



**Kandagor & 3 others v Kiptoo & 4 others; County Government of Baringo (Interested Party)
(Constitutional Petition E002 of 2024) [2024] KEHC 13770 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13770 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CONSTITUTIONAL PETITION E002 OF 2024**

RB NGETICH, J

NOVEMBER 6, 2024

**IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010
IN THE MATTER OF COOPERATIVE SOCIETIES ACT, CAP 490 LAWS OF KENYA**

BETWEEN

**LABAN A KANDAGOR 1ST APPLICANT
WILLIAM BASKWONY 2ND APPLICANT
STEPHEN K CHEMJOR 3RD APPLICANT
DAVID C KIPYOS 4TH APPLICANT**

AND

**JENIFFER KIPTOO 1ST RESPONDENT
RICHARD KITILIT 2ND RESPONDENT
CORNELIUS CHESEREM 3RD RESPONDENT
AUGUSTINE CHEBII 4TH RESPONDENT
BARINGO CHA COFFEE MILL LIMITED 5TH RESPONDENT**

AND

COUNTY GOVERNMENT OF BARINGO INTERESTED PARTY

RULING

1. The petitioners/Applicants have moved this court vide a notice of motion application dated 13th May, 2024 brought under rule 2 Part I of the Cooperative *Societies Act* and (Practice and procedure)



read with rules I, 2 and 3 of the Judicature Act Chapter 8 Laws of Kenya, Chapter 4 of the Constitution of Kenya seeking for orders:-

- a. Spent.
 - b. Spent.
 - c. Spent.
 - d. An injunction Order, Prohibitory Order restraining the Respondents herein be issued against the 1st to 4th Respondents from assuming office or conducting any business or from conducting any transactions relating to the management or business of Kituro Farmers' Co-operative Society Ltd pending the hearing and determination of this Petition.
 - e. That the Status quo of the current officials, the Petitioners herein be maintained pending hearing of the Petition.
 - f. That an order that the proceeds of the coffee deposited into the Account of Baringo CHA Coffee Mill Limited be released to the Kituro Farmers' Co-operative Society Ltd Bank Account held at Co-operative Bank Kabarnet Branch being US Dollar Account No. 02100253297001 so that the farmers are paid.
 - g. That Costs of this application be in the cause.
2. The application is based on the following grounds:-
- i. That the Petitioners herein have been illegally impeached without due process and kicked out as officials of the Sacco, Kituro Farmers' Cooperative Society Limited.
 - ii. That the farmers have already brought their coffee to the society and the buyer, CHA from Korea have purchased and deposited the money to Baringo CHA Coffee Mill Limited Account as usual but have not remitted to either of Kituro Farmers' Cooperative Sacco Accounts because of the anomaly caused by the Respondents herein.
 - iii. That the farmers who are clients to the Sacco need to be paid having brought their coffee and no one else is mandated by the law to pay them other than the Kituro Farmers' Cooperative Society Limited.
 - iv. The 1st to 5th Respondents have with a lot of impunity flouted the Cooperative Society and this Court should sanction them accordingly.
3. The application is supported by affidavit sworn by Stephen Kipsargon Chemjor who avers that he is the Secretary of Kituro Farmers' Cooperative Society Limited. He avers that the Claimants who together with all Management Committee team officials were elected to office on the 25th November 2022 and have served the Cooperative Society Limited to date and the elected officials were as follows:
- i. Laban C Kandagor -Chairman
 - ii. William Baskwony- Vice Chairman
 - iii. Stephen K Chemjor- Hon. Secretary
 - iv. David C Kipyoo-Treasurer
 - v. Kibet Cherogony-Member
 - vi. Joseph Kiproop-Member



- vii. Alfred Kimatagei-Member
 - viii. Elizabeth Cherutich- Member
 - ix. Francis Chepsom- Member
Supervisory Committee Members
 - i. Benjamin Rotich-Chairman
 - ii. Daniel Cheboi- Secretary
 - iii. Rosaline Koros-member
4. He further avers that Kituro Farmers' Cooperative Society Sacco draws Membership of 507 registered members and 242 Active members so far this year drawn across/within Baringo central and there exists constitution of the society which enshrines by laws, rules and regulations on elections and removal any official from the office together with every deliberation to be done throughout the cooperative society's life. That the officials have been legally elected in the year 2022 and have been transacting the business of the Cooperative Sacco to date.
 5. That on 25th March 2024 Kituro Farmers' Cooperative Society Ltd Management wrote a letter to the CEC trade and cooperatives Baringo County and copied to director of cooperatives, Cooperative officer Baringo central and MCA Ewalel chap chap. He avers that they have not been aware of marketing and oversight committee until 11th April 2024 when they received a letter from the said body requesting for a special general Meeting with farmers. Further that on the same day 11th April 2024, they received a letter from the chief officer department of industry, commerce, enterprise and cooperative development informing them that there have been complaints and directed them to convene a Special General Meeting on 2nd May 2024.
 6. That after enquiry and close investigations, they realized that the purported entity called marketing and oversight committee is behind a politically engineered team with an intention to overtake the constitution, by laws and rules and regulations on the running of the cooperative society Sacco.
 7. That following the findings of the said marketing and oversight committee, the members voted to dissolve the legally existing officials and the officials have been frustrated by third parties who purport to be the newly elected officials and threaten to transact the business of the Sacco with total disregard of the set constitution of the cooperative society; and on the 6th May 2024, they realized that the purported officials were mobilizing farmers and fronting for payments and even travelled to Kabarnet with an intention of changing the officials contrary to the set laws governing succession and take over by the incoming officials; that they instructed financial institutions to stop and/or disallow any parties apart from the officials and the legal signatories to transact the business of the cooperative society.

Response

8. In response, the Respondents filed a replying affidavit sworn by Augustine Chebii. He avers that the Petitioners herein are Ex-officials of Kituro Farmers Corporative Society and are no longer representatives and/or officials as stated in Applicants' supporting affidavit dated 13th May, 2024. He further avers that by notice dated 22nd April 2024 signed by the 3rd petitioner, the farmers and general public were notified of a special meeting to be held on the 2nd of May, 2024.
9. That prior to this notice, the Marketing and oversight Department of Kituro Farmers' Co-operative was elected to oversee the transmission of taking the farmers coffee produce to the 5th Respondent to



promote the local millers and to reduce on cost of transporting the coffee to other millers outside the County of Baringo.

10. That the Marketing Oversight committee made a report dated 5th February, 2024 showing findings that the 5th Respondent showed high promise to benefit Kituro coffee farmers and thus recommended to transfer milling of coffee produce to the 5th Respondent; and following the report, the Ex-officials, the Petitioners herein called for a meeting on 13th of February, 2024 but without notice to the farmers, the meeting was postponed indefinitely.
11. He avers that on the said date 13th February 2024, the farmers conducted a meeting despite the postponement and issues of mismanagement which include finances of the Societies' funds, failure to train farmers on modern coffee farming to improve yield and failure to convey to farmers information on any meeting called by the county and/or in corroboration with the National Government that involved the self-improvement of the coffee farmers emerged. Further that the Petitioners borrowed a loan against the assets of the society under Skyline Sacco Account No. 100503021 of Kenya shillings One Million Seventy-One Thousand Eight Hundred and Fourteen (Kshs.1,071,8814/=) without the consent of the members.
12. He avers that the Respondents were procedurally appointed and the Deputy County Commissioner Baringo Central Sub-County, The Director Cooperatives Baringo County and Cooperate Development Officer Baringo South were present to oversee the elections; and the 3rd Petitioner was re-elected back to serve as a Board of Member for a term not exceeding 2026 beginning 2024. Further that the Petitioners were in office for more than two terms contrary to Societies By-laws and the petitioners are selfish, are with unpredictable motives and are disloyal to the society.
13. The Respondents further state that the farmers proceeds, which are the monies collected after the sale of their coffee produce are being withheld at the bank and the farmers are absolutely dependent on this proceeds to manage their daily lives of paying school fees, buying groceries, food stuffs, tending to their cash crop by spraying insecticides, adding manure, fertilizers and conducting daily businesses and if court grants injunction, the farmers will suffer great injury and a great miscarriage of justice to the fanners.
14. The Respondents further aver that this application is not properly before this Court since it offends the provisions of section 76 of the *Co-operative Societies Act*, Cap 490 of the Laws of Kenya and if the Petitioners were dissatisfied with the results of the special meeting, they should have raised the complaint through the right process at the Co-operative Tribunal.
15. The Respondents urge this court to dismiss this petition with costs and punitive damages to Respondents and they be directed to apply for the resolution of dispute within a co-operative through the proper procedure under the Co-operation *Societies Act*.

Rejoinder By The Petitioners

16. The petitioners filed a supplementary affidavit sworn by Stephen Kipsergon Chemjor in response to the Respondents replying affidavit and confirm that there was a Notice dated 22nd April 2024 for special General Meeting to be held on 2nd May 2024 but the agenda of the meeting was not for election of New officials of the Kituro Farmers Co-operative, but for members to appoint an overseer who was to ensure that the farmers delivered their coffee to Baringo CHA Coffee Mill Limited. Further that no documents have been attached to show that officials acted without the approval of the faculties.
17. Further that the current officials were elected on 25th November 2022 and are to be in office for 3 year's up to 25th November 2025 or thereabout and if there is need and for good reason for the officials to be



casted/or impeached out of office, it has to follow all the process laid down in the societies By-laws and the constitution of Kenya 2010 which the respondent failed to follow.

18. On jurisdiction, he avers that this Court has inherent powers to exercise and deal with this application and discretionary powers is exercised based on the circumstance and merits of every case and it is in the interest of Justice that this application be allowed so that the petitioners be heard on merit.

Preliminary Objection

19. The Respondents filed preliminary objection dated 20th May, 2024 opposing the entire petition on the ground that this Petition is fatally defective, misconceived and mischievous or otherwise an abuse of the Court's process and therefore is unsuitable in the obtaining circumstances.
20. The Respondents argue that this court lacks the original jurisdiction to hear and determine this petition as section 76 of a Co-operative Societies Act provides clear procedure of settling disputes concerning the business of the Co-operative Society and successively providing appellate jurisdiction to the High Court by dint of section 81 of the Act. Further that it is an established principle of law that where there is an alternative remedy and especially where Parliament has provided a statutory dispute settlement, only in special circumstances does the court give orders and, in this case, the Petitioners have not provided any special circumstance to warrant the same.
21. Further that this Petition does not satisfy the particularity and precision threshold required for Constitutional Petitions as established in *Anarita Karimi Njeru v Republic* [1979] eKLR. That the petition is otherwise frivolous, bad in law, in principle and otherwise an abuse of the court's process. The Respondents pray that the whole part of this Constitutional Petition be dismissed with Costs.

Applicant's Submissions

22. The applicants submit that the application has met the standards required in civil cases which is on balance of probability. That the principles governing the injunction relief orders sought has been well spelled in celebrated case of *Giella Vs Gassman Brown & company* 1973 EA 33.
23. On whether or not the applicant/petitioner have a prima facie case with high chances of success, they submit that the petitioners/applicants herein have stated in the grounds and supporting affidavit that they are the legitimate office bearers having been appointed on 25th November 2022 at the Kituro Farmers' Co-operative Society Annual General Meeting and they were to hold office until 25th November 2025 after completing 3 years and to be replaced upon election of other officials after voting at another Annual General Meeting as per the societies by laws.
24. The petitioners further submit that if there is any misconduct of any kind by the elected officials, there ought to be a warning then a Notice to show cause why the official should not be impeached issued to the elected officials indicating the specific area of misconduct of society's affairs but the notices were not issued to the elected officials at all. That the officials have been conducting the affairs of the society until the time of payment when the Respondent rose to stop the officials from paying the farmers without any reason given to the elected officials to stop performing their duty.
25. That the "coup" of 2nd May 2024 held by the respondents named as 'special general meeting' was not for change of officials or election; that the legal notice of 22nd April 2024 did not indicate in its agenda that there was going to be an election or change of officials at the meeting and the respondents' act was unconstitutional and contravenes their right to hold office and against the mandate of the society's by-laws; they argue that they have a 'prima facie' case with high chances of success and urge this court to allow prayers sought.



26. On whether the applicants will suffer irreparable loss that cannot be compensated by way of damages if orders sought are not granted, they submit that the loss includes among others loss of image, integrity and trust in the community and Kituro Farmers Society where they are members for life and the damages cannot be compensated by way of damages.
27. That the principles governing grant of an interlocutory mandatory injunction relief were set out in the case of Kenya Breweries Limited Versus Washington Okeyo (2002) eKLR and the applicants herein have demonstrated existence of special circumstances as they will not only lose the elected office jobs but also lose their integrity, image in the society and the community and that of Kituro Society and this cannot be compensated by way of damages if the order sought are not granted.
28. The applicants further submit that the balance of convenience tilts to the applicant/petitioners who are the lawfully elected current officials running the affairs of Kituro Farmers' Cooperative Society and it is in the interest of justice that status quo be maintained so that the society's daily operations is not disrupted pending the hearing and determination of the petition.

Respondent's Submissions

29. The Respondents filed written submissions on both the preliminary objection dated 20th May, 2024 and application dated 13th May, 2024 and argued on the following issues:-
 - i. Whether this Court Lacks the Original Jurisdiction to hear and determine this Petition; and
 - ii. Whether the Petitioners stand to suffer any loss if orders are not granted.
30. On whether this Court Lacks the Original Jurisdiction to hear and determine this Petition, they submit that the petitioners were elected members of the board on the 25th of November, 2022 and on the 25th of March, 2024 they were notified of a special general meeting following complaints against them and the special general meeting was conducted on the 3rd of May, 2024 and new board officials were elected and thus this petition to challenge.
31. In respect to Jurisdiction of this petition the Respondents submit that Section 76 of the *Co-operative Societies Act*, Cap 490 referred hereinafter as the Act, expressly provides for dispute within the business of the co-operative stating -

“If any dispute concerning the business of the Co-operative Society arises – 76 (1) (b) Between members, past members or deceased members, and the Society, its committee or any officer of the Society to which this matter encompass.”
32. That Section 2 of the Act defines “member” - as a person or a Co-operative society joining in the application for registration of the society, admitted to membership after registration in accordance with the By-laws. An “Officer” – is a chairman, Vice-Chairman, Secretary, Treasurer, Committee member...
33. The Respondents argue that the 1st, 2nd, 3rd and the 4th Respondent respectively are brought to court within the meaning of section 2 of the Act as members and officials. On what the “business of the society” is, they rely on the case of Gatanga Coffee Growers Co-operative Society Limited -vs- *CA 35 of 1967*.
34. The Respondents submit that Jurisdiction is everything as stated by the court of appeal in the case of Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Ltd [1989] eKLR as follows: -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending



other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

35. They submit that this Court only has supervisory authority over this cause under Article 165 (6) of *the Constitution*, 2010, reading with section 81 of the Cooperative *Societies Act*. They further argue that in the case of *Mukisa Biscuits Manufacturing Company Limited v West End Distributors Limited* [1969] 1 EA 691 (CAN) a Preliminary objection must be purely on the point of law and Section 76 of the Act expressly provide that in matter business of the society any dispute shall be dealt with by the Co-operative Tribunals and the petitioner can seek redress in form of an appeal in this court.
36. They submit that the form and execution of this petition has failed to determine the constitutional rights violation that is brought under and relied on the *Oucho v Joseph Otieno Bee, Chief Executive Officer Bandari Sacco Ltd & 12 others and Sacco Society Regulatory Authority (SASRA) (Interested Party) (Constitutional Petition 57 of 2021)* [2022] KEHC 6 (KLR) (25 January 2022).
37. That the Courts must always be a measure of last resort, the analogy that the Petitioners were dis-elected unconstitutionally must be an issue that must first be resolved internally as a co-operative society and the chain moves up to seeking mandate and guidance from the Co-operative society regional office within its jurisdiction. That furthermore, it is a proviso of the Act that in any case of dispute, it shall be settled within the Cooperative Tribunal and for the Petitioners to jump all these hoops and arrive at this Court, should be considered an abuse of court process.
38. The respondent submit that they have demonstrated that this court lacks original jurisdiction and pray that this petition be dismissed with costs to the Respondents.

Interested Party’s Submissions

39. The interested party filed written submissions on the preliminary objection and submit that it is trite that the dispute fall within the ambit of section 76(1)(b) of the cooperative societies and this Honourable court lacks jurisdiction to dispense the case and relied on the cases of *Owners Of The Motor Vessel "Lilian S" Versus Caltex Oil (Kenya) Limited* 1989] KLR 1, and in *Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & 2 Others S.c. Application NO. 2 OF 2012; [2012] eKLR*.
40. They submit that Section 76 of the Cooperative *societies Act* provides for settlement of disputes touching on cooperative societies. That it is evident that section 76 (1) and (b) of the Cooperative *Societies Act* deals with the issues that concern the business of cooperative society with a member, past member, deceased, its committee or any offices of the society.
41. The interested party described a member and officer of society in the Cooperative *Societies Act* as captured under submissions by the Respondents above and relied on the case of *Republic versus Matheka Kithome and 4 Others Misc. Civil. Appl. No 664 Of 2010* where Edward M. Murithi, J. stated as follows:

“In my view, a dispute concerning the business of a cooperative society must be construed to mean a dispute or claim arising from, related or connected to the performance of the profession, trade or operations of the cooperative society towards the achievement of the subject of cooperatives as given under section 4(a) of the Act being "the promotion of the welfare and economic interests of its members.”
42. That It includes in terms of section 76(2) of the Act a debt or demand by a member against a cooperative society and vice versa. That the dispute must be so closely related to the business



- (profession, trade, service, or operations) for which the cooperative society is established as to be part of its activities or operations as guided by cooperatives law, by-laws, and rules. Such dispute must be referred to the tribunal which under section 77 of the Act is required to be composed of a majority 4 of 7 members of persons with experience in cooperative law and cooperative management and practice.
43. In respect to application dated 13th May, 2024, the interested party responded by filing a replying Affidavit sworn by Moses Toroitich on 1st July, 2024. He avers that an annual General meeting was convened by the interested parties after 2/3 of the members of the society appended their signature among many allegations that were leveled against the petitioners including that they spend a whopping 400,000 only on transportation; that they have a huge appetite of spending the members monies without approval in the AGM'S amongst other mischiefs; and it is for this reason that the farmers unanimously voted out the officials/petitioners but they have continued to be a thorn in the flesh and have refused to heed the requests and desires of the members.
 44. That the court issued prayer e and f for status quo to be maintained and for the proceeds of the coffee deposited in the Account Baringo CHA Coffee mill Limited be released to Kituro farmers and the issue for determination is prayer c, d, of the Petitioner's Application.
 45. On Whether the petitioners has shown a prima facie case with probability of success, they rely on the famous case of *Giella vs- Cassman Brown (1973) EA 358* which spells out the conditions for grant of an interlocutory injunction and submit that the petitioners have not established any legal or equitable right that has been apparently infringed or may have been infringed if the orders sought are not granted and that on the other hand if the orders are granted, the farmers are likely to suffer as for the society's affairs are being mismanaged.
 46. It is their submission that the petitioners have not shown that they will suffer irreparable loss. That it is trite law that irreparable loss consists of loss that is not recoverable in Law and which the Respondents are not capable of paying should the court rule the case in favour of the petitioners. They rely on the case of *Nguruman Limited v Jan Bonde Niesen & 2 others, CA NO 77 OF 2012* where the Court relied on the case of *Lucy Wangui Gachara V Minudi Okemba Lore 2015 ECLR* and submit that under the facts and circumstances of this case, the petitioners have not demonstrated how they stand to suffer injury (if any) which cannot be remedied by monetary value if the orders sought are not granted and that any damages she may suffer can be quantified.
 47. They submit the Petitioners have not established a prima facie case with a probability of success as they are in the office illegally having been removed from the office by the 2/3 majority of the members and they have not demonstrated how they stand to suffer irreparable loss if the orders sought are not granted and in fact it is the farmers who stand to suffer as the finances of the society risk being squandered by Petitioners and urged this court to dismiss the Petitioner's Application with cost.

Analysis And Determination

48. I have considered arguments by parties herein in respect to both the preliminary objection dated 20th May 2024 and application dated 13th May 2024. I will first determine the preliminary objection as it challenges original jurisdiction of this court to determine the dispute herein. My finding on preliminary objection will determine whether I will proceed to consider the application or not. Section 76 the Co-operative Society Act provide for the settlement of disputes in respect to Co-operative society as set out hereunder: -

- (1) If any dispute concerning the business of a co-operative society arises—



- (a) among members, past members and persons claiming through members, past members, and deceased members; or
 - (b) between members, past members or deceased members, and the society, its committee or any officer of the society; or
 - (c) between the society and any other co-operative society, it shall be referred to the Tribunal.
- (2) A dispute for the purpose of this section shall include—
- (a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or
 - (b) a claim by a member, past member of the nominee, or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;
 - (c) a claim by a Sacco society against a refusal to grant or a revocation of license or any other due, from the Authority.

49. The Act also defines persons named above as hereunder: -

“member” includes a person or a co-operative society joining in the application for the registration of a society, and a person or co-operative society admitted to membership after registration in accordance with the by-laws;

50. An officer is also described as:-

“officer” includes a chairman, vice-chairman, secretary, treasurer, committee member, employee or any other person empowered under any rules made under this Act, or by-laws of a co-operative society, to give directions in regard to the business of the society;

51. From the foregoing, under section 76(1)(b) of the Cooperative *Societies Act*, disputes that concern the business of Cooperative Society with a member, past member, deceased, its committee, or any officers of the society shall be referred to the tribunal. The above provision is coached in mandatory terms by use of the word “shall”.

52. My understanding is that the business of the Cooperative Society includes its management, election of its members and how the elected members, committee manage the affairs of the society. It is not disputed that the Petitioners were elected officials of the Society and they formed management committee of the society. Any dispute concerning their management of the business of the society shall be referred to tribunal as provided by section 76 of the Act.

53. Section 81 of the Cooperative *Societies Act* provide for appeal to the High Court (this Court) in the event a member/official of the society is aggrieved by the decision of the tribunal.

54. Among issues raised in the report by marketing and supervisory committee are mismanagement of the Societies' funds, failure to train members on the modern methods of coffee farming to improve yields, failure update members on collaboration with National Government that involved the self-improvement of the coffee farmers and borrowing loan against the assets of the society under Skyline Sacco Account No. 100503021 of Kenya shillings One Million Seventy-One Thousand Eight



Hundred and Fourteen (Kshs.1,071,8814/=) without the consent of the members the issues revealed by report angered members resulting in a vote of no confidence in the society's officials leading to replacement.

55. From averments, the Petitioners are challenging the mandate of marketing and oversight committee of the society and subsequent vote of no confidence in their management of the society. I am of the view that the dispute falls within the armpit of section 76(1)(b) of the *co-operative societies Act* as it concerns the business of the cooperative society and the petitioners being dissatisfied with the resolution of the members in the special AGM should have filed a complaint to the cooperative societies' tribunal. From the foregoing I agree with counsels for the Respondents and Interested Party that the Cooperative Societies Tribunal is seized with original jurisdiction to determine the dispute herein.

56. Final Orders: -

1. The Preliminary Objection dated 20th May 2024 is hereby upheld.
2. This petition is hereby dismissed in its entirety.
3. Each party to bear own costs.
4. The dispute to be filed before Cooperative Societies Tribunal.

RULING DELIVERED, DATED AND SIGNED IN VIRTUALLY AT KABARNET THIS 6TH DAY OF NOVEMBER 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

1. Elvis – Court Assistant.
2. Ms. Mokoit for Respondent.
3. Petitioners present in Open Court.
4. Respondents present in Open Court.
5. Counsel for Petitioners Absent.
6. Counsel for Interested Party Absent.

