



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. CIVIL APP. NO.3 OF 2016

PRIDGEON MASAKE BARASA.....EX-PARTE APPLICANT

VERSUS

MINISTRY OF AGRICULTURE , LIVESTOCK, FISHERIES &

CO-OPERATIVES BUNGOMA COUNTY & ANOTHER.....RESPONDENT

AND

KITINDA DAIRY FARMERS CO-OPERATIVE SOCIETY LTD

& 13 OTHERS.....INTERESTED PARTIES

RULING

1. The Applicant moved the Court under Order 53 rule 3 of the Civil Procedures Rules and sections 8 & 9 of the Law Reform Act seeking for orders that;

a. An order of certiorari do issue to remove into this Honourable Court and quash the proceedings, resolutions and decision of the meeting held on 30th June 2016 by the second respondent, County Cooperative Commissioner to elect the board members of Kitinda Dairy farmers Cooperative Society Ltd and

b. Costs of the suit.

2. The application was predicated on the grounds that the special general meeting did not have as part of its agenda Elections or removal of the board directors; the venue used was contrary to rules and procedures, the board of directors were condemned unheard, the adhoc take over was unprocedural, unlawful and improper, and the decision was flagrant, oppressive, unjustified and ultra vires.

3. The 1st and 2nd respondent raised a Preliminary objection which was supported by the interested parties as follows;

1. This Honourable Court lacks jurisdiction to hear and determine this matter.

2. There is no decision capable of being reviewed.

4. In order to deal with the issue raised; as to whether this Court has jurisdiction or not the Court must consider the provisions of Section 76 of the Cooperative Society Act which provides as follows;

“(1) If any dispute concerning the business of Cooperative 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 Cooperative 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 or 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 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 licence or any other due, from the authority.”

5. Against the above background of Section 76 of the Co-operative Society Act will elections of board members be construed to be business of a

Co-operative tribunal is defined?

In *Alex Malikhe Wafubwa & 7 others versus Elias Nambakhu Wamite & 4 others (2012) eKLR Gikonyo J* had this to say;

“ I therefore find that the dispute herein relating to, elections, illegal holding of Office, failure to convene a general meeting by the Management Committee, or special general meeting by the Co-operative Commissioner which are not a kin to the powers of the Cooperative Tribunal under Section 76, 77 and 80 of the Act. In particular, the tribunal does not have jurisdiction to issue Judicial review order which is one of the jurisdictions the petitioners are seeking order from”

I have also considered *Benard Mugo & Others Vs Kaagari South farmers Co-operative Society & 4 others (2015) eKLR* where the Court was of the view that it had jurisdiction in Judicial review matters.

6. The case before this Court as alluded to earlier seeks an order of certiorari to quash the proceedings, resolutions and decisions of a meeting. The Cooperative tribunal has no such mandate. This Court is the one charged with the original jurisdiction to make an order of certiorari as sought for.

Consequently the Preliminary objection must fail.

Costs to follow events.

DATED and DELIVERED at BUNGOMA this **4th day of May, 2017**

ALI-ARONI

JUDGE