

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E426 OF 2023

MARY MAMBO.....
APPELLANT

VERSUS

**THE COMMISSIONER FOR CO-OPERATIVES
DEVELOPMENT.....**

RESPONDENT

AND

**WANANDEGE HOUSING
CO-OP SOCIETY LTD.....INTERESTED
PARTY**

*(Being appeal from the Ruling of the Co-operative Tribunal
delivered in CTA No. 5 of 2018 by Tribunal Deputy Chairperson
Hon. J. Mwatsama on 27th April, 2023)*

JUDGEMENT

1. The Appellant moved the Respondent *vide* Cooperative Tribunal Appeal **No. 7 of 2018** to appeal a Surcharge Order of the Commissioner for Cooperative Development made against her on 4th July, 2018. The Appeal was dismissed for being filed out of time.
2. The Appellant was aggrieved and lodged a Memorandum of Appeal dated 26th May, 2023 which was subsequently amended on 24th May, 2024. The Appellant objects to the

Respondent's decision on the following three grounds as condensed by the court:-

- i) The Co-operatives Tribunal erred in law by misinterpreting provisions of Section 74(1) of the Co-operative Societies Act.**
- ii) The Co-operative Tribunal erred in law by misinterpreting provisions of Rules 3, 7 and 11 of the Co-operative Tribunal (Practice and Procedure) Rules, 2009.**
- iii) The Co-operative Tribunal erred in law in relying on an Inquiry Report completed way after its mandated period had expired.**

3. The Appellant therefore wants the Ruling of the Co-operative Tribunal dated 27th April, 2023 be set aside and replaced with the Orders of this Court quashing the Inquiry Report by the Respondent, and that the Respondent and the Interested party do pays costs herein and in the Co-operative Tribunal.
4. The Appeal was directed to be heard by way of written submissions. Only the Respondent failed to put in submissions.

Appellant's Submissions

5. The Appellant began by stating that she had misquoted the date of the Surcharge Order as being 20th July, 2018 as

opposed to 4th July, 2018 and that error should not be visited upon her.

6. It was submitted that the Tribunal misinterpreted the provisions of **Section 74(1) of the Co-operative Societies Act** and that the statutory 30 - days appeal period starts running after receipt of the Surcharge Order and not when it is dated or issued. According to the Appellant, the only party that who could have complained about service of the subject Surcharge Order was the Respondent who, however, failed to appear at the hearing before the Tribunal and present evidence to the contrary. The court is told that the Appellant was served with the Surcharge Order on 20th July, 2018 and she filed the appeal on 5th August, 2018.
7. It was further submitted that the Tribunal misinterpreted the provisions of Rules 3, 7 and 11 of the Co-operative Tribunal (Practice and Procedure) Rules. It is pointed out that Rule 3 bestows on the Tribunal the duty of care to question the Appellant on the discrepancy between what had been written vis-à-vis what was on the Surcharge Order.
8. Finally, the Appellant contends that the Tribunal erred in relying on an Inquiry Report completed way after its mandated period had expired.

Interested Party's Submissions

9. The Interested Party submitted that the Tribunal was within the law to dismiss the Appeal since the Appellant was served with the Surcharge Order on time.
10. The Interested Party also submitted that the Appeal filed at the Tribunal was not proper and that it did not conform with procedure as provided for under **Rule 8 (3) of the Co-operative Tribunal (Practice and Procedure) Rules 2009**. The Appellant allegedly failed to file crucial minutes of the Interested Party's general meeting relating to the decision under appeal (see case law in ***Felix Otande v Commissioner for Co-Operative Development & another [2021] eKLR***) relied upon by Counsel.
11. The Interested Party therefore agrees with the Tribunal that the instant Appeal was filed out of time, which infraction is also said to be contrary to **Section 79G of the Civil Procedure Act**.
12. It is further submitted that the Respondent's disputed Inquiry was conducted within a period of 25 days as specified in a published Gazette Notice. In any event, the Interested Party holds the view that an Appellate Court has no original jurisdiction to quash the Inquiry Report as it is the preserve of the High Court through Judicial Review jurisdiction under **Order 53 of the Civil Procedure Rules 2010**.

Analysis and determination

13. I shall determine all the Grounds of Appeal together.
14. This is a second appeal. The first appeal against the decision of the Respondent lay on issues of facts and law with the Tribunal and then to the High Court as a second appeal on matters of law only. This is in accordance with **Section 74 of the Co-operative Societies Act** which provides that:-
- (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. Upon perusal of the Record of Appeal, the rival submissions, the evidence on record and the Applicable laws, the issues for determination in this Appeal are as follows:
- i) Whether this appeal was filed out of time.**
- ii) Whether the Co-operatives Tribunal misinterpreted the provisions of Section 74(1) of the Co-operative Societies Act.**
- iii) Who bears the costs of this Appeal?**
16. The Interested Party submitted that not only was the Tribunal Appeal filed out of time, but the Appellant filed this

Appeal out of time as well. **Section 81 (1)** of the **Co-operative Societies Act** addresses the issue of appeals to the High Court and states 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.

17. The record shows that the decision of the Tribunal was rendered on 27th April, 2024. The Memorandum of Appeal dated 26th May, 2023 was filed on 26th May, 2023 at 1553 hours, according to the e-filing platform. The 30 days as contemplated *supra* were to lapse on 27th May, 2023. This Appeal was therefore filed within the prescribed period and is competently before the court.
18. Pertaining the second issue for determination, the argument by the Appellant is that time ought to have started running upon service of the surcharge order and not upon delivery of the order.

19. The Surcharge Order is dated 4th July, 2018 and the Tribunal Appeal was filed 15th August, 2015. The Appellant argues that she was served with the surcharge order on 20th July, 2018 and therefore time started running from that time. The question to be asked is when does time start running for purposes of an Appeal to the Tribunal? Is it after delivery of a decision or service of the decision?
20. The procedure under **Section 74 of the Co-operative Societies Act** *supra* is very clear. I see no misinterpretation of this statutory provision on the part of the Tribunal. The appeal ought to have been lodged with the Tribunal within 30 days from 4th July, 2018 when the impugned Surcharge Order was made, and not from when the Order was served.
21. The Appellant submitted that the Gazette Notice No. 7138 dated 3rd September, 2025 required the Respondent's Inquiry to have been concluded within 25 days but the Tribunal erred in relying on the Inquiry Report completed way after its mandated period had expired.
22. I have looked at the 15 grounds of Appeal raised at the Tribunal in the Memorandum of Appeal dated 15th August, 2018. The question of late completion of the said Inquiry Report was not raised. The issue cannot therefore be the

subject of this Appeal. Besides, this matter is now academic as the Appeal is not properly before the court.

23. The upshot of the foregoing is that the Appeal is without merit and is hereby dismissed. Because of the business relationship of the parties, no order is made as to the costs of the Appeal. The costs of the Tribunal proceedings shall be as directed by the Tribunal.

Judgement delivered virtually on this 26th day of November 2025.

**J.M NANG'EA,
JUDGE.**

In the presence of:

The Appellant's Advocate, Absent

The Respondent's Advocate, Absent

The Interested Party's Advocate, Ms Mango

The Court Assistant, Jeniffer

**J.M NANG'EA,
JUDGE.**