



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. 48 OF 2018**

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

**VERSUS**

**ATTORNEY GENERAL.....1<sup>ST</sup> RESPONDENT**

**MURANG'A COUNTY CO-OPERATIVE COMMISSIONER.....2<sup>ND</sup> RESPONDENT**

**EDWARD MAINA.....3<sup>RD</sup> RESPONDENT**

**COUNTY GOVERNMENT OF MURANG'A.....4<sup>TH</sup> RESPONDENT**

**JAMES KIBUGU.....5<sup>TH</sup> RESPONDENT**

**WILLIAM WAWERU HEZRON.....6<sup>TH</sup> RESPONDENT**

**PETER WAWERU GICHIA.....7<sup>TH</sup> RESPONDENT**

**JOHN MWANGI.....8<sup>TH</sup> RESPONDENT**

**PETERSON MAINA NJOROGE.....9<sup>TH</sup> RESPONDENT**

**LINCOLN MACUA.....10<sup>TH</sup> RESPONDENT**

**BILLY GICHUKI.....11<sup>TH</sup> RESPONDENT**

**KAIHURA KARANJA.....12<sup>TH</sup> RESPONDENT**

**RULING**

1. The dispute relates to the *business and management* of a co-operative society. But it has been presented as a *constitutional and human rights* petition.
2. I thus asked the parties to first address me on the question of *jurisdiction*.
3. Kangiri Farmers Co-operative Society Limited (hereafter *the society*) is *registered* under the **Co-operative Societies Act**. Two factions of its *members* are fighting over the *control* of the society.
4. It is alleged that the 5<sup>th</sup> to 12<sup>th</sup> respondents have attempted to remove the *management committee* from office unlawfully; or, without complying with the *bye-laws* or the *Co-operative Societies Rules*. It is alleged further that the 5<sup>th</sup> respondent has stationed armed hoodlums outside the premises of the society; and, prevented the Chairman and the Treasurer of the society from *accessing* their offices.
5. The petitioner contends that the 5<sup>th</sup> respondent has tacit support of the 3<sup>rd</sup> and 4<sup>th</sup> respondents or other agents who are hostile to the current management of the society.
6. Furthermore, there is a disputed *special general meeting* of the society held on 9<sup>th</sup> August 2018 which was *supervised* by the 2<sup>nd</sup>

respondent. The petitioner's case is that the meeting did not raise the *two thirds quorum* required by the bye-laws or the Co-operative Societies Rules.

7. Although the petitioner seeks declarations that the respondents have violated Articles 2, 10, 19, 27, 36, 40, 232 and 260 of the Constitution, the *principal* reliefs sought are in prayers (vii) to (x) of the petition to wit: a *permanent injunction* to restrain the 3<sup>rd</sup> to 12<sup>th</sup> respondents from entering the *offices* of the society at *Loc. 18/Gachocho/2123*; a *permanent injunction* to restrain those respondents from interfering in the *management or business* of the society; or, molesting or intimidating the employees of the society; and, lastly, an order to remove the *panga* wielding gangs from the society's premises.

8. It is not disputed that the 5<sup>th</sup> to 12<sup>th</sup> respondents are members of the society. It is also pleaded that the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents are acting at the behest or as agents of one of the belligerent faction of *members*.

9. 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* and *management* of the co-operative society. However the action is *camouflaged* as a *constitutional and human rights* petition. It is a dispute that, 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.

10. Jurisdiction is everything. See Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited [1989] KLR 1.

11. I thus *strike out* the petition *suo motu* but with *leave* to the petitioner to lodge the dispute in the **Co-operative Tribunal**.

12. 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 2<sup>nd</sup> day of October 2018.

**KANYI KIMONDO**

**JUDGE**

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

Mr. Chege holding brief for Dr. Kamau Kuria for the petitioner instructed by Kamau Kuria & Company Advocates.

No appearance by the 1<sup>st</sup> to 12<sup>th</sup> respondents.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.