



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
MILIMSNI LAW COURTS**

CIVIL SUIT NO. 1267 OF 1999

DISHON GOGO & 6 OTHERSPLAINTIFF

VERSUS

BRIGADIER JOHN SEREM & 10 OTHERSDEFENDANTS

RULING

Before this Court is Amended Chamber Summons brought under Order XXI Rule 22. Order XXXIX Rules 1 & 2. Order VII Rule 4 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act. The orders sought are as follows:

"b.THAT a temporal injunction do issue restraining the defendants jointly and severally from convening the Harambee Co-operative Savings & Credit Society Limited Sacco Annual General Meeting on the 7th of August, 1999 at KCCT Mbagathi or any other place thereof and or transacting any business thereof until final determination of this suit.

c.THAT costs of this application be provided for".

It was contended that the notice purporting to convene the meeting was irregular unprocedural and defective and that the audited accounts are yet to be availed to the branches. However, it was conceded that audited accounts had now been made available. Mr. Mose for the applicants referred to what he thought were defects or omissions which had to be rectified before the meeting could be held.

Mr. Kahuthu for the respondents was of the view that Harambee Sacco had not been sued and that whatever the defendant did they did so on behalf of Harambee Sacco.

I have now carefully considered the dispute herein and at this stage, I find that what has been complained of are minor issues which may indeed be discussed during the meeting.

In Giella V. Cassman Brown & Co., Ltd., 91973) E.A. 358 it was held that an applicant must show a prima facie case with a probability of success and that the applicant might suffer irreparable injury incapable of being compensated by an award of damages. And finally it was held that if the court was in doubt then the matter should be decided on balance of convenience. In this matter this meeting is scheduled for tomorrow. The applicants are members of this society. They fear that if the meeting is held then same information on accounts might be suppressed. But we have gone over that hurdle of accounts since audited accounts have been availed. It has not been shown that the applicants are likely to suffer irreparable injury if the meeting proceeded as arranged.

Section 76 of the Co-operatives Act 1997 is on settlement of disputes and in my view what is complained of in this matter should be settled pursuant to Section 76 of this Cooperative Societies Act.

Court of Appeal decision in Civil Appeal No. 114 of 1997: Ernest M. Njoroge & 28 others v. Kabiru Karanja & 4 others read together with Section 76 of Co-operative Societies Act 1997 would show that this court has no jurisdiction to entertain disputes of this nature.

The upshot of the foregoing is that the applicants have failed to show that they are entitled to the orders sought. The meeting scheduled for tomorrow will go on as arranged. This application is found to be unmeritorious and the same is dismissed with costs to the respondents. Order accordingly.

Delivered at Nairobi this 6th day of August, 1999.

E. O. O'KUBASU

JUDGE

6.8.99

Coram: E. O. O'Kubasu, J

Mr. Mose and Mr. Mose for Applicants.

Mr. Mwaura for Mr. Oyugi for 4th, 5th and 10th defendant.

Mr. Kahuthu for the rest of the defendants.

C/clerk - Njihia

Order: Ruling delivered.

E. O. O'KUBASU

JUDGE