



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT MERU**

**CIVIL APPEAL NO. E087 OF 2025**

**GWARAGWARA NKOSI MBURUGU KIM.....**  
**APPLICANT**

**VERSUS**

**THE CHAIRPERSON OF THE VETTING COMMITTEE OF  
YETU DT SACCO SOCIETY LIMITED.....1<sup>ST</sup>**  
**RESPONDENT**

**YETU DT SACCO SOCIETY LIMITED.....2<sup>ND</sup>**  
**RESPONDENT**

**R U L I N G**

1. For determination is the Notice of Motion dated 23/4/2025 pursuant to Section 81 of the Co-operative Societies Act, seeking that:

1. Spent

2. Pending the hearing and determination of the Appeal filed herein, this Honourable Court be pleased to issue a temporary injunction restraining the Respondents from recognizing or allowing

CHRISTOPHER KIRIMI NDEGWA who was elected unopposed from assuming office or executing the functions of the Board Member of Kathangari Zone.

3. Pending the hearing and determination of this Appeal, this Court be pleased to stay the implementation and effect of the certification issued in favour of CHRISTOPHER KIRIMI NDEGWA by the Respondents herein.
4. Costs for this application be provided for.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of the Appellant sworn on even date. In its impugning ruling of 27/3/2025, the Co-operative Tribunal acknowledged irregularities in his vetting and disqualification from participating in the election of the Board Member of Kathangari Zone, but failed to nullify the said elections where Christopher Kirimi Ndegwa was duly elected unopposed. The Respondents acted in breach of the legitimate expectations of members by failing to follow proper electoral process, and he stands to suffer irreparable harm if stay is denied, because the appeal

raises weighty constitutional and legal issues. He was discriminated against and was not given a fair opportunity to participate in the elections, which contravenes the principles of natural justice.

3. The Respondents opposed the application vide a replying affidavit sworn by Dennis Kirimi, the 1<sup>st</sup> Respondent's Secretary and the 2<sup>nd</sup> Respondent's Chief Executive Officer, sworn on 20/5/2025. He asserted that during the vetting of the persons who had expressed their interest in the declared vacancies in Kathangari Electoral Zone, it was established that the Applicant had defaulted in his loan obligations in 2022 and 2023, which contravened the 2<sup>nd</sup> Respondent's by-laws and Electoral Policy. Upon conclusion of the vetting process, it was unanimously found that the Applicant was not qualified to vie, and Christopher Ndegwa was thus elected unopposed. In his view, the electoral process in relation to the Kathangari Electoral Zone has concluded, and therefore the instant application is overtaken by events. Christoher Ndegwa stands prejudiced because he was neither a party to the primary suit nor the appeal, and the Respondents have

cross appealed against the Tribunal's decision. The application is made in bad faith, intended to mislead the court, and is anchored in non-existent by-laws.

4. The Applicant swore a further affidavit on 2/6/2025 in support of his application.
5. The application was canvassed by way of written submissions, which were only filed by counsel for the Respondents.

### **Determination**

6. The singular issue for determination is whether the orders sought should be granted.
7. The application is predicated on Section 81 of the Co-operative Societies Act, which 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: 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.”**

8. Pursuant to Order 42 Rule 6 (6) of the Civil Procedure Rules, the High Court is vested with jurisdiction to entertain an application for temporary injunction pending appeal from a subordinate court as follows;  
**“Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just**

***provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”***

9. The principles for grant of temporary injunction pending appeal were settled by the Court of Appeal in ***Venture Capital & Credit Limited v Consolidated Bank of Kenya Ltd Civil Application No Nairobi 349 of 2003 (174 of 2003 UR)*** quoted by the court (Alnashir Visram J, as he then was) in ***Patricia Njeri & 3 Others v National Museum of Kenya [2004] eKLR***, as follows; ***“a. an order of injunction pending appeal is a discretionary which will be exercised against an applicant whose appeal is frivolous. b. the discretion should be refused where it would inflict greater hardship that it would avoid. c. the applicant must show that to refuse the injunction would render the appeal nugatory. d. the court should also be guided by the principles in *Giella vs. Cassman Brown [1973] EA 358.*”***
10. Comparatively in ***Kenya Commercial Finance Co. Ltd v Afraha Education Society [2001] 1 EA 86***, the Court of

Appeal held that, ***“The sequence of steps to be followed in the enquiry into whether to grant an interlocutory injunction is (i) whether the applicant has laid out a prima facie case with a probability of success; (ii) whether the applicant might suffer irreparable injury if the injunction is not granted; and (iii) (if there is doubt) whether the balance of convenience favours the applicant; Giella v Cassman Brown and Co Ltd [1973] EA 358. The conditions for granting an interlocutory injunction are sequential so that the second condition can only be addressed if the first one is satisfied and when the court is in doubt the third one can be addressed.”***

11. It is discernable from the grounds of appeal, that the Applicant is dissatisfied with *inter alia* his disqualification from the election process based on non-existent by-laws. As such the appeal cannot be said to be frivolous.

12. Invariably, I find that the appeal, which is undeniably arguable will be rendered nugatory if the injunction is

refused, and the Applicant will suffer irreparable loss and damage, in the eventuality of a successful appeal.

13.I am persuaded on the test of **Giella v Cassman Brown (1973) EA 358**, that the Applicant has a *prima facie* case with probability of success, and that damages would be an inadequate remedy. The balance of convenience thus tilts in favour of granting the injunction sought.

14.The upshot from the foregoing considerations is that the application dated 23/4/2025 is merited and it is allowed in terms of prayer 2 thereof.

15.Cost be in the cause.

**DATED AND DELIVERED AT MERU THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2025**

**S.M. GITHINJI**

**JUDGE**

**APPEARANCE**

Miss Bett holding brief for Mr. Kiogora for the Appellant/Respondent.

Mr. Gatobu for the Applicant (absent).

