



**Kiamumbi Multi-Purpose Co-operative Society Limited v Commissioner for Cooperatives & 7 others (Civil Appeal E910 of 2023) [2024] KEHC 9219 (KLR) (Civ) (24 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9219 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E910 OF 2023**

**BM MUSYOKI, J**

**JULY 24, 2024**

**BETWEEN**

**KIAMUMBI MULTI-PURPOSE CO-OPERATIVE SOCIETY  
LIMITED ..... APPELLANT**

**AND**

**COMMISSIONER FOR COOPERATIVES ..... 1<sup>ST</sup> RESPONDENT**

**FRANCIS NGURE NJOROGE ..... 2<sup>ND</sup> RESPONDENT**

**DAVID KIHARA MWANGI ..... 3<sup>RD</sup> RESPONDENT**

**FRANCIS GITAU NGANGA ..... 4<sup>TH</sup> RESPONDENT**

**LEONARD NDUNGU MBUGUA ..... 5<sup>TH</sup> RESPONDENT**

**JOSEPH KIARIE NJOROGE ..... 6<sup>TH</sup> RESPONDENT**

**LUCY NYOKABI MIMANO ..... 7<sup>TH</sup> RESPONDENT**

**SUSAN WANJA MWANGI ..... 8<sup>TH</sup> RESPONDENT**

*(Being an appeal from judgement and decree of Honourable Hon. Mjeni Mwatsama Deputy Chairperson dated 21-04-2022 in Cooperative Tribunal Appeal number 6 of 2020)*

**JUDGMENT**

1. The appellant is a cooperative society registered under the Cooperatives *Societies Act*. The 2<sup>nd</sup> to the 8<sup>th</sup> respondents were at some point members of the appellant's management committee. By an order of the 1<sup>st</sup> respondent dated 14-08-2019, an inquiry into affairs of the appellant under Section 58 of the Cooperatives *Societies Act* was carried out by the 1<sup>st</sup> respondent's representatives known as Muriithi



- Mahugu and Nicholas Ndirangu. By report dated 26-02-2020, the said inquiry found that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were liable for loss of Kshs 12,565,912.00 and surcharged each of the said respondents different sums and issued surcharge notices to that effect dated 3-06-2020.
2. After the 2<sup>nd</sup> to 8<sup>th</sup> respondent received the surcharge notices, they appealed to the Cooperative Tribunal raising several grounds among them that they were denied a fair hearing. In judgment dated 21-04-2020, the Tribunal found in favour of the 2<sup>nd</sup> to 8<sup>th</sup> respondents in its appeal number 6 of 2020. The orders in the judgement were to apply in appeals numbers 7 of 2020, 8 of 2020, 9 of 2020, 10 of 2020, 11 of 2020 and 12 of 2020. For this reason, orders in this judgment will obviously apply to the other appeals mentioned above.
  3. The appellant has preferred this appeal where it has raised 6 grounds. The said grounds are repetitive and border on the same issue which is that the tribunal erred in holding that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were denied a fair hearing. Section 74(2) of the *Co-operative Societies Act* provides that any appeal to this court from the tribunal shall be on matters of law only.
  4. The first issue in this appeal is to determine whether the issue raised by the appellant is a matter of law. That is the only thing which will give this court jurisdiction to seat on this appeal. The single issue which disposed the appeal before the tribunal was that the respondent's right to be heard was violated. The tribunal made extensive citation, analysis and references to Article 25 and 50 of *the Constitution*, Section 4, 5 and 7 of the Fair Administrative Actions Act. At the end of it all, the tribunal found that the provisions of these laws were breached. The tribunal did not make any decision on issues of facts. Based on this I am convinced that the appeal herein is on a matter of law and therefore, I have jurisdiction to determine the same.
  5. I have read the record of appeal and submissions of the appellant dated 16<sup>th</sup> April 2024. None of the respondent has filed submissions. The appellant takes the position that the tribunal made an error in finding that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were not granted opportunity to be heard. The appellant has extensively relied on its position that the respondents were given four months to present their case. The appellant maintains that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were questioned and given all the time they required to produce their cases.
  6. It is the appellant's position that the respondents were given sufficient time because they were issued with summons and the 1<sup>st</sup> respondent's offices were in the appellant's premises for four months during the inquiry. According to the appellant, the 2<sup>nd</sup> to 8<sup>th</sup> respondents were during the four months given opportunity to be heard and presented their cases and documents. For this reason, the appellant submits that the appellant would lose Kshs 12,565,912/- due to the orders of the tribunal. It is true that members' funds in cooperative societies must be jealously protected and that is one of the reasons the legislature came up with a special tribunal. This however does not mean that anyone accused of misappropriating funds or breaching the interests of the members should be crucified or punished without them being given opportunity to be heard.
  7. A fair hearing includes giving the party who is likely to be adversely affected by a decision an opportunity to represent its case. It is not in dispute that the 1<sup>st</sup> respondent was performing an administrative function when it conducted inquiry and proceeded to surcharge the 2<sup>nd</sup> to 8<sup>th</sup> respondents. The tribunal in making the finding as it did made reference to a letter dated 18<sup>th</sup> June 2020 which was protesting about the 2<sup>nd</sup> to 8<sup>th</sup> respondents not having been given a chance to respond to the accusations.
  8. The appellant has urged this court to find that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were given adequate opportunity to be heard as they were involved in the inquiry during the whole process. To support this



position, the appellant has referred me to pages 14 to 59 of the record of appeal. These pages contain the inquiry report. I have gone through the report prepared by Muriithi Mahugu a Deputy Commissioner for Co-operatives Development and Nicholas Ndirangu a Principal Co-operative Auditor. At page 23 of the record of appeal, the report indicates that;

‘The inquiry team engaged several persons in question-answer session with a view of gathering, processing and evaluating evidence on the credibility of information acquired. The inquiry team thus summoned and interviewed current and former committee members, the Manager Kiamumbi Water Project, the society’s accounts clerk, turbine vendor, society’s auditor and eight members (the complainants).’

9. That far, the 1<sup>st</sup> respondent had laid a good basis to show that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were heard. What I need to consider is whether the process of the hearing was in a manner that could be said to have been fair. In an enquiry, parties need not be taken through the conventional way of hearings. The inquiry team can adopt its own procedures so long as the same are satisfactory in ensuring the persons being investigated are given adequate time and facilities to present their cases.
10. The record before me does not indicate that any of the 2<sup>nd</sup> to 8<sup>th</sup> respondents was interviewed. It also does not show that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were given the opportunity to face their accusers. It is not enough for the appellant to say that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were interviewed and given opportunity. The inquiry report should show what the said respondents said in their defence and what their accusers said. All that is recorded is the complaint followed by the team’s findings. The fact that the law allows appeals on matters of facts to the tribunal means that the inquiry report should be elaborate enough for the tribunal to be able to ascertain and rule on the merits of the inquiry.
11. It is apparent and clear to me that the 1<sup>st</sup> respondent was recording the complaints as they came from the members who reported and the next thing would be their findings. The report indicates that the findings were based on investigations. One would expect to see the evidence given by the 2<sup>nd</sup> to 8<sup>th</sup> respondents. There is nothing that would convince this court that there were any representations received from the said respondents. Apart from the impugned summons dated 19-06-2020, there is nothing that would make anyone conclude that a proper and fair hearing was conducted. It is clear to me as it was to the tribunal that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were condemned unheard. As it was held in *INM vs AJMN (2022) eKLR*, the right to be heard before an adverse decision is taken against a person is fundamental and permeates our entire judicial system. Any sight of lack of compliance however dim it must be interpreted in favour of the affected person.
12. It is my finding that the tribunal was right in finding that the 2<sup>nd</sup> to 8<sup>th</sup> respondents were not heard and that their rights to a fair hearing was violated. Nothing stops the 1<sup>st</sup> respondent from conducting a fresh inquiry which is in adherence to the law and *the Constitution*. The order of the tribunal did not bar the 1<sup>st</sup> respondent from doing the right thing. In the circumstances, I dismiss this appeal. Since the respondents have not participated in this appeal, I will not award any costs.

Orders accordingly.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS 24TH DAY OF JULY 2024.**

**B.M. MUSYOKI**

**JUDGE OF THE HIGH COURT.**

