

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NO. 134 OF 2020

MIGORI TEACHERS CO-OPERATIVE SAVING &

CREDIT SOCIETY LIMITED.....APPELLANT/APPLICANT

VERSUS

MSL SAVINGS & CREDIT CO-OPERATIVE SOCIETY LTD....RESPONDENT

AND

CO-OP HOLDING CO-OPERATIVE SOCIETY LTD.....INTERESTED PARTY

RULING

This is an application by way of Notice of Motion dated 11th March, 2020 seeking a stay of execution of the decision of the Co-Operative Tribunal made on 26th February, 2020. The applicant was aggrieved by that decision and lodged a Memorandum of Appeal dated 11th March, 2020 alongside this application. The grounds upon which the application is premised appear on the face of the application and also a supporting affidavit sworn by one John Osewe, said to be the Chairman of the applicant.

The application is opposed and there is a replying affidavit sworn by one Paul Muiruri Mwangi, the Chairman of the respondent. Parties have filed substantive submissions and cited several authorities which I have gone through. Order 46 Rule 6 of the Civil Procedure Rules requires that the application be filed timeously and that the applicant demonstrates substantial loss may be incurred if the order of stay is not given.

In matters relating to co-operative societies, any adjudicating authority, which includes this court, must bear in mind that there are several interested members who are led by the elected officials, and therefore the subject of public interest must be emphasised.

It is common knowledge that societies of this nature survive on the shares of their respective members and that whatever decisions are arrived at should be in the interest of such members. There is no doubt that the application was filed timeously. The respondents have a judgment in their favour delivered by the Tribunal. On the other hand, the applicant has a right of appeal. In the delicate exercise of balancing the interests of the parties, and guided by the authorities cited, I believe substantial loss may occur if the order of stay as sought is not granted.

Having considered the entire dispute in totality, read against the pleadings, evidence, the submissions and authorities cited, I am persuaded that the application should succeed. In the event therefore there shall be a stay of execution in terms of prayer 3 of the Notice of Motion provided that the applicant shall file a bank guarantee for any decree and costs that may be declared against it, limited to Kshs. 15,000,000/= (fifteen million). This has to be filed within 30 days from the date of this ruling. The costs shall abide by the outcome of the appeal.

Dated and delivered at Nairobi this 15th day of October, 2020.

A.MBOGHOLI MSAGHA

JUDGE