



**REPUBLIC OF KENYA
HIGH COURT AT NAIROBI
MISCELLANEOUS CRIMINAL APPLICATION
NO. E073 OF 2025**

OLIN SACCO LTD.....APPLICANT

-VS-

**DIRECTOR OF CRIMINAL INVESTIGATIONS (DCI)
DIRECTOR OF PUBLIC PROSECUTION (ODPP)**

AND

**SACCOS SOCIETIES REGULATORY
AUTHORITY(SASRA)**

**COMMISSIONER OF COOPERATIVES
DEVELOPMENT**

RULING

The Applicant's application dated 17/3/2015 was filed wherein the Applicants prayed for ORDERS THAT: -

(1) The Court orders of stay of proceedings and enforcement of orders issued on 5/3/2025 in Milimani Miscellaneous Application No. E766 of 2025 Republic-

vs- Ollin Sacco pending hearing and determination of the Application.

1. The Court calls for the records in Milimani Miscellaneous Application NO. E766 of 2025 Republic - vs- Ollin Sacco for purpose of satisfying itself and determination of legality, propriety and correctness of the orders issued on 5/3/2025.

2. That the Court be pleased to restrain the Respondent from arresting charging prosecuting or questioning or in any way intimidating the Applicants Board of Directors on or over any matter the subject of the orders issued on 5/3/2025.

3. That the Court be pleased to issue an order referring the subject matter in E766/2025 Republic vs Ollin Sacco to Sacco Societies Fraud Investigation Unit (SSFIU) for investigation and determination.

GROUND OF THE APPLICATION

3. The application is brought under the provisions of **Article 165 (6) and (7)** of the Constitution (**Sections 362) Criminal Procedure Code and 364 Section 48 (2) 49 (3) 50 Sacco Societies Act** and on the following grounds; that the Applicant is a deposit institution with over 38,000 members who have

deposited 8 Billion Kenya Shillings and a share capital of 800,000,000/= . The Applicant is a vital institution in the financial sector.

4. The Applicant received Court order dated 5/3/3035 issued in **Miscellaneous Criminal Application No. E766 of 2025** and which was served with the 1st Respondent's application dated 3/3/3035.

5. That the Respondent sought warrant to investigate the entire record of the Applicant's undertaking which order was issued on 5/3/2025 allowing C.I Antony Kamau to “ ***...access , inspect , investigate , to obtain information and to lift and carry as exhibits certified copies of the Applicant's documents listed under paragraph 4 (I)-(XVIII) on the grounds of the application and the impugned orders of the trial Court .***”

6. That the orders did not give a mention date for compliance.

7. That the orders granted to the 1st Applicant on 5/3/2025 is a preserve and mandate vested by law on SASRA; inspection of documents is within the mandate of Sacco Societies Regulatory Authority (SASRA) as per the provisions of **Sections 48 (2) and 49 (1) of the**

Sacco Societies Act granting it power to inspect Sacco records.

8. Further that Sacco Societies Fraud Investigative Unit is a specialized unit established through SASRA with mandate of detecting, preventing and addressing any fraudulent act or activities within any Sacco whether reported (as herein) or even in its own volition as per page 6675 of Gazette Notice No. 3/12/2021.

9. That the proceedings leading to the impugned orders failed to comply with **Sections 67 and 76 of the Sacco Societies Act** which also provide for dispute resolution mechanisms in such matters.

10. That these orders will not only have serious financial implications and time constraints on Applicant's share holders but will also have far reaching implications by totally disrupting the operations and financial stability of the Applicant and potentially erode public and the depositors' confidence in the organization.

11 That the Applicant's confidentiality and protection of members personal and financial data under the Data Protection Act risks violation. The orders would lead to unauthorized dissemination of sensitive information.

12. That the power granted to SASRA to investigate is the ideal way to protect the depositors' interests considering the sensitive nature of the Applicant business.

13. That similar policy applies to mainstream banks that are investigated by Anti-Banking Fraud Unit that operates under Central Bank of Kenya.

14. The Applicant sought interim orders through Court's intervention of the urgent Application as Applicant and its members will indeed suffer irreparable loss and damage to its reputation and there were serious chances of potential breach of Applicant's confidentiality to its depositors, members and shareholders that cannot be mitigated by damages.

THE APPLICANT'S SUPPORTING & FURTHER AFFIDAVITS.

15. The Application is further supported by the affidavit of Cyrus Kabute Mungai the Chairman of the Board of Directors of Ollin Sacco Ltd and the Further Affidavit sworn by John Mwangi Gathige who is the Applicant's Chief Executive Officer and Secretary.

13. That Cyrus Kabute in his affidavit reiterates the grounds on the face of the application.

14. He further explains that the Respondent's application was filed on account of a complaint by an unknown member of the Sacco and a letter was sent to the Board of Directors by unknown person on 24/1/2025 to be addressed during the Applicant's AGM Meeting that was to be held on 25/1/2025 and was actually held and the said letter was attached and produced at Pg 126-132 of the annexed bundle to the application

15. The member failed to raise the issue at the Annual General Meeting and thus it was never discussed but the letter was circulated amongst members and dropped in some institution by unknown person. That the 1st interested party's CEO informed him that the letter had been dropped in their offices with other copies made to the Directorate of Criminal Investigations and Ethics and Anti-corruption Commission.

16. That the Applicant was served with Court orders and having seen the complaint the Applicant Board tasked its Audit Committee to look into the allegation and report back immediately. That the Audit Committee found that the claims were untrue and not justified and

a report to this effect was presented to the Board. The report was adopted unanimously on 13/3/2025.

17. The Applicant's document falls within the mandate of SASRA which is to inspect Sacco records as per the case of **Kenya National Police Service DT Sacco -Vs- Directorate of Criminal Investigations** where the Court referred a complaint to SSFIU.

18. The Applicant has a well-established and updated human resource policy and structures and reviews that continually guide it as per the provisions of the Finance Act to manage its resources. The Applicant urges that it is fully compliant as will be established by SSFIU report.

19. The orders have far reaching implications and will inevitably expose the Applicant to potential operational disruption financial instability erosion of public confidence and should be set aside.

20. That there is no justification in granting the orders. The Respondent is in the haste to harass the Sacco management and overlooked the legal role of SASRA and SSFIU in investigating the claims against the management of Saccos.

21. The Sacco Societies Fraud Investigations Unit (SSFIU) established by SASRA in 2020 is mandated to

detect prevent and address any fraudulent act/claim, activities within SACCOs, as per the Kenya Gazette Notice of 3/12/2021, Pg 6675.

22. That the Respondent enjoined SSFIU in the matter as a party after realizing its folly in assuming powers outside its jurisdiction to investigate Saccos.

23. The depositions in the Further Affidavit are that the CEO and Finance officer were exonerated and that internal reports authored by the Applicant's Board, Audit Committee and SASRA.

24. That the complaint letter was from an anonymous person who was not a member. That members attended trainings and meetings and the issues were not raised. That the letter of complaint does raise any offence and the Respondent had a duty to look into the complaints.

REPLYING AFFIDAVIT BY 1st & 2nd RESPONDENTS

25. The 1st and 2nd Respondent filed the affidavit of C.I Antony Kamau an officer attached to the Economic Commercial Crimes Unit at DCI headquarters in contest of the application.

26. The 1st Respondent is established under **Section 28 of the National Police Service Act** to undertake

investigations into serious economic crimes, to detect and prevent crimes and to apprehend offenders.

27. That the 1st Respondent works under the command and control of the National Police Service which has constitutional authority under **Article 244 (b) of Constitution** to prevent corruption and to promote transparency and accountability.

28. That the Respondent receives and handles public complaints with bearing to criminal offences and undertakes criminal investigations with cooperation and assistance of the 2nd Respondent. The Applicant is one of the fast-growing financial institution in Kenya with a wide membership and strong deposit base of savings from its members making it one of the fast growing Kenya Financial Institution.

29. That the 1st Respondent's statutory functions do not exclude or have preference over institutions such as the Applicant but is mandated to undertake its functions over all subjects within the Republic of Kenya as individuals or institutions except where expressly provided.

30. The Respondent received a complaint from the Applicant's members regarding mismanagement, embezzlement and misuse of funds by CEO and

Finance Officer raising pertinent issues of serious economic crime. The complaint also questions transparency and accountability in management of financial affairs of the Sacco. (Copy of Complaint attached)

31. That the members have the right to seek financial accountability through the 1st Respondent where glaring indications of commission of serious economic crime by CEO and Financial Officers are involved.

32. The 1st Respondent has lawful duty to investigate complaints where the complaints merit investigations and the complaints received from the members of the Applicant raise substantive questions of criminal concerns thus worth investigations.

33. That fallout between the Applicant and its members should not disqualify criminal investigations where questions of fraud are raised. The Respondent sought the impugned orders to be supplied with relevant documents to commence investigations on bribery, fraudulent false accounting, stealing of members money, money laundering among others which squarely fall under the realm of criminal law.

34. That the Court in **Criminal Misc Application E 766 of 2025** granted access to the documents listed on the affidavits and face of the impugned orders issued on 5/3/2025. (Copy of the Application & Court Order attached AK-2)

35. The Respondent sought the documents to trace evidence of the allegations in lawful procedural exercise of investigative function.

36. The application manifests the Applicant's dishonesty and efforts to cover up criminal activities involving the CEO and Financial Officer and is an attempt to defeat lawful course of its investigations.

37. That the Respondent acted within its constitutional and statutory obligation and setting aside the orders would be curtailing its lawful duty. Further those criminal investigations do not amount to harassment but are fundamental step in the criminal justice process, the application has been filed to evade investigations and probable prosecution and hence is abuse of process.

38. That the suspects will be afforded an opportunity to defend themselves in a Court of law if found culpable and justice will be served on all parties equally.

39. That the deponent is used to shield the CEO and Finance Officer, the complaint raised was from concerned members who wished the Sacco well. Further , the Respondents are well trained on conducting investigations and the Applicants will not be exposed to any public ,financial or operational implications .

40. That SSFIU was established as an MOU between SASRA and Directorate of Criminal Investigations vide Gazette Notice No. 13392 reiterated the role of SSFIU to improve governance of Saccos, deter, fraud and increase protection of member deposits. That no law or legal notice established the SSFIU and gives it sole investigative powers with regard to fraudulent activities in Saccos.

41. Further that sub-units and directorates of the DCI are not in creatures of statute but they share mandate from initial statutory mandate given to the Directorate of Criminal Investigations.

42. That units deployed outside the DCI headquarters to Government Agencies and Institutions are enabled by a working understanding between National Police Service and the Directorate of Criminal Investigations.

That officers deployed remain under command and control of National Police Service.

43. That the Applicant has not demonstrated any threat of objects of the Constitution Professionalism , Human Rights and Fundamental Freedom

44. That SASRA is established under **Section 5 of the Act** with objectives listed to have regulatory of the Sacco , supervisory and otherwise inspect books of accounts and records .That under **Section 49 (2) (t) of Sacco Societies Act** places the mandate of assisting investigative unit matters suspected fraud or malpractice in Sacco .

45. The SSFIU is the establishment of the 1st Respondent and not SASRA and comprises of agents nominated by the 1st Respondent who are deployed to undertake investigations in the best interest of Saccos. That SSFIU applies where Saccos are the complainant, contrary to the case at hand. The complaint is against the Chief Executive Officer and Finance officer.

46. Lastly, referring the case to the SSFIU is a duplication of duties and a deliberate unjust scheme to defeat justice.

47. The Respondent has attached copy of the complaint received on misuse of Sacco funds and several allegations, complaint was to be raised during Annual General Meeting on 26/1/2025 letter to BOD by members.

48. The Gazette Notice No. 6673: That SASRA & Directorate of Criminal Investigations establish SSFIU to improve governance through deterrence of fraud and increase protection member deposit .That the DCI and SASRA operationalized SSFIU through good governance integrity transparency accountability.

49. The application was canvassed through written submissions.

WRITTEN SUBMISSIONS.

THE APPLICANT'S SUBMISSIONS

50. The Applicant submits that the order issued on 5/3/2024 does not envisage search warrants envisaged under Section 118 of the Criminal Procedure Code. The warrants breached further statutory provisions of Section 120 of the Proceeds of Crime & Money Laundering Act on which they were sought.

51. That the documents listed did not require search warrants but were held in Applicant's ordinary course of

business and/or are not documents suspected to be in the Applicant's possession.

52. Further that documents can be obtained by genuine members upon request and proper channels upon due diligence.

53. That the orders were made without justification and there was no proof demonstrating that the documents were necessary for investigation of unknown offences by the CEO and Finance Officer. That the relevant law that was breached is not pleaded and the offences remain unknown.

54. Further that the application is not backed documents in support of the allegations and the complaints were not recorded and/or statements attached to the application. That the details of names or society numbers of the complainant members are also not on the application.

55. The Respondent did not present the letter before the subordinate Court. The letter was attached in the affidavit of Cyrus Mungai filed in this Court .That the letter does not mention any commission of an offence and there was also no basis in issuing the orders.

56. Further that there is no proof that the complaint came from the Applicant's members. The Respondent did not interview or record any statement or deposed that the members declined to be interrogated.

57. The Respondent claimed that investigations were prompted by complaints raised at the Annual General Meeting. The Applicant attached minutes of the AGM of 26/1/2025 where no complaint over embezzlement and mismanagement of funds was raised.

58. The Respondent did not intend to take the documents to Court or deal with them as provided in law under Section 118 of the Criminal Procedure Code .Similarly, the Court did not order a return date making the warrants irregular and non-complaint with **Section 120** of Criminal Procedure Code which require documents to be produced before Court .

59. That **Section 102** of Criminal Procedure Code was not complied with since the offence to be charged and the description of the persons was not indicated. The warrant was not issued against the CEO and Finance Officer but was issued and served on the Applicant.

60. That the warrant seeks documents which include list of past and present members of the Applicant and

Account details. However, the warrants were not issued against them and the name of banks and account names were not indicated. The Applicant contends that the listed documents are not relevant to the investigations of crime and that there is no proof under oath that the details of members and bank accounts are required in investigations against the CEO and the Finance officer.

61. There is no proof on reasonable ground that there is need to investigate the accounts on suspicion of an offence .The warrants seek to investigate accounts of persons who are not under investigations.

62. The provisions of **Section 107 of Proceeds of Crime & Money Laundering Act** were cited in the impugned application. That **Section 107 as read with Section 103 of POCAMLA** are not relevant since charges have not been brought. That grant of warrants under the said provisions was illegal, in statutory error and excess of jurisdiction .The Applicants legal and constitutional rights were violated in the process.

63. That the orders obtained disrupt and demean Sacco operations if implemented. The Applicant annexed Audit report and Board Committee report. The

Sacco's Committee Report and report by SASRA on the Applicant's operations and which have not been contested.

64. The Applicant is not challenging the Respondent's constitutional right to investigate crime. Instead, it is the process used in the process before the subordinate Court.

65. That the power was applied unlawfully and in violation of the Applicant's right and orders issued are subject to recall and quashing by this Court. The Applicant refers to the cases of **Ochillah -Vs- DPP 2022 KEHC 15455 KLR** where search warrants were revoked by the High Court, the case of **DPP -Vs- Ibrahim M Chengo (2019) eKLR** where trial Court orders on denovo proceedings were quashed. **Ngetich vs Republic [2023] KEHC 20155 KLR & Walingo vs Republic [2023] KEHC 315 (KLR**

RESPONDENT'S SUBMISSIONS.

66. The Respondent frames issues for determination as :

a) Whether Sacco Societies Regulatory Authority SASRA has powers to investigate criminal matters ,

- b) Whether SSFIU is an independent investigative body ,whether the Cooperative Tribunal has jurisdiction whether the Directorate of Criminal investigations has power to investigate suspected fraud cases in Saccos,
- c) Whether the orders contravene the Data Protection Act
- d) Whether orders were correct legal and proper.

67. That SASRA was established under **Section 5 and Section 48 of the Sacco Societies Act** with the mandate to undertake inspection or require Sacco to submit reports and financial affairs or deposit taking to enable the authority evaluate societies' financial affairs.

68. That section 49 (a) of the Act the Authority has mandate of assisting investigative authority on matters of suspected fraud of malpractice in Sacco by identifying such matters for referral or upon request. The Respondent refers to the case of **EG & 7 Others --Vs- Attorney General, DKM & 9 others Katiba Institute amicus Petition 150 234 of 2016**

69. Further that inspection is different from investigations and the two words cannot be used interchangeably. Section 48 recognizes investigative

authorities. That inspection is the direct physical examination review of something to determine its condition and compliance with regulation. On the other hand investigations is the comprehensive inquiry into a specific event allegation or issue and gathering evidence. The Authority has mandate to assist investigation of suspected fraud.

70. The SSFIU is an administrative unit of the Directorate of Criminal investigations and an understanding between SASRA and the Directorate of Criminal Investigations to deter fraud and protect member deposits.

71. The Memorandum of Understanding is not binding, further, SSFIU is not backed by statutory instruments establishing it with exclusive investigatory powers. The gazette notice merely published and did not establish it. The officers deployed to the SSFIU are not independent and work under authority of the Directorate of Criminal Investigations.

72. The Respondent also contends that the Cooperative Tribunal established under Section 65 of the Sacco Societies Act does not have jurisdiction over

suspected fraud by board members which is the precinct of law enforcement agencies.

73. That the Directorate of Criminal Investigations has power to investigate suspected fraud under Section 35 of the **National Police Service Act and Article 243 of the Constitution** . The Respondent also relies on the case of Dande & 3 others- Vs- Office of the Inspector General and further urges that the Director of Criminal investigations acted within their constitutional mandate.

74. That the revision proceedings filed are directed to the Court to usurp the Respondent constitutional mandate and to direct it how and who to investigate the matter.

75. The Respondent's actions are legitimate since the complaint is related to illegality and economic crimes.

76. On whether the impugned orders contravened the Data Protection Act, it is submitted that the documents sought are meant to aid in investigations. That processing of personal data is exempted from the provisions of the **Data Protection Act under Section 35** of the Act on grounds of public interest. Further that **Section 56 of the Act** provides that collection of and

disclosure of personal data by the controller or data processor is allowed in suspected and unlawful activity.

77. That the impugned orders do not violate the Data Protection Act and no prejudice will be occasioned by investigations. The Applicant had not shown how the depositors will be at risk .In this case the depositors are the complainants and have lodged request for the investigations in the complaint letter dated 26/1/2025.

78. The Respondent urged that the orders are not vague or overboard .That the correct and proper orders were issued under the appropriate sections of the law. The case of **Prosecutor -Vs Stephen Lesinko (2018) eklr** set principles which guides under **Section 362 of the Criminal Procedure Code** and that orders should be grossly erroneous no compliance with the law.

79. The case of **Francis Njau Njoroge & Another t/a Francom General Merchants-Vs- Insurance Regulatory Authority & 5 Others (2018) eklr** on search warrants .

ANALYSIS & DETERMINATION

80. The Court considered pleadings and submissions by parties pursuant to the Application filed on 18/3/2025 under Certificate of Urgency and the Court on 20/3/2025 granted the temporary /interim orders of stay of execution of Court orders granted in CMCCE076 of 2025 pending hearing and determination.

81. The issues that emerge for determination are the following;

- a) Constitutional and/or legal mandate of the various Investigative institutions; DCI, SASRA, SSIFU
- b) The Complaint/Anonymous Letter received by DCI EACC KRA & Applicant Sacco is the subject of investigations; who how when and where should investigations be conducted?
- c) Are the Trial Court orders pursuant to Section 118 & 120 of CPC be upheld or set aside?
- d) Should the temporary /interim orders of stay of the Trial Court orders be upheld or set aside?

82. The Legal mandate of Kenya Police Service is stipulated in **Article 244(b) & 245 4 (a) of the Constitution of Kenya.**

83. The National Police Service Act outlines functions of ALL OFFICERS in the Kenya Police Service in Section 24

of the Act and specifically functions of DCI in **Section 35 of the Act** as follows;

35. Functions of the Directorate

The Directorate shall—

(a) collect and provide criminal intelligence;

(b) undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cyber crime among others;

(c) maintain law and order;

(d) detect and prevent crime;

(e) apprehend offenders;

(f) maintain criminal records;

(g) conduct forensic analysis;

(h) execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157(4) of the Constitution;

(i) coordinate country Interpol Affairs;

(j) investigate any matter that may be referred to it by the Independent Police Oversight Authority; and

(k) perform any other function conferred on it by any other written law.

84. Therefore, it is the responsibility of Police Officers under **Section 24 of the Act** to conduct investigations and more specifically the Directorate of Investigations to investigate serious crimes as prescribed under **Section 35 of the Act**. That is not in contention and the process of obtaining the Court order was lawful.

85. The issue in contention as raised by Applicant is that the Applicant is a Sacco and there is SASRA that regulates Saccos and specifically Police Unit SSIFU that is legally mandated to conduct inspection and investigations.

86. Section 48 -52 of the Sacco Society Act refers to the Authority's power to inspect and evaluate financial situation. Section 48(b) particular provides That the Authority shall :

"....undertake inspections or require a Sacco society to submit information and reports on its financial affairs of the deposit-taking business to enable the Authority to evaluate the society's financial condition."

87. Section 49 of the Act provides for the power to inspect - THAT

Powers of the Authority to inspect

1. The Authority may, at any time and from time to time, and shall, if so directed by the Cabinet Secretary, cause an inspection to be made by any person authorized by the Authority in writing of any Sacco society and of its books, accounts and records.

2. The Authority shall assist any investigative authority regarding matters of suspected fraud or malpractice in Sacco societies either by identification of such matters for referral or at the request of such authority.

3. Where an inspection is made under subsection (1), the society concerned and every officer or employee thereof shall produce and make available to the person making the inspection, all books, accounts, records and other documents of the Sacco society and such correspondence, statements and information relating to the society as the person making the inspection may require, and within such period as he may direct in writing.

4. A person who fails to produce any books, accounts, records, documents, correspondence, statements or the information required under subsection (2), within the period specified in the relevant direction, commits an offence.

5. The person making the inspection shall prepare and submit a report to the Authority, and the report shall state—

a) any breach or contravention of any of provisions of this Act or any regulations made under this Act;

b) any irregularity in the manner of conduct of the inspected society; (c) any mismanagement of a Sacco society; and

c) any other matter relating to a Sacco society not consistent with sound and prudent business practice

88. Section 50 provides that the Authority shall have power to advice and direct action to be taken where a Sacco has breached the Act and/or member deposits are at stake.

51. Supervisory enforcement actions

Where the Authority determines that a Sacco society conducts its business in a manner contrary to the provisions of this Act or of any regulations made thereunder or any other Act or in any manner detrimental to or not in the best interests of its members or members of the public, or a Sacco society is undercapitalized, the Authority shall—

(a) restrict, suspend or prohibit the payment of dividends by the society;

(b) prohibit the conversion of any profits of the society into capital;

(c) direct the suspension or removal of any officer involved in such conduct from the service of society;

(d) require the society to reconstitute its board of directors;

(e) withhold branch or other corporate approval with respect to such society;

(f) undertake regular inspections of that society;

(g) order the society to submit to the Authority within forty five days a capital restoration plan to restore the society to capital adequacy as prescribed in section 29 or in the case of issues unrelated to capital such as violations of law, a plan to resolve all deficiencies to the satisfaction of the Authority;

(h) prohibit the society from awarding any bonuses, or increments in salary, emoluments and other benefits of all directors and officers of the society;

(i) appoint a person suitably qualified and competent in the opinion of the Authority to advise and assist the society in designing and implementing the capital restoration plan or other corrective action plan and the person appointed shall regularly report to the Authority on the progress of the plan;

(j) impose restrictions on growth of assets or liabilities of the society as it deems fit;

(k) restrict the rate of interest on deposits payable by the society to such rates as the Authority shall determine; and

(l) order the society to do any or take such other action that the Authority may deem necessary to rectify a capital deficiency or other weakness.

(m) impose financial penalties on the society or any officer, director, committee member, employee or agent of the Society in such amounts as may be prescribed through regulations;

(n) issue an order placing the society under statutory management;

(o) restrict the withdrawal of deposits from the society;

(p) institute legal proceedings against any officer, director, committee member, employee or agent of the society; or

(q) issue such administrative directives as the Authority may deem necessary.

89. The ODPP submitted that SASRA does not have powers to investigate criminal matters and SSFIU is not an Independent Investigative body. Section 49 of the Sacco Societies Act clearly indicates that SASRA has a duty to assist any investigative authority regarding matters of suspected fraud or malpractice in Sacco either by identification of such matters for referral or at

the request of such authority. SASRA is therefore limited to assisting in investigations.

90. With regard to Sacco Societies Fraud Investigative Unit (SSFIU) it was admitted to exist but 1st Respondent deposed that it is an administrative Unit under Directorate of Criminal Investigations formed by way of Memorandum of Understanding between DCI & SASRA for the purpose of deterrence of fraud and increased protection of member deposits.

91. The 1st Respondent submitted that the MOU (which this Court was not shown to verify the terms of engagement) was non-binding between the 2 bodies and legally binding obligations and powers can only be created through statutory instruments and Acts of Parliament.

92. The Gazette Notice No. 13392 has been attached in the parties affidavits and they hold the common position that the SSFIU is an investigative unit which was a result of cooperation/ arrangement / memorandum of understanding between the Authority and the and DCI. Its mandate is spelt out under Gazette Notice.

93. The Applicant on the other hand stated, that the Sacco Societies Fraud Investigations Unit (SSFIU), established by Sasra in 2020, is mandated to detect, prevent, and address fraudulent activities within Sacco, as per the Kenya Gazette Notice of 3rd December 2021.

94. The Court finds admittedly SSFIU is part of DCI as Police Officers deployed to SASRA are Police Officers exercising mandate under the **Constitution** and **Section 24 & 35 National Police Service Act**. They are directly answerable to DCI except for being in a specialized Unit as other specialized Units under the Insurance and Banking industries.

95. The memorandum of understanding between 2 institutions cannot be deemed non-binding as long as the terms of the Agreement are not shown to Court and validity of the Agreement MOU is not in question.

96. With respect, the Constitution donates the legal mandate of Judicial Officers and accords each Officer, Magistrate and Judge each of the Court jurisdiction. Therefore, generally all Judicial Officers of the same cadre apply the relevant jurisdiction. However, where administratively, Divisions or Special Courts are formed

for efficiency and expediency in resolution of disputes in special circumstances or area, it cannot be stated that those Divisions or Special Courts should conduct proceedings in tandem with other Judicial Officers over the same disputes. The Assigned Courts shall tackle the matters first, then any review appeal follows from the other Courts with requisite jurisdiction.

97. Further, the Respondent deposed that whether the complaint should be investigated by the Economic Crime Unit or the SSFIU is not a matter that can be directed by the Court. The Respondent is an independent statutory organ with control and mutual cooperation with its sub units. The investigative function is also a constitutional mandate with warning that interference from courts must be warranted and minimal.

98. In **Diana Kethi Kilonzo vs. IEBC and 2 Others Constitutional Petition Number 359 of 2013** the Court held that :-

“We note that the Constitution allocated certain powers and functions to various bodies and tribunals. It is important that these bodies and tribunals should be given leeway to discharge the mandate bestowed upon them by the Constitution so long as they comply with the

Constitution and national legislation. These bodies and institutions should be allowed to grow. The people of Kenya, in passing the Constitution, found it fit that the powers of decision-making be shared by different bodies. The decision of Kenyans must be respected, guarded and enforced. The courts should not cross over to areas which Kenyans specifically reserved for other authorities.”

99. This Court recognizes that all Police Officers so certified are qualified and competent and have experience to conduct investigations. The Court cannot and is not picking 1 institution over another, but in light of disclosure that all Police Officers are under the command of IG overall and specifically in investigations under the leadership of DCI then SSFIU has Police Officers from DCI and should initiate investigations and be supported by SASRA.

100. It is common knowledge that there are Special Agencies and/or Units within and seconded Police Officers/Teams to Government Agencies to engage in special assignments with regard to their mandate. There are Police Units in Central Bank of Kenya, Insurance Regulatory Body, and now Sacco Societies Regulatory Authority which admittedly has a Police Unit SSFIU. These Units Teams cannot be said to be

incapable of exercising their legal mandate under **Section 24 & 35 of the National Police Service Act.**

101.If that be the case then what would be the value or purpose of the Units BFIU, SCIU, then they ought to be abolished and each case the DCI puts up a team to investigate. With the above background I find DCI has the mandate to conduct criminal investigations directly and through Units set up which includes the teams assigned/seconded to various Government Agencies initiating the investigations and reporting to their Head.

102.The 1st Respondent urged that the complaint raised in the letter relates to serious and economic crimes. That the complaints are raised against the CEO and the Finance Officer relating to embezzlement and misuse of funds and theft of members' money. Further that the matter does not lie with the Applicant since the Sacco members are the complainants.

103.The impugned letter from the anonymous person was attached to the Applicant's Supporting Affidavit and is claimed to have informed intended investigations and the application for warrants. The letter lists various complaints levelled against the CEO

and Finance officer and requests the “relevant authority to carry out a thorough investigation with findings to be presented to the membership”

104.The author is unknown but the letter is addressed to the Board of Directors .It is also claimed that the complaint was to be raised at the AGM of 26/1/2025 but it was not raised.

105.The Applicant also contends that the complainant and/or the whistle blower was not from any of its members and that the issue was not raised in its training with members in Kirinyaga in December and the AGM held in the month of January 2025.

106.The Respondent case is that it received the complaint against the CEO and Finance officer of the Applicant. From the facts, it is clear that the complaint against the applicant’s top officials comprised of detailed allegations and the complaints are within the Applicant’s knowledge.

107.The letter titled Complaint to be raised during annual General Meeting to be held on 26/1/2025. The complaints are wide range and relate to loans to CEO & finance officers, refurbishment, salaries, vehicles, allowances, security, consultations and construction.

The investigations would entail the whole enterprise and affect the operations of the Applicant Sacco.

108. The Respondent has unlimited power to undertake investigations over serious crime, to collect related intelligence and to detect and prevent crime. The complaint having reached its desk placed the respondent within its duties under section 35 of the National Police Service Act and to exercise either of the functions listed. These functions must be done in public interest, in good faith exhibiting transparency accountability and professionalism amid other national values of public service. The Complaint is subject to investigations. Investigative powers must not be abused or done in overreach and parties have right to question abuse of process by the DCI.

109. In the case of **Kuria & 3 others versus Attorney General [2002] 2 KLR 69** cited in **Hassan Joho- Vs- Inspector General of Police & Others Constitutional Petition No 15 of 2017** .. where the court held that

“The court has power and indeed the duty to prohibit the continuation of the criminal prosecution if extraneous matters divorced from the goals of justice guide their instigation. It is a

duty of the court to ensure that its process does not degenerate into tools for personal score-setting or vilification on issues not pertaining to that which the system was formed to perform... The machinery of criminal justice is not to be allowed to become a pawn in personal civil feuds and individual vendetta. It is through this mandate of the court to guard its process from being abused or misused or manipulated for ulterior motives..."

110.In **Cape Holdings Limited -Vs- Attorney General & Another [2012] eKLR** Warsame J as he then was emphasized the independent and exclusive role of the police in investigations and also stated that intervention is where there is abuse. That “

“ My understanding of the law is that the responsibility to investigate, determine the credibility of the complaint and prosecution is solely left for the police under the direction and control of the Director of Public Prosecution. The predominant factor being that they must act in accordance with the law and so long as they do not exceed the limits, then a court should not prohibit the prosecution of an individual. The investigation of a criminal offence or complaint cannot be easily prohibited or stopped unless there is credible and reasonable evidence to show the same is mounted for an ulterior purposes or objectives. The applicant has failed

to demonstrate that the Police lack or acted in excess of jurisdiction or have not complied with the rules of natural justice. In my view it is outside the jurisdiction of this court to supervise how the police should conduct its investigations unless there is evidence to show that the investigation is being conducted in a manner to prejudice the rights and the interests of the applicant. The police should be allowed to investigate the complaint lodged by the interested party to its logical conclusion and it is now premature for me to determine whether there is any abuse being committed against the applicant.”

111. The letter addressed to DCI was also addressed to EACC KRA Applicant who forwarded the letter to SASRA and also made it part of the matters for discussion of AGM of 26/1/2025. The issue was not raised or discussed. The letter outlines various allegations of misuse of Sacco funds by CEO & Finance Officers. The Attached Audit Reports to the Application would also be subject of investigation and verification. So this Court is Not & cannot prevent preempt conduct of investigations. However, in light of disclosure that SSFIU is a part of and comprised of Officers under command of IG /Deputy IG makes it clear that it is the

Unit to conduct initial investigations with reference /reporting to Head Office. It is upon disclosure of initial findings that will illuminate on the way forward.

112.The other Court's reservation is the content of Order to investigate the Applicant by obtaining carting away numerous documents related to members shareholders deposits dividends assets loans disbursed payments made procurement of goods and services, literally all documents in and from the Applicant, Sacco of 7,600 members 3 physical branches and 22 staff members. The Sacco as a business and going concern.

113.On taking ALL documents enumerated in the Search Warrant sought under **Sections 118 & 120 of CPC** would result in immediate shutdown of the Applicant Sacco institution, deposits and savings would be all lost because the whole body would halt operations , employees would attend to investigations and /or recording of statements and eventually after investigations and/or prosecution over prolonged period the institution would fold up and would adversely affect innocent depositors.

114.As investigations of CEO & Finance Officer are carried out priority ought to be not to interfere as far as

is practically possible with the members shareholders and/or depositors of the Applicant. Their identity and financial arrangements be kept confidential and since complaint and allegations of maladministration are against CEO and Finance Officer(s) and not the Institution, the public confidence of Sacco transactions ought to be maintained while investigations commence and safe guard the Sacco as going concern.

115. Whether the search warrants complied with the law; The Trial Court orders were in line with **Section 118 & 120 & 121 Criminal Procedure Code.**

116. The 1st Respondent sought to obtain documents from the Applicant as per the list on the face of the search warrants. The documents relate to accounts of past and present members and names of members together with other dealings and financial records.

117. Section 180(1) of the Evidence Act refers to the courts power to issue warrant to authorize a police officer or such person to investigate the account of any specified person in any bankers' book. The officer may also take copies :

118. The Applicant contends that the names of members and accounts are not specified on the

warrants. That the warrants seek to investigate accounts of members but the real suspect/ persons being investigated are the applicant's Chief Executive Officer and Finance officer. It is evident that the warrants were not issued to the account holders who may be affected by the investigations.

119. In the case of **Africa Spirits Limited -Vs- Director of Public Prosecutions & another (Interested Party's) Wow Beverages Limited & 6 others** The court held that the police in exercise of obligations in executing search warrants must recognize rights of those they are investigating. That right includes the right to enable those affected by the orders issued by the court to be heard.

120. Although **Section 180(1) of the Evidence Act** does not specifically provide that where an application for a warrant to investigate a bank account is made by an investigator, the holder of such account should be served at the appropriate time, Courts have recognized that the constitutional precepts of fair trial requires that the affected party be served with the application and order (if any) at the appropriate time. 121. Recognizing this lacuna in the law, Hon LJ H. Ong'udi in **Hassan Mohammed vs EACC & Another [2019] eLKR** when

dealing with ex-parte application made under **Section 118 and 121(1) of the Criminal Procedure Code** (which was made in similar circumstances to the application that is the subject of this Ruling) held thus:

“Owing to many complaints arising from the ex parte issuance of search warrants by the Magistrate courts under section 118 and section 121(1) CPC and for proper management of the process, as a Division, we have decided to issue the following guidelines.

(i) Upon issuance of the orders under section 118 and 118A of the Criminal Procedure Code the Magistrate must state the duration which the order shall remain in force.

(ii) The duration shall not exceed 14 days.

(iii) The court shall give a return to court a date soon after the 14 days for the following purpose:

(a) For the investigation to appraise the court on what he or she has done.

(b) For the affected party to raise any issues it may have

(c) The Court could extend the search warrant by a maximum of 7 days if satisfied of the need to do so.

(d) The affected party must be served within 48 hours of the issuance of search warrants.”

122. Therefore, the DCI should/ may carry out its legal mandate of investigations but in light of the above considerations especially safeguard of Applicant Sacco as going concern, investigations shall commence first through DCI Special Unit SSFIU.

123. This Court relies on the persuasive case of **Kenya National Police DT Sacco v Office of Director of Public Prosecutions & 3 others (Criminal Revision E1769 of 2024) [2025] KEHC 10469 (KLR) (10 July 2025) (Ruling)** in similar circumstances where DCI opted to conduct investigations to Kenya Police Sacco instead of SSFIU and Hon A. Muteti J observed;

The Respondents have admitted That the officers deployed to SSFIU are DCI officers.were not able to tell this court why the SSFIU could not be trusted with the investigation. All That this court heard them state is That the choice of who is to investigate a certain matter is a preserve for the DCI and by extension the Inspector General of Police

Whereas That argument has some truth in it viewed exclusively from the standpoint of the Respondents interpretation of article 245 of the Constitution

Counsel fails to realize by creating special investigation units by whatever name they may

come the DCI/ IGP have as a matter of policy and design chosen to place investigation of certain offenses in those units of the police. The specialized units are not just there by name but by design they serve a particular purpose in investigations touching on certain categories of offenses. This court pressed counsel for the respondents to explain what is the function of the Sacco Societies Fraud Investigation Unit(SSFIU) but the two kept evading the question.....

The SSFIU does not answer to Sasra and remains a Unit of the Police. The unit has absolutely no reason not to undertake investigation and nothing stops them from reporting to the DCI on their findings. The public must get value for their money That funds the unit.....

The Unit must perform the function for which they were set up otherwise they should be disbanded if the respondents find no value in it.

DISPOSITION

- 1) The Applicant's Application filed on 19/3/2025 is hereby granted in the following terms;**
- 2) Conduct of investigations of allegations of misuse of Sacco funds to commence**

forthwith and shall be by SSFIU in the 1st instance

- 3) SSFIU to report initial and periodically to DCI on the progress status of ongoing investigations and findings.**
- 4) Any fraud disclosed to be reported to DCI for further action.**
- 5) This Court's orders of 20/3/2025 of stay of execution of Court orders of CMCCMISC E766 OF 2025 are hereby vacated and taken over by events.**
- 6) The Court orders of CMCC MISC E766 of 2025 are varied amended to facilitate investigations by SSFIU in the 1st instance and to inspect investigate the listed documents without affecting interfering with the Applicant Sacco as a going concern.**

**RULING DELIVERED DATED & SIGNED IN OPEN
COURT HIGH COURT CRIMINAL DIVISION-
MILIMANI ON 17/11/2025
VIRTUALLY/PHYSICALLY**

**M.W.MUIGAI
JUDGE**