



**Gichuki v Kangemi Matatu Owners Savings & Credit Society Limited & another (Civil Appeal E909 of 2022) [2025] KEHC 13389 (KLR) (Civ) (30 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 13389 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL APPEAL E909 OF 2022**

**AC MRIMA, J  
SEPTEMBER 30, 2025**

**BETWEEN**

**JOSEPH MUTUNG’U GICHUKI ..... APPELLANT**

**AND**

**KANGEMI MATATU OWNERS SAVINGS & CREDIT SOCIETY  
LIMITED ..... 1<sup>ST</sup> RESPONDENT  
COMMISSIONER FOR COOPERATIVE DEVELOPMENT ... 2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the judgment and decree of Hon. B.M. Kimemia (Chairperson)  
in Cooperative Tribunal Appeal No. 3 of 2016 delivered on 19th October 2022)*

**JUDGMENT**

**Background:**

1. The dispute, subject of this judgment, emanates from the decision of The Cooperative Tribunal (hereinafter referred to as ‘the Tribunal’) dated 19<sup>th</sup> October 2022, wherein Joseph Mutung’u Gichuki, the Appellant herein, pursuant to an inquiry in respect of the affairs of the Kangemi Matatu Owners Sacco Society Limited, the 1<sup>st</sup> Respondent herein, was implicated and surcharged for the misappropriation of Kshs. 3,985,025/-.
2. In response to the surcharge notice, the Appellant, claimed that his Advocates wrote to the Commissioner for Cooperative Development, the 2<sup>nd</sup> Respondent herein, challenging the results of the inquiry. However, the said response did not elicit any action from the 2<sup>nd</sup> Respondent, hence the instant appeal.



## The Appeal:

3. Through a Memorandum of Appeal dated 4<sup>th</sup> November 2022, the Appellant sought to set aside the findings and recommendations of the inquiry, the resolutions made by the 1<sup>st</sup> Respondent and the Tribunal's surcharge orders based on 23 grounds summarised as hereunder: -
  1. The Tribunal erred by failing to make a finding that the inquiry proceedings were conducted unprofessionally by inquiry officers who lacked capacity and the subsequent report was characterized by undue influence and external factors.
  2. That the Tribunal erred by failing to make a finding that the findings and recommendations of the inquiry report adopted by the members in the general meeting are erroneous, misleading and incapable of adoption.
  3. That the Tribunal erred by failing to make a finding that the allegation that the Appellant failed to keep proper records was not bona-fide and misleading since he hired a book keeper and there are audited financial reports.
  4. That the Tribunal erred by failing to make the finding that the Appellant changed the Societies' locks not to prohibit access but in the best interest of the 1<sup>st</sup> Respondent.
  5. That the Tribunal erred by upholding the finding that the Appellant authorized the destruction of books to conceal evidence.
  6. That the Tribunal erred in failing to find that the allegation that the Appellant conducted the affairs of the 1<sup>st</sup> Respondent without involving the other members was fallacious.
  7. The allegation that the Appellant acted as the credit committee was biased on the issuance of loans, in penalties for defaulters and that he charged high interest rates in not bonafide since loans were issued with the approval of officials including the chairman, secretary and treasurer and loans were issued to members without bias and all members were charged similar interests.
  8. That the finding by the inquiry officers that the Appellant was in constant conflict with the previous Supervisory Committee is not bonafide.
  9. That the Tribunal erred by relying on hearsay evidence that the Appellant bribed members to heckle meetings.
  10. That the Tribunal erred in upholding the allegation that the Appellant held frequent meetings which were not bonafide as there were many unforeseen happenings in the matatu industry which needed to be addressed promptly.
  11. That he allegation that the Appellant colluded with the Chairman was fallacious since there was no investigation into the allegation.
  12. That the Tribunal failed to make a finding that the Appellant was not given a fair hearing.
  13. That the allegation that the Appellant irregularly suspended the 1<sup>st</sup> Respondent's bank account is baseless in that he lodged a caution at the bank to prevent withdrawals after it was discovered that cheques were being fraudulently plucked from the cheque book.
  14. That the Tribunal erred by upholding the finding by the inquiry officers that the Appellant misappropriated the 1<sup>st</sup> Respondent's funds.



15. That the allegation that the Appellant overspent the 1<sup>st</sup> Respondents funds is baseless as the 1<sup>st</sup> Respondent's expenses have only become much higher after he quit.
16. The allegation that the Appellant irregularly purchased a new route for the 1<sup>st</sup> Respondent was baseless and malicious in that it was an expense approved by the entire management committee for the benefit of the 1<sup>st</sup> Respondents members.

### **The Submissions:**

4. The Appellant urged its case further through written submissions dated 11<sup>th</sup> October 2024. It identified the three issues for determination as; whether the appellant misappropriated the SACCO's funds; whether the Appellant abused powers as a member of the management committee; and, whether the 2<sup>nd</sup> respondent took into account the appellant's evidence before issuing the impugned surcharge order.
5. On the first issue, it was his submission that if the inquiry team appointed by the 2<sup>nd</sup> Respondent had conducted independent inquiries into the matter, he would not have been penalized for expenses that were approved by the management committee and used for the benefit of the 1<sup>st</sup> Respondent. He submitted that the cash banked in his account between 14<sup>th</sup> May 2016 and 6<sup>th</sup> August 2014 following embezzlement of Kshs, 2,330,000/- was reported and he lodged a caution in the bank in a bid to stop further stealing of the funds. It was his case that as reflected in the minutes of 7<sup>th</sup> August 2014, the former Management Committee reconvened purposely to compute the money collected and used during the said period. It was his case that the omission of the foregoing facts by the inquiry officers showed that they did not carry out an independent investigation.
6. With respect to route expenses, the Appellant submitted that the finding that the amount of Kshs. 987,000/- was exorbitant failed to take into account the fact that the expenses spent between 26<sup>th</sup> March 2013 and 27<sup>th</sup> March 2014 were authorized by the management committee and was paid for through cheques which required the approval of 3 signatories. It was his case, therefore, that there was no reason to surcharge him. On the issue of unaccounted for monies, the Appellant submitted that the inquiry team did not conduct an independent audit. It simply adopted the figures indicated in the audited report for the year 2014.
7. On the second issue, the Appellant submitted that he never abused powers and that the inquiry team never considered his account at any point before presenting their report to the 2<sup>nd</sup> Respondent which in turn failed to consider his response to the report. The Appellant referred to the decision in James Otari Muhanji & 6 Others -vs- Commissioner for Co-op Development (2012) eKLR where it was observed thus: -

.... From the provisions of Sections 58 and 73 of Act number 12 of 1997, it is clear that an inquiry conducted under Section 58 does not require the investigators to investigate a specific individual and that the outcome of the investigation does not lead to a surcharge. On the other hand, an inquiry under Section 73 of the Act enables the investigators to inquire into the conduct of a specific member of a SACCO and depending on the outcome of the inquiry, the commission can require the investigated member to restore or repay any misappropriated funds or property.
8. In conclusion, the Appellant claimed that the Tribunal considered its case casually and did not consider the merits of the grounds he raised. He asserted that this appellate Court should not only look at the procedure but also the merits of the appeal. He urged the appeal be allowed with costs.



### **The 1<sup>st</sup> Respondent's case:**

9. Kangemi Matatu Owners Sacco Society Limited challenged the appeal through a response to the appeal and written submissions both dated 2<sup>nd</sup> July 2025. In the response, it argued that the Appellant had disregarded the provisions of Section 74(2) of the Cooperative *Societies Act* which requires a party aggrieved by the decision of the Tribunal to appeal on matters of law only. The 1<sup>st</sup> Respondent maintained that the whole appeal was hinged on matters of facts.
10. Separately, the 1<sup>st</sup> Respondent argued that the Amended Memorandum of Appeal was dated 6 years before the impugned judgment of the Tribunal was rendered and that the Appellant, having abandoned his memorandum of Appeal dated 4<sup>th</sup> November 2022, there was no appeal. It further submitted that the Appellant was given an opportunity to stop the 2<sup>nd</sup> Respondent from surcharging him after he was issued with a Notice of intention to surcharge him but he ignored to address the Commissioner.
11. In the written submissions, the 1<sup>st</sup> Respondent reiterated the position that there was no appeal on record. It asserted that when the Appellant amended his Memorandum of Appeal he effectively abandoned the earlier one. Further it was its case that the Appellant failed to indicate, in the Amended Memorandum of Appeal, how the amendments were made, a contravention of Order 8 Rule 7 of the Civil Procedure Rules. The 1<sup>st</sup> Respondent urged this Court to dismiss the appeal with costs.
12. The Commissioner for Co-operative Development, 2<sup>nd</sup> Respondent herein, did not take part in the appeal.

### **Analysis:**

13. Having appreciated the tenor of the parties' respective cases through the record, the written submissions and the decisions referred to therein, there is a preliminary issue which ought to be dealt with first. It is whether the Tribunal properly exercised its jurisdiction in limiting itself to procedural matters only.
14. In dealing with the said issue, it is imperative to appreciate how appeals from the Tribunal lie to the High Court. The Co-operatives *Societies Act* (hereinafter referred to as 'the Act') provides for the instances when an appeal shall lie to the High Court. Section 74 is one of the avenues in which an aggrieved litigant can access this Court. It provides as follows: -
  74. Appeal against order
    - (1) Any person aggrieved by an order of the Commissioner under section 73(1) may, within thirty days, appeal to the Tribunal.
    - (2) A party aggrieved by the decision of the Tribunal may within thirty days appeal to the High Court on matters of law.
15. The context within which section 74 is operationalized is as provided for in section 73. It is where a person, involved in the management of a Society, pursuant to an inquiry, has been adjudged liable for or accountable for any money or property or is guilty of misfeasance in relation to the society. For completeness, section 73 provides as hereunder;
  73. Power to surcharge officers of co-operative society



- (1) Where it appears that any person who has taken part in the organization or management of a co-operative society, or any past or present officer or member of the society-
  - (a) has misapplied or retained or become liable or accountable for any money or property of the society; or
  - (b) has been guilty of misfeasance or breach of trust in relation to the society, the Commissioner may, on his own accord or on the application of the liquidator or of any creditor or member, inquire into the conduct of such person.
- (2) Upon inquiry under subsection (1), the Commissioner may, if he considers it appropriate, make an order requiring the person to repay or restore the money or property or any part thereof to the co-operative society together with interest at such rate as the Commissioner thinks just or to contribute such sum to the assets of the society by way of compensation as the Commissioner deems just.
- (3) This section shall apply notwithstanding that the act or default by reason of which the order is made may constitute an offence under another law for which the person has been prosecuted, or is being or is likely to be prosecuted

16. The second instance where an appeal lies to the High Court is as codified in Section 81 of the Act which stipulates as follows: -

81. Appeal to High Court:

- (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:  
  
 Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.
- (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
  - (d) 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.

17. The dichotomy between Sections 74 and 81 of the Act is inherent in the person who may appeal to the High Court. The former is applicable to persons who have taken part in the organization or management of a co-operative society whether past or present officers or members of the Society and have been the subject of an inquiry while the latter is respect of any party before the Tribunal.



18. In this matter, the Appellant was the Treasurer of the 1<sup>st</sup> Respondent and was subjected to an inquiry. The resultant report made adverse findings against him and he exercised his right of appeal to the Tribunal under Section 74[1] of the Act. The appeal before the Tribunal was heard by way of written submissions where the Appellant filed the submissions dated 29<sup>th</sup> November 2021. The Tribunal delivered its judgment on 19<sup>th</sup> October 2022 where it dismissed the appeal with costs to the Respondents. It was that dismissal that elicited the instant appeal under Section 74[2] of the Act.
19. Having approached this Court under Section 74[2] of the Act, the Appellant must limit himself to matters of law. Whereas there has been no universally accepted definition of the term ‘matters of law’, there has been some working definitions thereto. The term ‘point of law’ may also be referred to as ‘matter of law’. The Black’s Law Dictionary defines ‘a matter of fact’ and ‘a matter of law’ as follows: -  
Matter of fact: A matter involving a judicial inquiry into the truth of alleged facts and Matter of law: A matter involving a judicial inquiry into the applicable law.
20. Lord Denning, J in *Bracegirdle vs. Oxley (2)* [1947] 1 ALL E.R. 126 at pg. 130 in espousing the two terms had the following to say: -  

... The question whether a determination by a tribunal is a determination in point of fact or in point of law frequently occurs. On such a question there is one distinction that must always be kept in mind, namely, the distinction between primary facts and conclusions from those facts. Primary facts are facts which are observed by the witnesses and proved by testimony; conclusions from those facts are inferences deduced by a process of reasoning from them. The determination of primary facts is always a question of fact. It is essentially a matter for the tribunal who sees the witnesses to assess their credibility and to decide the primary facts which depend on them. The conclusions from those facts are sometimes conclusions of fact and sometimes conclusions of law. In a case under the Road *Traffic Act*, 1930, s. 11, the question whether a speed is dangerous is a question of degree and a conclusion on a question of degree is a conclusion of fact. The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts, and that is the case here. The conclusion drawn by these justices from the primary facts, was not one that could reasonably be drawn from them.
21. Drawing from the above, the Court of Appeal in *Bashir Haji Abdullahi v Adan Mohammed Nooru & 3 others* [2014] eKLR sated as under: -  

... That reasoning has been adopted in this jurisdiction. In *A.G. vs. David Murakuru* [1960] EA 484, for instance, Chief Justice Ronald Sinclair sitting with Rudd J. adverted to the factual foundations of legal questions by stating that an appellate court restricted to determining questions of law may yet quite properly interfere with the conclusion of a lower court if the same is erroneous in point of law. This is the case where that lower court arrives at a conclusion on the primary facts that it could not reasonably come to. Such a conclusion or decision becomes an error in point of law. See also *PATEL Vs. Uganda* [1966] Ea 311 And *Shah Vs. Aguto* [1970] EA 263.
22. Further, in *M’riungu and Others -vs- R* [1982-88] 1 KAR 360 His Lordship, Chesoni, JA at p366 the expressed himself on the subject thus: -  

... We would agree with the views expressed in the English case of *Martin v Glyneed Distributors Ltd (t/a MBS Fastenings)* [1983] 1 CR 511 that where a right of appeal is confined to questions of law only, an appellate court has loyalty to accept the findings of fact of the lower court(s) and resist the



temptation to treat findings of fact as holdings of law or mixed findings of fact and law, and, it should not interfere with the decision of the trial of first appellate court unless it is apparent that; on the evidence, no reasonable tribunal could have reached that conclusion, which would be the same as holding the decision is bad law....

23. The foregoing was reiterated in *Twaher Abdulkarim Mohamed v Independent Electoral and Boundaries Commission (IEBC) & 2 others*, (2014) eKLR. Further, in *Peter Gichuki King'ara vs. IEBC & 2 others*, Nyeri Civil Appeal No. 31 of 2013, Court of Appeal held that a decision challenged on the basis of wrongful exercise of discretion raised a point of law.
24. Applying the said dichotomy in this case, it is this Court's finding that indeed the Appellant raised several grounds which were purely factual. However, there are some grounds that transcended the borders of facts into the realm of matters of law. Such include whether the Tribunal properly exercised its jurisdiction in limiting itself to procedural matters only, the legal capacity of the inquiry officers, whether the Appellant was accorded a fair hearing and whether the Tribunal considered hearsay evidence. To that limited extent, this Court finds that it has the requisite jurisdiction to deal with this appeal.
25. Returning to the issue on the manner in which the Tribunal conducted itself, the Appellant vehemently protested the pronouncement that the Tribunal was only limited to consider procedural matters. In paragraph 7 of the judgment, the Tribunal partly stated as follows: -
  7. .... The tribunal cannot be seen to be opening up the inquiry report to inquire on its merit, fairness and accuracy of the report. The Tribunal looks into whether the correct procedure was followed and in this case it was followed .....
26. The above, therefore, calls upon this Court to examine the manner in which the Tribunal is to handle matters before it. The first port of call is Section 74 of the Act which provide for appeals to the Tribunal and to the High Court. Whereas sub-section [1] is on appeals from orders of the Commissioner to the Tribunal and is silent on the nature of the appeals to be preferred, sub-section [2] limits appeals from the decisions of the Tribunal to the High Court to only matters of law. Further, Section 78 of the Act provides for the manner in which the Tribunal conducts its proceedings. For precision purposes, I will reproduce the said provision in full as under: -
  78. Proceedings of Tribunal:
    - (1) The Tribunal shall not be bound by the rules of evidence.
    - (2) The Tribunal shall, upon an application made to it in writing by any party or a reference made to it by the Commissioner, the Commissioner or any Committee or officer of a co-operative society on any matter relating to this Act, the rules made thereunder or the by-laws of the society, inquire into the matter and make an award thereon, and every award made shall be notified by the Tribunal to the parties concerned.
    - (3) The Tribunal shall sit at such times and in such places as it may decide.
    - (4) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.
    - (5) Except as expressly provided in this Act or any rules made there under, the Tribunal shall regulate its own procedure.

[emphasis added]



27. The question which now calls for an answer is what ‘to inquire into a matter’ means. The Merriam Webster Dictionary defines the word ‘inquire’ to mean ‘to carry out an investigation’. In Black’s Law Dictionary, “inquire” generally means to seek information by asking questions or making an investigation. Therefore, to ‘inquire’ refers to a systematic and formal investigation into a matter. As such, under Section 78[2] of the Act, the Tribunal is called upon to carefully and systematically investigate into any matter which it has jurisdiction over and to make an award or a decision on the same. In the present case, in carrying out the inquiry, the Tribunal was to be guided by the 22 grounds of appeal raised in the Amended Memorandum of Appeal dated 4<sup>th</sup> November 2022 among other information that would form part of the record including the parties’ submissions.
28. Looking at the grounds of appeal and the submissions thereto, the Tribunal in discharging its duty under Section 78[2] of the Act could not purport to be limited to procedural issues only. The Tribunal was called upon to investigate the manner in which the Inquiry Report was arrived at including whether *the Constitution* and the law were adhered to given the serious nature of issues raised. The Tribunal was to ascertain whether the findings were factually and legally correct and in line with the grounds of appeal including the effect of the audit reports by the Ministry for the previous years which gave the 1<sup>st</sup> Respondent clean bills of health. With tremendous respect, the Tribunal erred in holding that its jurisdiction only extended to procedural issues. If that was the intention of the law, then nothing could have hindered the lawmakers from making express provisions in Section 74[1] like the way Section 74[2] of the Act is tailored. This Court now finds and hold that a Tribunal dealing with an appeal under Section 74[1] of the Act must enquire into both matters of fact and law on the subject matter.
29. Having found as much, next is the way forward. It is not disputed that several issues of fact and law raised by the Appellant were not considered by the Tribunal given the position it took on its appellate role. The Appellant was, hence, rightly so, aggrieved. Despite Section 74[2] of the Act limiting appeals to the High Court on matters of law, Section 81[2][c] of the Act gives the High Court powers to exercise any of the powers of the Tribunal in the proceedings relating to the appeal. Further, given that an appeal to the High Court is final pursuant to Section 81[3] of the Act, this Court finds it imperative to instead remit the appeal for fresh hearing before the Tribunal. Such a move will accord any party which will not be satisfied with the finding of the Tribunal an opportunity to challenge the decision on appeal, at least for once.

**Disposition:**

30. Drawing from the foregoing discussion, there is no need of dealing with the rest of the issues herein as that will be only academic with no any value to the parties. The appeal is merited and the impugned judgment cannot stand.
31. On costs, since the error pursuant to which the appeal is allowed was on the part of the Tribunal and more so given that the dispute is still on-going, no party ought to be condemned to costs.
32. In the end, the following final orders do hereby issue: -
- [a] The appeal is hereby allowed. The judgment of Co-operative Tribunal in Tribunal Appeal No. 3 of 2016 is hereby set-aside and quashed accordingly.
  - (b) The appeal shall be heard afresh by the Tribunal.
  - (c) Each party shall bear its own costs of the appeal.
- Orders accordingly.



**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment virtually delivered in the presence of:

Mr. Kamau, Learned Counsel for the Appellant.

Michael/Amina – Court Assistants.

