

The court would concern itself with issues such as to whether the decision maker had the necessary jurisdiction to make the decision or whether the persons affected by the decision were heard before it was made.

The court may also consider whether the disputed decision was illegal and/or **“Ultra-vires”**, unreasonable, irrational or made in error of the law or whether any rule of natural justice was violated at the time of making the decision.

The issues arising herein for determination are **firstly**, whether the respondent i.e. the District Co-operative Officer Trans Nzoia West District acted without and/or in excess of jurisdiction under the Co-operative Societies Act (Cap 490 LOK) by calling for a special general meeting and placed elections as an agenda when the election of the officials of the fourth ex-parte applicant was not due and **secondly**, whether the respondent acted in contravention of the Co-operative Societies Act.

With regard to the first issue, it is the applicant's contention that the first, second and third applicants were elected on 31st August, 2011 as chairman, secretary and treasurer of the fourth applicant Co-operative Society respectively to serve for a period of three (3) years meaning that their term is to and on 31st August, 2014. That, the business of the Co-operative Society has been running well despite a clique of six-people forming a splinter group and that on several occasions special and general meetings were held to discuss the smooth running of the society. That, in one such meeting it was resolved that the six committing members creating obstacles in the running of the society be replaced with six other members and this was done.

The applicants further contend that the replaced six members became bitter and wrote to the respondent giving him false and misleading information and instead of adhering to section 58 of the Co-operative Societies Act, the respondent acted beyond his powers by causing an election to be carried out after calling a meeting whereby the agenda included elections.

The respondent on the other hand contended that he was answerable to the Commission for Co-operative development and that his actions were those of the said commissioner who is responsible for the growth and development of Co-operative Societies by providing such services as may be required by Co-operative Societies for their organization, registration, operation, advancement and dissolution and for administration of the provisions of the Act by dint of section 3 (3) of the Co-operative Societies Act.

The respondent went on to contend that although the first, second and third applicants were elected on 31st August, 2011 for a period of three (3) years but retiring each year, the term of three years is not absolute because if certain legal conditions are not satisfied a management committee can be removed from office any time even before the expiry of three years to allow fresh elections to be conducted. That, the first, second and third applicants were elected on 11th August, 2011 with six other management committee members making a team of nine members in accordance with the Co-operative Societies Act which requires a minimum number of five members and a maximum number of nine members as per section 28 (1) of the Act but herein, the nine members engaged in wrangles leading to the resignation of six members thereby leaving the first, second and third applicants as the only members managing the affairs of the society contrary to section 28 (1) of the Act. It was therefore against that background that the respondent convened a meeting for elections as he could not wait for the society to be mismanaged until the 11th August, 2014.

As for the interested parties, they contended that the respondent called for and convened the special general meeting as the management committee was not well constituted since the first, second and third applicants were the only ones running the affairs of the society after six members had withdrawn after issuing a vote of no confidence in the first, second and third applicants who were therefore illegally in office or were carrying out the management of the society contrary to the Co-operative Societies Act in relation to the composition of the management committee. Consequently, the action by the respondent to call for elections which are not really meant to be conducted annually instead of after three years was justified and lawful in terms of section 93A of the Act.

The interested parties further contended that throughout the period that they have been in office, the first, second and third applicants had never convened an annual general meeting or special meeting to carry out elections or for approval of the budget thereby running the society in blatant disregard of the by-laws.

In the opinion of this court, the respondent was by a dint of section 93A of the Co-operative Societies Act (herein, the Act) empowered to call for elections of officials of the fourth ex-parte applicant Co-operative Society.

The facts presented herein by way of the supporting and replying affidavits clearly indicated that all was not well in the management and running of the affairs of the fourth ex-parte applicant due to disagreements and wrangles amongst the nine members of the management committee such that six of the said members had to be resigned.

Although the first, second and third ex-parte applicants indicated that the six were replaced, there was no tangible evidence to establish the fact or to establish the fact that they were properly and lawfully replaced. The resignation of the six members reduced the number of the management committee to only three (i.e. the first, second and third applicant) contrary to section 28 (1) of the Act which requires every co-operative society to mandatorily have a committee consisting of not less than five and not more than nine members.

The continued running and management of the fourth applicant society by the first, second and third applicant much to the chagrin of a majority of members of the society and in total disregard of the applicable law rendered the calling of a fresh election inevitable notwithstanding that the stipulated three year period was to end on 31st August, 2014 if all was well.

The society could not be allowed to continue with its affairs under the stewardship of only three officials whereas the law provided for a minimum of five members.

Clearly, the first, second and third applicant were in office unlawfully following the resignation or withdrawal of six members from the management committee.

That unpleasant and unlawful state of affairs dictated that the institution and/or office responsible for regulating the affairs of a co-operative society had to come in to restore "sanity" in the running of the fourth applicant.

Such institution and/or office was the office of the Commissioner for Co-operatives which is responsible for the growth and development of Co-operative societies by providing such services as may be required by Co-operative societies for their organization, registration, operation, advancement and dissolution and for administration of the provisions of the Act.

Under delegated authority, the actions of the respondents in this matter were the actions of the Commissioner for Co-operatives.

The ex-parte applicant's have argued that the respondent acted beyond his powers when he called for a special general meeting instead of adhering to the provisions of section 58 of the Act which provides for an inquiry by the Commissioner at the Commissioner's own motion or on the direction of the Minister 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.

The provision thus empowers the Commissioner to hold an inquiry into the by-laws, working and financial conditions of any co-operative society at his own discretion and/or if he is moved by members of the society in the manner indicated hereinabove.

In this case following complaints from members of the society that the ex-parte applicants were not conducting the affairs of the society in a proper and lawful manner, the respondent exercised his discretion and invoked section 27 and 93A of the Co-operatives Societies Act by calling a special general

meeting in which fresh elections were called despite the fact that the term of the previous officials had not expired.

Given the circumstances, the respondent deemed it fit and necessary to call for fresh elections of the management committee rather than conduct an inquiry which would take a considerable period of time at the expense of the fourth ex-parte applicant society.

The action was in line with section 3 (3) of the Act, section 27 of the Act if not section 93A of the Act.

Section 27 (1) provides that the supreme authority of a Co-operative Society shall be vested in the general meeting at which all members shall have the right to attend, participate and vote on all matters while section 27 (8) and (10) provides that the Commissioner may convene a special general meeting of a society at which he may direct the matters to be discussed at the meeting.

It would therefore follow from all the foregoing observations and with regard to the first issue for determination that the respondent did not act “**Ultra-Vires**” or in excess of jurisdiction when he called for a special general meeting and placed elections an agenda.

Indeed, the respondent did not act in contravention of the Co-operative Societies Act. Therefore, the second issue for determination is accordingly resolved.

On the periphery, it may be mentioned that in terms of section 28 (3) (b) of the Co-operatives Societies Act, the management committee is the one with capacity to institute and defend suits of a co-operative society. The first, second and third ex-parte applicants were voted out as officials of the fourth ex-parte interested party, they had no “**locus-standi**” to bring this matter and even if they were still in office, they did not comprise the full management committee to bring this suit. They could also not purport to join the society as a party to the suit which for all intents and purposes was an abuse of the court process.

The fact that the first, second and third ex-parte applicants did not even attempt to stop by necessary court orders the special general meeting called by the respondent was a clear indication that the majority of the members of the society were not in that support and that is why they fully participated in the special general meeting and elected new officials to run and manage the affairs of the society in accordance with the applicable law.

In the upshot, this application is devoid of merit.

The ex-parte applicants are not entitled to an order of certiorari as prayed in the Notice of Motion dated 10th February, 2014.

The application is dismissed with costs to the respondent and the interested parties.

Ordered accordingly.

[Read and signed this 3rd day of July, 2014.]

J.R. KARANJA.

JUDGE.