



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC APPEAL NO. 37 OF 2014**

**UFUNDI SAVINGS & CREDIT CO-OPERATIVE SOCIETY LIMITED...APPELLANT**

**=VERSUS=**

**FRANCIS GITARI NDIRANGU & 99 OTHERS.....1<sup>ST</sup> RESPONDENT**

**TITUS E. OBARA & 199 OTHERS.....2<sup>ND</sup> RESPONDENT**

**ALEX G. MARETE & 19 OTHERS.....1<sup>ST</sup> INTERESTED PARTY**

**CO-OPERATIVE BANK OF KENYA LIMITED.....2<sup>ND</sup> INTERESTED PARTY**

**EUNITA KERUBO RATEMO & 100 OTHERS.....3<sup>RD</sup> INTERESTED PARTY**

**FRANCIS GITARI NDIRANGU & OTHERS.....CLAIMANTS**

**=VERSUS=**

**UFUNDI SACCO LIMITED.....1<sup>ST</sup> RESPONDENT**

**TITUS E. OBARA & 199 OTHERS.....2<sup>ND</sup> RESPONDENT**

**ALEX G. MARETE & 19 OTHERS.....1<sup>ST</sup> INTERESTED PARTY**

**CO-OPERATIVE BANK OF KENYA.....2<sup>ND</sup> INTERESTED PARTY**

**EUNITA KERUBO RATEMO & 100 OTHERS.....3<sup>RD</sup> INTERESTED PARTY**

**RULING**

1. This is the notice motion dated 27<sup>th</sup> September 2018 brought under Section 59 of the Civil Procedure Act, Order 42 Rules 22, 13 and 30 of the Civil Procedure Rules.

2. By consent of all the parties on 24<sup>th</sup> June 2019, the application was compromised in the following terms: -

*“By consent of all parties;*

*(1) The notice of motion dated 27<sup>th</sup> September 2018 be allowed except prayer (c) which is withdrawn.*

*(2) Prayer (b), (d), (e) and (f) in the said notice of motion be granted subject to (e) be after the hearing an determination of the notice of motion dated 24<sup>th</sup> May 2019.*

*(3) The appellant is hereby allowed to file an amended memorandum of appeal within fourteen (14) days from the date hereof.*

*(4) After the appellant has served the amended memorandum of appeal, parties do take directions on the appeal”.*

3. This ruling is therefore in respect of prayer (e) which seeks orders; *“that this file be placed before the honourable Chief Justice to nominate a bench of three (3) judges to hear and determine the appeal”*.

4. By the consent of 24<sup>th</sup> June 2019, it appears all the parties are desirous that the appeal be heard by a bench to be nominated by the chief justice.

5. **Section 21** of the Environment and Land Act, provides that:-

*“1. The court shall be properly constituted for the purposes of its proceedings under this Act, by a single Judge.*

*2. Notwithstanding subsection (1) any matter certified by the court as raising a substantial question of law.*

*(a) Under Article 165(3) (b) or (c) of the constitution; or*

*(b) Concerning impact of environment and land:*

*Shall be heard by uneven number of Judges, as determined by the Chief Justice”*.

**Section 81** of the Cooperative Societies Act, No 12 of 1997 provides that;

*“(1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court:*

.....

*(2) Upon the hearing of an appeal under this section, the High Court may:-*

*(a) confirm, set aside or vary the order in question;*

*(b) remit the proceedings to the Tribunal with such instructions for further consideration, report, proceedings or evidence as the court may deem fit to give; (c) exercise any of the powers which could have been exercised by the Tribunal in the proceedings in connection with which the appeal is brought; or*

*(c) make such other order as it may deem just, including an order as to costs of the appeal or of earlier proceedings in the matter before the Tribunal.*

*(3) The decision of the High Court on any appeal shall be final”*.

6. It is clear that neither the Environment and Land Court Act nor the Cooperative Societies Act mandates the requirement of such appeals to be heard and determined by a bench. However, I note that there emerged weighty issues during the hearing at the Tribunal. The said issues also raise substantial question of law.

7. Since the filing of this appeal more parties have sought and have been enjoined as either the respondents or interested parties. These parties have competing interests.

8. I find that it in the interest of justice that the appeal be disposed of a bench of uneven number of Judges.

9. I would also wish to add that I know some of the members of the 3<sup>rd</sup> interested party. It is for this reason that I wish to be excused from the intended bench should the Honourable Chief Justice find it fit to constitute a bench.

10. Accordingly, the matter is hereby forwarded to the Honourable Chief Justice for the appointment of uneven number of judges to hear the appeal and give further directions and/or a determination. I therefore direct that the matter be placed before the Honourable Chief Justice on a date convenient to give directions.

It is so ordered.

Dated, signed and delivered in Nairobi on this 15<sup>th</sup> day of October 2020.

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Muriuki advocate for the Appellant

Ms Waikikitu for Mr. Mahinda for the 1<sup>st</sup> Respondent.

Mr. Kirimi for Mr. Amollo for the 2<sup>nd</sup> Respondent

Mrs. Wanyama for Mr. Walubengo for the 2<sup>nd</sup> Interested Party

Mr. Ratemo Oira for the 4<sup>th</sup> Interested Party.

Kajuju – Court Assistant