



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 6 of 2011**

**MASINDE MULIRO UNIVERSITY OF SCIENCE AND TECHNOLOGY .....APPLICANT**

**V E R S U S**

**THE COMMISSIONER OF CO-OPERATIVE DEVELOPMENT .....RESPONDENT**

**WECO SACCO SOCIETY LTD ..... INTERESTED PARTY**

**R U L I N G**

In its notice of motion dated 9.3.2011 the ex-parte applicant is seeking orders of certiorari and prohibition against the respondent. The dispute emanates from the decision by the respondent to issue agency notices to the applicant's banks requesting them to withhold **KShs.83,675,974.65** in respect of unremitted deductions from members of the interested party society. Parties filed written submissions. From the pleadings herein it is clear that the respondent issued agency notices to several banks where the applicant operates bank accounts. The dispute between the parties has been dealt with in Kakamega Judicial Review no. 49 of 2010 and Kakamega Judicial Review No. 50 of 2010. In both cases the respondent issued agency notices and the applicant sought judicial review orders which were granted.

The current application appears to be replica of that in Kakamega Misc. Civil Application No. 49 of 2010 (JR) the amount is the same only that in that application the concerned bank was Kenya Commercial Bank Limited. I have gone through the judgment of Justice Thurania Jaden in that application and I am satisfied that the dispute is the same only that the notice was sent to Kenya Commercial Bank. When the applicant sought leave of the court to file the current application the bank accounts that were to be affected were listed and the court allowed the application for leave vide Justice Lenaola's order issued on the 18.2.2011. I have gone through the written submissions by the applicant, the respondent and the interested party and I am satisfied that the dispute is similar to the one in Misc. Civil Application No. 49 of 2010. I have gone through the notice of motion and the relevant affidavits in response and I am satisfied that the applicant was not accorded a hearing contrary to the rules of natural justice. The fact that the respondent was empowered to issue agency notices does not entitle him to do so without giving the affected parties a hearing. I dealt with the dispute herein in Judicial Review No. 50 of 2010. The dispute is the same whereby the respondent has developed a tendency of issuing agency notices even after parties deliberated and agreed on the issues.

I do find that the agency notices issued to the Family Bank, Co-operative Bank of Kenya Limited, Standard Chartered Bank of Kenya Limited and the National Bank of Kenya Limited dated 31.1.2011 was issued in excess of jurisdiction. I will agree with the finding of Justice Thurania Jaden in Misc. Civil Application No. 49 of 2010 (JR) and do grant the application dated 9.3.2011 as prayed. In order to avoid wasting court's time parties herein are advised to deliberate on the dispute and come up with a solution. The interested party if it is convinced that there is any money due from the applicant is free to file recovery proceedings in court instead of using the respondent to issue agency notices. In Judicial Review No. 50 of 2010 the dispute had been resolved and only **KShs.4,822/=** was due and it was paid yet the agency notice was for **KShs.1,571,538.55**. In Misc. Application No. 49 of 2010 (JR) the debt was computed as **KShs.122,327/=** together with interest and the agency notice was for **KShs.83,675,974.95** which amount is the same as in the current application. How the respondent comes about to those colossal figures is his own secret. The interested party seems to be harbouring feelings that one day it will benefit from the respondent's unilateral action of issuing agency notices. That hope by the interested party will only remain to be what it is, I hope. One has to prove that indeed the applicant inherited all the above sums being claimed through the agency notices from the previous members of the interested party.

In the end, the application is merited and the same is granted as prayed. Each party to meet its own costs.

*Delivered, dated and signed at Kakamega this 9<sup>th</sup> day of May 2013*

**SAID J. CHITEMBWE**  
**J U D G E**