



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CIVIL SUIT NO. 29 OF 2015

1. SAMSON CHILO OMONDI – CHAIRMAN
2. CHRISPINE OTIENO PUDO – VICE CHAIRMAN
3. MARGRET AWUOR ODHIAMBO – SECRETARY
4. FRANCIS OCHIENG – TRANSFER

(Suing as the Chairman, Vice Chairman, Secretary and Treasurer of MEK SACCO LIMITED and Suing on behalf of the members of MEK SACCO and on their own behalf as members of MEK SACCO)1ST PLAINTIFF/APPLICANT

MEK SACCO LTD. 2ND PLAINTIFF/APPLICANT

VERSUS

1. EDWIN KISIA
2. PETER OLUOCH
3. JOSEPHAT KOLA
4. METABEL APIYO
5. BENTER
6. COUNTY CO-OPERATIVE OFFICER – KISUMU

7. ATTORNEY GENERALDEFENDANTS/RESPONDENTS

RULING

By the Notice of Motion dated 14th July 2015 filed herein under Certificate of Urgency the Plaintiffs/Applicants seek a temporary injunction to restrain the Defendants/Respondents jointly and severally, whether by themselves, agents, workers, servants or anyone acting on their behalf, from interfering in any way with the running/operations/businesses of MEK SACCO LIMITED and further from removing them from office as officers of the said MEK SACCO LIMITED. They also pray that the 1st Applicant be allowed to continue as the signatory of the Sacco's accounts at Family Bank Kisumu Branch and Co-operative Bank – Kisumu and indeed any other accounts. Further that the Respondents be restrained from operating those accounts.

The gist of this application as can be discerned from the grounds on its face, the supporting affidavit and annexures thereto and the submissions of Mr. Nyawiri, Learned Advocate for the Applicants, are that the Respondents are illegally in office having been elected at a meeting that was unlawfully and unprocedurally convened and which had no authority to elect officials; that the Applicants stand to suffer irreparable loss and damage unless the orders sought are granted, and that they have a good case with high chances of success. Further that the balance of convenience tilts in their favour and they are willing to give an undertaking as to damages.

The application is vehemently opposed. In the replying affidavit sworn by the 4th Respondent on 22nd July 2015 she deposes that the meeting in which she and her co-respondents were elected was lawfully and procedurally convened and that they were lawfully elected and have the mandate of the members to manage the business of the society. She disputes that the applicants stand to suffer irreparable loss and damage stating that they still remain members of the Sacco and their interests are catered for pursuant to the law and urges the Court to find that the application lacks merit and dismiss it.

The application was canvassed by way of written submissions.

The Co-operative Societies Rules requires co-operative societies to make By-Laws in respect of among others :

(L) its general meetings, the procedure and quorum of such meetings, power of such meetings and representation and voting at such meetings;

(M) The appointment, suspension and removal of members of the committee and officers and duties of the committee and officers;

(P) The settlement of disputes.

Section 13 of the Co-operative Societies Act provides that the by-laws once registered bind both the society and its members and Section 32 makes it possible for provision for fines for violation of the by-laws. A copy of the MEK SACCO LIMITED By- Laws were on 11th September 2015 filed as part of the Plaintiffs/Applicants list of authorities. By-Law 74 provides for elections and states that the society's General Elections shall be conducted at the Annual General Meeting of members. It then sets out the procedure to be followed at such elections. By-law 82 provides that:

"Any dispute arising out of these By-laws concerning the business of the society shall be referred to the Co-operative Tribunal established under the Act."

In my view elections arise from the By-Laws and concern the business of the society and whereas the applicants may have a legitimate complaint regarding the election of the Respondents, I agree with the submission by Mr. Rodi Orege, Learned Advocate for the Respondents that this is not the proper forum to ventilate this grievance. This was also the finding of Chemitei J. in **Moses Waymba Okoth & 2 Others V. Senior Scheme Manager Western Kenya Scheme Sub-County & 2 Others [2014] eKLR** which though not binding I agree with entirely. Accordingly this application and indeed the entire suit is dismissed for want of jurisdiction. Costs be to the Respondents.

Signed, dated and delivered at Kisumu this ...8th..... day ofOctober..... 2015

E. N. MAINA

JUDGE

In presence of:-

Mr. Nyawiri for Plaintiffs/Applicants

N/A for Defendants/Respondents

CC: Moses Okumu