



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC. CIVIL APPLICATION NO. 248 OF 2016

**IN THE MATTER OF AN APPLICATION TO APPLY FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION**

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CO-OPERATIVE SOCIETIES ACT, CAP 490 LAWS OF KENYA

AND

IN THE MATTER OF THE SACCO SOCIETIES ACT, NO. 18 OF 2008

BETWEEN

MARTIN NJUHIGU & 11 OTHERS.....APPLICANTS

VERSUS

THE SACCO SOCIETIES REGULATORY

AUTHORITY.....1ST RESPONDENT

THE COMMISSIONER

OF CO-OPERATIVE DEVELOPMENT.....2ND RESPONDENT

AND

UNITED NATIONS

SACCO SOCIETY LIMITED & 13 OTHERS.....INTERESTED PARTIES

RULING

Introduction

1. In these proceedings the applicants herein seek *inter alia* the following orders:

1. **Leave to institute the suit in a representative capacity on behalf of the members of the 1st interested party (hereinafter referred to as “the Sacco”)**
2. **Leave to apply for the following orders of mandamus directed against the Respondent compelling them to:**
 - a. **Appoint a person to manage the affairs of the Sacco and exercise all the powers of the Sacco to the exclusion of the directors;**
 - b. **Hold an inquiry or direct any person authorised by them to do so in respect of the bye-laws, working and financial affairs of the Sacco;**
 - c. **Require all officers of the Sacco to produce cash, accounts, books, documents and securities of the Sacco as required by the person holding the inquiry;**
 - d. **Dissolve the Board of the Sacco and cause to be appointed an interim Committee consisting of not more than five members from amongst the members of the Sacco.**
3. **Leave to apply for an order of certiorari to quash the Respondent and Sacco’s decision allowing Sacco Special General Meeting scheduled for 4th Jun, 2016.**
4. **That the leave granted operate as a stay to call the said Special General Meeting.**

2. The applicants’ case seems to stem from their belief that there is a misappropriation and misuse of the Sacco’s funds which according to them runs into hundreds of millions by the 2nd to 10th interested parties who are the officials of the Sacco.
3. According to the applicants, despite having presented their grievances to the Respondents, the Respondents have without any reasons.

Interested Parties’ Objection

4. Upon being served with the application, the interested parties filed a Notice of Preliminary Objections in which they contended that this Court has no jurisdiction to entertain a dispute concerning the business of a Co-operative Society as provided in section 76 of the ***Co-operative Societies Act***, Cap 490 Laws of Kenya (hereinafter referred to as “the Act”).
5. It is this preliminary objection that is the subject of this ruling.
6. According to **Mrs Wachira**, learned counsel for the interested parties, by looking at the parties, the grievances and the applicable law in this matter, the jurisdiction lies with the Co-operative Tribunal. Learned counsel contended that the applicants before the Court were in fact 11 as opposed to the 12 mentioned who are members of the Sacco. According to learned counsel there were only eleven signatures attached as one of the persons mentioned, **Scholastica Ogada** had not appended her signature. It was contended that from the description of the parties, the applicants were allegedly suing on behalf of all the members of the Sacco, though no such authority was donated by the Sacco’s membership pursuant to Order 1 rule 13(2) of the ***Civil Procedure Rules*** which applies where there are several plaintiffs or defendants. Such an authority, it was submitted ought to be in writing and ought to be filed.
7. It was submitted that the other parties to the suit are the Commissioner of Co-operative Development (hereinafter referred to as “the Commissioner”) and The Sacco Societies Regulatory Authority (hereinafter referred to as “SASRA”). The guiding law on the other hand is the ***Co-operative Societies Act***, Cap 490.
8. According to learned counsel section 67(3) of the Act provides that all disputes under the Act be referred to the Tribunal and this applies to matters covered by both Cap 490 and Cap 490B. It was contended that under Cap 490, the Commissioner is described as the Commissioner of Cooperative Development and any person conferred with such powers. It was therefore submitted that the parties herein are covered by Cap 490 since the 1st interested party is the Sacco while the 2nd to 12th are the Sacco Board members with the 12th interested party being the Chief Executive Officer of the Sacco. The rest, it was contended are committee members while the applicants are members of the Sacco with grievances against the Sacco.

9. It was submitted that from paragraphs 58-60 of the supporting affidavit, the applicants' grievances revolve around financial and administrative management of the Sacco and hence section 76(1)(b) of the Act applies hence the applicants ought to have gone to the Tribunal.
10. With respect to the prayers sought it was submitted that the applicant seek an order of mandamus to compel the Respondent to undertake certain steps which are provided for under the Act such as section 58 which deals with inquiries and inspection. It was contended that the applicants ought to satisfy the Court that they have properly moved the Commissioner and that the Commissioner has failed to take the necessary steps. In this case, the only evidence of Communication is the letter exhibited as MN-3 which in learned Counsel's view does not have the name of the author and was addressed to the CEO, SASRA and only copied to the Commissioner. The next letter, MN-4, was a letter by advocates.
11. It was further contended that to the extent that the applicants had not complied with the requirements of the Act by demonstrating that a third of the members had requisitioned for action on the part of the Commissioner, the matter remained a simple dispute between the members of the Sacco that ought to be resolved under the Act.
12. It was contended that the Commissioner pursuant to section 58(4) has various powers including the dissolution of the Committee and making an inquiry into the books of accounts hence the prayers sought herein are properly covered under the Act.
13. In support of these submissions, learned counsel relied on Alphonse Kondi Riaga vs. the Commissioner for Co-operative Development Nairobi HC Misc. Appl. No. 405 of 2014 at page 6, R vs. Kenya Vision 2030 Delivery Board & Anor. Exp Eng. Judah Abukah Nairobi HC JR Case No. 223 of 2014 at page 3, New Murang'a Farmers Co-op Society Ltd vs. District Co-op Officer & Others Murang'a HC Misc. Appl. No.1 of 2014, Wakenya Pamoja Sacco Society Ltd vs. Stephen Ogamba Kisii Civil Case No. 8 of 2008, Daniel Kaloki Kioo & Anor. vs. Willy Muasya Kioko Machakos HCCC No. 24 of 2000 and Ol'Kalou Farmers Sacco Savings & Credit Co-operative Society & Another vs. Pus Njoroge Nyeri HCCA No. 67 of 2004. It was submitted that the only remedy that can be sought before this Court is by way of an appeal hence this matter is prematurely before this Court.

Respondents' Case

14. On behalf of the Respondents, it was submitted by **Mr Saende**, while leaving the matter to the Court, that the dispute ought to have been resolved by the members and that the Respondents had offered to mediate thereon.

Ex Parte Applicants' Case

15. The objection was however opposed by **Mr Gatheru**, learned counsel for the ex parte applicants. According to learned counsel, there is an admission of a justifiable grievance. With respect to the title of the proceedings, it was contended that it is only after the leave is granted that the Motion is brought in the name of the Republic.
16. It was learned counsel's view that in arguing the issue of jurisdiction the interested parties were inviting the Court to deal with the merits of the application. However, the matters pointed out show that there is a serious dispute and that the people who ought to intervene therein have been asked to do so but have not given any reason why they have not done so.
17. It was submitted that whereas section 76 of the Act defines the limits of jurisdiction, the same does not divest the Court of the powers to deal with judicial review matters, which are the orders sought in these proceedings.
18. With respect to Order 1 rule 8, it was contended that the legal provisions were complied with hence the prayer for leave to be allowed to institute these proceedings as representative suit. According to him, since one person can be appointed to swear an affidavit on behalf of the others, there is no requirement that a particular number of persons be parties to the suit. Order 1 on the other hand requires the Court to give directions after leave to sue has been given.
19. It was submitted that since the copy of the letter exhibited was a counterpart, the signature could only appear in the origin which was dispatched. It was reiterated that since there exist an admitted grievance, this Court has the power to entertain these proceedings. This Court was therefore urged

to dismiss the objection.

Determinations

20. I have considered the issues raised herein. This being a decision on a preliminary objection, the Court ought to set out the principles guiding the raising of such objections. In NBI High Court (Civil Division) Civil Case No 102 of 2012 - **Cheraik Management Limited vs. National Social Security Services Fund Board of Trustees & Another** this Court expressed itself, *inter alia*, as follows:

“Ordinarily, a preliminary objection should be based on the presumption that the pleadings are correct. It may also be based on agreed facts. It, however, cannot be entertained where there is a dispute as to facts for example where it is alleged by the defendant and denied by the plaintiff that a condition precedent to the filing of the suit such as the giving of a statutory notice was not complied with, unless the fact of non-giving of the notice is admitted so that the only question remaining for determination is the legal consequence thereof. It may also not be entertained in cases where the Court has discretion whether or not to grant the orders sought for the simple reason that an exercise of judicial discretion depends largely on the facts of each particular case which facts must be established before a Court may exercise the discretion...In this case both parties have adopted the unusual mode of arguing the preliminary objection by filing affidavits in support and in opposition thereof respectively. Accordingly part of the Court’s task would be to determine what are the agreed facts contained therein whether expressly or by legal implication.”

21. In arriving at that decision, the Court relied on the celebrated case of **Mukisa Biscuits Manufacturing Ltd. vs. West End Distributors Ltd. Civil Appeal No. 9 Of 1969 [1969] EA 696**. In that case Law, JA was of the following view:

“A preliminary objection consists of a point of law which has been pleaded, or which arises from a clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

22. As for Newbold, P:

“A preliminary objection is in the nature of what used to be called a *demurrer*. It raises a pure point of law, which is argued on the assumption that all the facts pleaded are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and, on occasion, confuse the issues, and this improper practice should stop”.

23. Also cited was the decision in **Omondi vs. National Bank of Kenya Ltd & Others [2001] KLR 579; [2001] 1 EA 177** where it was held that:

“The objection as to the legal competence of the Plaintiffs to sue (in their capacity as directors and shareholders of the company under receivership) and the plea of *res judicata* are pure points of law which if determined in the favour of the Respondents would conclude the litigation and they were accordingly well taken as preliminary objections...In determining both points the Court is perfectly at liberty to look at the pleadings and other relevant matter in its records and it is not necessary to file affidavit evidence on those matters...What is forbidden is for counsel to take, and the Court to purport to determine, a point of preliminary objection on contested facts or in the exercise of judicial discretion and therefore the contention that the suit is an abuse of

the process of the Court for the reason that the defendant's costs in an earlier suit have not been paid is not a true point of preliminary objection because to stay or not to stay a suit for such reason is not done *ex debito justitiae* (as of right) but as a matter of judicial discretion.”

24. Dealing with the same issue, **Ojwang, J** (as he then was) in **Oraro vs. Mbaja [2005] 1 KLR 141** expressed himself as follows:

“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration. The first matter relates to increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of preliminary objection. A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law, which is argued on the assumption that all facts pleaded by the opposite side are correct. It cannot be raised if any fact is to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of preliminary objection does nothing but unnecessarily increase costs and, on occasion confuse issues and this improper practice should stop... The principle is abundantly clear. A “preliminary objection” correctly understood, is now well defined as, and declared to be, a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion, which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point... Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence. If the applicant's instant matter required the affidavit to give it validity before the Court, then it could not be allowed to stand as a preliminary objection clearly out of order and, apart from amounting to a breach of established procedure, it had the unfortunate effect of provoking filing of the respondent's very detailed “affidavit in reply to an affidavit in support of preliminary objection”, which replying affidavit was expressed to be “under protest”... The applicant's “notice of preliminary objection to representation” cannot pass muster as a procedurally designed preliminary objection. It is accompanied by affidavit evidence, which means its evidentiary foundations are not agreed and stand to be tested. Secondly, the essential claims in the said preliminary objections are matters of great controversy, as their factual foundations are the subject of dispute.”

25. It is therefore my view that issue of jurisdiction and improper intitlement of proceedings can perfectly form the basis of preliminary objections as long as the facts relied upon are not in dispute. With respect to the issue whether these proceedings ought to have been commenced in the name of the Republic, this issue was dealt with by **Maraga, J** (as he then was) in **Republic vs. Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others Mombasa HCMCA No. 617 of 2003 [2006] 1 KLR (E&L) 563**, in which the learned Judge held that an application for leave ought to be intitled as hereunder:

In the Matter of An Application by (the applicants for leave to apply for orders of certiorari and prohibition

And

In the Matter of Kenya Ports Authority Act

And

In the Matter of the National Environmental Management and Co-ordination Act 1999.

26. This was in tandem with the decision in **Farmers Bus Service and Others vs. Transport Licensing Appeal Tribunal [1959] EA 779** where the East African Court of Appeal held that the ex parte application for leave ought to have been intitled:

“In the matter of an application by (applicants) for leave to apply for an order of Certiorari

and

In the matter of Appeals Nos. 11 to 16 inclusive, 30, 32-35 inclusive, 37, 39, 41-43 inclusive, all of 1958, of the Transport Licensing Appeal Tribunal.”

27. In judicial review applications, once leave is granted the applicant in the substantive Motion then becomes the Republic rather than the person aggrieved by the decision sought to be impugned. See **Farmers Bus Service & Others vs. Transport Licensing Appeal Tribunal [1959] EA 779.**

28. The rationale for this was given in **Mohamed Ahmed vs. R [1957] EA 523** where it was held:

“This recital reveals a series of muddles and errors which is not unique in Uganda and is attributable to laxity in practitioners’ offices and in some registries of the High Court. The appellant’s advocate appears to have failed entirely to realise that prerogative orders, like the old prerogative writs, are issued in the name of the crown at the instance of the applicant and are directed to the person or persons who are to comply therewith. Applications for such orders must be intitled and served accordingly. The Crown cannot be both applicant and respondent in the same matter”.

29. In **Jotham Mulati Welamondi vs. The Electoral Commission of Kenya Bungoma H.C. Misc. Appl. No. 81 of 2002 [2002] 1 KLR 486** Ringera, J (as he then was) expressed himself as follows:

“Prerogative orders are issued in the name of the crown and applications for such orders must be correctly intitled and accordingly, the orders of *Certiorari*, *Mandamus* or *Prohibition* are issued in the name of the Republic and applications therefore are made in the name of the Republic at the instance of the person affected by the action or omission in issue and the proper format of the substantive motion for *Mandamus* is: -

“REPUBLIC.....APPLICANT

V

THE ELECTORAL COMMISSION OF KENYA.....RESPONDENT.

EX PARTE

JOTHAM MULATI WELAMONDI”

30. It must be remembered that judicial review proceedings are commenced by the Notice of Motion and not the Chamber Summons. The Chamber Summons is simply an application for leave or permission to commence judicial review proceedings and whereas on the filing of the Notice of Motion the Chamber Summons is subsumed or submerged in the Motion, it is the Motion that originates the judicial review application proper. I can do no better than quote the Court of Appeal in **R vs. Communications Commission of Kenya & 2 Others Ex Parte East Africa Televisions Network Ltd. Civil Appeal No. 175 of 2000 [2001] KLR 82; [2001] 1 EA 199** where it

expressed itself *inter alia* as follows:

“The proceedings under Order 53 can only start after leave has been obtained and the proceedings are then originated by the notice of motion filed pursuant to the leave granted. It would be somewhat ridiculous to bring the application for leave by way of an originating summons and once the leave is granted, the originating summons is then swallowed up or submerged in the notice of motion.”

31. Similarly, in Mike J. C. Mills & Another vs. The Posts & Telecommunications Nairobi HCMA No. 1013 of 1996, it was held *inter alia* that the application for leave does not commence judicial review until such permission is granted to institute appropriate Judicial Review application.

32. In this case the application is still at leave stage. It follows that the stage at which the Republic becomes the applicant has not been reached. It is therefore my view that these proceedings were properly intitled.

33. That leads me to the issue of jurisdiction. That an issue going to jurisdiction ought to be raised as a preliminary issue is now old hat. Since the issue of jurisdiction is central to these proceedings and any legal proceedings, as was stated by Nyarangi JA in The Owners of Motor Vessel “Lillian S” vs. Caltex Oil Kenya Limited (1989) KLR 1:

“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 downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”.

34. Similarly in Owners and Masters of The Motor Vessel “Joey” vs. Owners and Masters of The Motor Tugs “Barbara” and “Steve B” [2008] 1 EA 367 the same Court expressed itself as follows:

“The question of jurisdiction is a threshold issue and must be determined by a judge at the threshold stage, using such evidence as may be placed before him by the parties. It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything and 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 downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. It is for that reason that a question of jurisdiction once raised by a party or by a court on its own motion must be decided forthwith on the evidence before the court. It is immaterial whether the evidence is scanty or limited. Scanty or limited facts constitute the evidence before the court. A party who fails to question the jurisdiction of a court may not be heard to raise the issue after the matter is heard and determined. There is no reason why a question of jurisdiction could not be raised during the proceedings. As soon as that is done, the court should hear and dispose of that issue without further ado.”

35. Lastly, on the same issue, the Supreme Court in the case of Samuel Kamau Macharia vs. Kenya Commercial Bank & 2 Others, Civil Appl. No. 2 of 2011, observed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings...”

Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

36. It therefore behoves this Court to consider and determine whether or not it has jurisdiction to entertain the instant proceedings.

37. Section 76 of *Co-operative Societies Act* provides:

(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 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 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.

38. In this case, it is clear that with respect to the mismanagement and misuse or misappropriation of funds, the dispute is between the members or some of them on one hand and the Co-operative Society and its officials on the other and therefore falls squarely within the purview of section 76(1)(b) of the Act. If that is the dispute before the Court, this Court would have no jurisdiction to entertain these proceedings. This was the position in *In Adero & Another vs. Ulinzi Sacco Society Ltd [2002] 1 KLR 577*, where **Ringera, J** (as he then was) held that:

“As the subject matter of the suit was a dispute between a registered Co-operative Society and its members, the dispute should not have been filed in the High Court by dint of the provisions of Section 76 of the Cooperative Societies Act, 1997. The forum with jurisdiction was the Co-operative Tribunal. The High Court has no jurisdiction to entertain a dispute between a society and its members concerning the business of the society.”

39. However, in this case, the crux of the dispute according to the applicants is the failure or refusal by the Commissioner to carry out its statutory obligation under section 58 of the Act. The said provision in its material part provides as follows:

1) The Commissioner may, of his own accord, and shall on the direction of the Minister, as the case may be, or on the application of not less than one-third of the members present and voting at a meeting of the society which has been duly advertised, hold an inquiry or direct any person authorized by him in writing to hold an inquiry, into the by-laws, working and financial conditions of any co-operative society.

(2) All officers and members of the co-operative society shall produce such cash, accounts, books, documents and securities of the society, and furnish such information in regard to the affairs of the society, as the person holding the inquiry may require.

(3) The Commissioner shall report the findings of his inquiry at a general meeting of the society and shall give directions for the implementation of the recommendations of the inquiry report.

(4) Where the Commissioner is satisfied, after due inquiry, that the Committee of a co-operative society is not performing its duties properly, he may—

(a) dissolve the Committee; and

(b) cause to be appointed an interim Committee consisting of not more than five members from among the members of the society for a period not exceeding ninety days.

40. In my view, the orders which the applicants seek from this Court can only be granted by this Court since there is no provision giving such power to the Tribunal. In Judicial Review Application No. 106 of 2014 – **Republic vs. Public Procurement Administrative Review Board & Others Exp Olive Telecommunication PVT Limited** the Court expressed itself as follows:

“In our view where a statute donates powers to an authority, the authority ought to ensure that the powers that it exercises are within the four corners of the statute and ought not to extend its powers outside the statute under which it purports to exercise its authority. In Republic vs. Kenya Revenue Authority Ex Parte Aberdare Freight Services Ltd & 2 Others [2004] 2 KLR 530 it was held that the general principle remains however, that a public authority may not vary the scope of its statutory powers and duties as a result of its own errors or the conduct of others and based on East African Railways Corp. vs. Anthony Sefu Dar-Es-Salaam HCCA No. 19 of 1971 [1973] EA 327, the courts are empowered to look into the question whether the tribunal in question has not stepped outside the field of operation entrusted to it...Therefore where the law exhaustively provides for the jurisdiction of a body or authority, the body or authority must operate within those limits and ought not to expand its jurisdiction through administrative craft or innovation.”

41. It is therefore clear that a Tribunal’s power must be conferred by the Statute establishing it which statute must necessarily set out its powers expressly since such Tribunals have no inherent powers. Unless its powers are expressly donated by the parent statute, it cannot purport to exercise any powers not conferred on it expressly.

42. As to whether the requirements under section 58 of the Act have been satisfied in order to warrant the grant of the orders sought herein, that is a matter which goes to the merits and cannot be determined at this stage.

43. An issue was also raised with respect to the prayer seeking leave to institute the suit in a representative capacity on behalf of the members of the Sacco. It is now well settled that judicial review applications are neither criminal nor civil in nature. In **Commissioner of Lands vs. Kunste Hotels Ltd (1995-1998) 1 EA 1** and **Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354** it was held that judicial review jurisdiction is a special jurisdiction which is neither civil nor criminal and the ***Civil Procedure Act*** does not apply since it is governed by sections 8 and 9 of the ***Law Reform Act*** being the substantive law and Order 53 of the ***Civil Procedure Rules*** being the procedural law. Apart from the ***Law Reform Act***, such proceedings are now also governed by the ***Fair Administrative Action Act***, No. 4 of 2015. Accordingly, Order 1 rule 13(2) of the ***Civil Procedure Rules*** which applies where there are several plaintiffs or defendants is inapplicable to judicial review proceedings and the Court cannot grant leave thereunder.

Findings

44.I therefore find that whereas the objection raised that this Court has no jurisdiction to entertain these proceedings fails, the prayer for leave to institute the suit in a representative capacity on behalf of the members of the Sacco cannot be granted in these proceedings.

Order

45.Consequently I hereby strike out the prayer seeking leave to institute the suit in a representative capacity on behalf of the members of the Sacco. Save for that the preliminary objection dated 3rd June, 2016 fails and is dismissed but with no order as to costs.

Dated at Nairobi this 8th day of July, 2016

G V ODUNGA

JUDGE

Delivered in the presence of:

Mrs Wachira for the interested parties

Cc Mwangi