



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**PETITION NO. 49 OF 2018**

**KARIUA FARMERS CO-OPERATIVE SOCIETY LTD.....PETITIONER**

**VERSUS**

**COMMISSIONER FOR**

**CO-OPERATIVE DEVELOPMENT.....1<sup>ST</sup> RESPONDENT**

**COMMISSIONER FOR CO-OPERATIVE**

**DEVELOPMENT MURANG'A COUNTY.....2<sup>ND</sup> RESPONDENT**

**MUMATHI STAFF SAVINGS & CREDIT**

**CO-OPERATIVE SOCIETY LTD.....INTERESTED PARTY**

**RULING**

1. The root of the dispute is the failure by the petitioner to remit *check-off deductions* of Kshs 2,484,535.90 to the interested party. But the action has been clothed as a *constitutional* petition.
2. Both the petitioner and the interested party are *co-operative societies* registered under the **Co-operative Societies Act**. I thus asked the parties to first address me on the question of *jurisdiction*.
3. It is alleged that on the 20<sup>th</sup> December 2006, the 1<sup>st</sup> respondent issued *agency notices* to the petitioner to enforce the payment under section 35 of the **Co-operative Societies Act**. Subsequent agency notices were issued in 2007 and 2009. Under section 35 of the Act, the deductions from members should be remitted within *seven days*.
4. The petitioner's case is that the 1<sup>st</sup> respondent did not accord it a *fair hearing*; that a proper inquiry was *not* conducted; and, that the action was capricious.
5. The interested party in the meantime filed at the *Co-operative Tribunal* Civil Suit Number 557 of 2014 **Mumathi Staff Savings & Credit Co-operative Society Ltd v Kariua Farmers Co-operative Society Ltd**. That claim is *partly heard* by the Tribunal; and, the interested party has closed its case.
6. The petitioner now seeks the writ of *certiorari* in this court to quash the agency notices. But it is evident that the *principal* questions revolve around the interpretation of the *agency agreement* between the parties; the *powers* of the Commissioner of Co-operatives under sections 3, 35, 51, 58, 59, 61, 73 and 74 of the Act; and, the *validity* of the various *agency notices*.
7. I cannot comment on the merits of the action at this stage. But it is clear to me that the *petition* and *reliefs* sought revolve around the *business* or contractual obligations of the two co-operative societies. However the action is *camouflaged* as a *constitutional* petition founded on **Articles 2, 19, 22, 23, 24, 27, 47, 165, 258 and 259** of the **Constitution**. When unpacked, all that the petitioner seeks is a writ of *certiorari* to quash the impugned agency notices.
8. The *core* dispute, in the first instance, belongs to the *Co-operative Tribunal* formed under the **Co-operative Societies Act**. Any aggrieved party would then be entitled to an appeal to the High Court under section 81 of the Act. I am fortified by the fact that the disputants are already litigating over the *same subject* matter before the Tribunal.
9. Jurisdiction is everything. **Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited** [1989] KLR 1. I am *not* seized of

jurisdiction.

10. I thus *strike out* the petition *suo motu* but with *leave* to ventilate the dispute before the *Co-operative Tribunal*.

11. In the interests of justice, I order that each party shall bear its own costs.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 17<sup>th</sup> day of January 2019.**

**KANYI KIMONDO**

**JUDGE**

**Ruling read in open court in the presence of:**

No appearance by counsel for the petitioner.

Mr. G. K. Kimani holding brief for Ms. R. Kimani for the respondents instructed by R. M. Kimani & Company Advocates.

No appearance by counsel for the interested party.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.