition by those prayers to enable him sanitize his illegal actions considering that he stated throughout his application before the Tribunal that the purported draft report in his possession is what was allegedly circulated to the 1st and 2nd Respondents. it is thus clear that the appeal herein does not raise sufficient reasons to warrant interfering with the ruling of the tribunal.
25. The 3rd respondent submitted that the grant of a temporary injunction (or similar interlocutory remedies) is a discretionary relief based on the circumstances of a case. The onus of demonstrating that the same, rests with the Applicant. In this case, the Appellant did not demonstrate to the Tribunal the precarious predicament he was in that warranted its intervention. Similarly, other than his right to access the alleged report, the Appellant did not explain how the said report would benefit the general membership of the 2nd Respondent.



26. The Tribunal rightfully acted within its mandate, applied its judicial mind to the circumstances of the application as would have been expected of a reasonable Court of Law and arrived at its conclusion. No misdirection or grave error of the law on the Part of the Tribunal has been illustrated to this Court to justify the interference with its discretion.
27. This being a first appeal, the duty of the first appellate court is to re-evaluate the evidence before the trial court and to arrive at its own conclusion whether to support the findings of the trial court.
28. The issues for determination in this appeal are as follows;
 - i. Whether the appellant was entitled to an interlocutory mandatory injunction.
 - ii. Whether the appeal should be allowed.
29. On the issue as to whether the appellant was entitled to an interlocutory injunction, I find that there are exceptional circumstances to warrant the grant of an injunction at interlocutory stage.
30. In the case of Paul Gitonga Wanjau vs. Gathuthis Tea Factor Company Ltd & 2 Others [2016] eKLR, the Court expressed itself thus:-

“Where any doubt exists as to the applicants’ right, or if the right is not disputed, but its violation is denied, the court, in determining whether an interlocutory injunction should be granted, takes into consideration the balance of convenience to the parties and the nature of the injury which the Respondent on the other hand, would suffer if the injunction was granted and he should ultimately turn out to be right and that which injury the applicant, on the other hand, might sustain if the injunction was refused and he should ultimately turn out to be right...Thus, the court makes a determination as to which party will suffer the greater harm with the outcome of the motion. If applicant has a strong case on the merits or there is significant irreparable harm, it may influence the balance in favour of granting an injunction. The court will seek to maintain the status quo in determining where the balance of convenience lies.”
31. The tribunal relied on the case of Giella vs Cassman Brown Co. Ltd [1973] EA in determining the application.
32. The principles of injunctions found in the case of Giella vs Cassman Brown Co. Ltd(supra) are that in order to grant an injunction, the court must be satisfied that;
 - i. The applicant had established a prima facie case with probability of success;
 - ii. The applicant stood to suffer irreparable loss which could not be compensated by an award of damages; and
 - iii. If the court was in doubt, the application would be determined on a balance of convenience.
33. The tribunal found that the appellant did not establish that he would suffer irreparable damage.
34. I find that the appellant did not deny that he contravened the by-laws of the 1st and 2nd respondents. He ought to have appealed to the General Delegates’ meeting.
35. I agree with the findings of the tribunal that the case should be heard before deciding as to whether the suspension of the appellant was lawful.
36. I find that the appeal herein lacks in merit and I dismiss the same with no orders as to costs.



**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS
16TH DAY OF FEBRUARY, 2024.**

.....

A. N. ONGERI

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent

