

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.....1ST
RESPONDENT**

**YETU DT SACCO SOCIETY LIMITED.....2ND
RESPONDENT**

RULING

1. The Applicant filed a Notice of Preliminary Objection on 15/12/2025 raising 6 grounds that:

1. *The Application by the 1st & 2nd Respondents/Applicants dated 3rd December, 2025 is incompetent, misconceived, and bad in law for want of jurisdiction.*
2. *Pursuant to Section 81 (3) of the Co-operative Societies Act, the decision of the High Court on an Appeal from the Co-operative Tribunal is final and not appealable to any other court.*
3. *There exists no statutory or constitutional right of appeal from the said decision of the High Court, whether as of right or with leave.*

4. The aforesaid Application by the 1st & 2nd Respondents/Applicants herein seeking leave to appeal and/or extension of time to appeal is untenable in law where the right of appeal is expressly ousted by the statute.

5. This Honourable Court lacks jurisdiction to entertain the aforestated Application, and the same amounts to an abuse of the court process.

6. The Application ought to be struck out with costs

Submissions

2. The Applicant through the firm of Gatobu & Associates filed submissions dated 18/12/2025. Counsel contended that the application dated 3/12/2025 is incompetent, misconceived and bad in law for want of jurisdiction, and cited **Mukisa Biscuit Company v Westend Distributor Limited (1969) EA 696, Macharia & Another v Kenya Commercial Bank Ltd & 2 Others (Application 2 of 2011) [2012] KESC 8 [23 October 2012] (Ruling), Wahiu & 7 others v Magereza Savings and Credit Cooperative Society Limited (Civil Appeal 98 of 2019) [2025] KECA 621 (KLR) (4 April 2025) (Judgment) and Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Ltd (Civil Appeal 50 of 1989) [1989] KECA 48 (KLR) (17 November 1989) (Judgment)**.
3. The 1st and 2nd Respondents did not file any submissions.

Disposition

4. The issue for determination is whether the preliminary objection has been properly raised.
5. What properly constitutes a preliminary objection has been defined times over including in the *locus classicus* case of **Mukisa Biscuit Company v Westend Distributor Limited (1969) EA 696** as follows:-

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

6. The application dated 3/12/2025 is said to be incompetent for want of jurisdiction as it seeks inter alia stay of execution and extension of time to appeal against the ruling of this court dated 10/11/2025.
7. Section 81 (3) of the Co-operative Societies Act succinctly provides that, ***“the decision of the High Court on any appeal shall be final.”***
8. In the *locus classicus* case of **Owners of Motor Vessel “Lillian S” v Caltex Oil Kenya Ltd [1989] eKLR**, the Court of Appeal stated that: ***“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down***

tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

9. The Supreme Court in **Samuel Kamau Macharia & Another v Kenya Commercial Bank & 2 Others [2012] KESC 8 (KLR)** enunciated that, **“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. We agree with counsel for the first and**

second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is

not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

10. In the case of **Godfrey Kinuu Maingi & 4 Others v Nthimbiri Farmers Co-operative Society [2016] KECA 591 (KLR)**, the Court of Appeal, in declining to entertain an application for leave to appeal and to stay execution of a decision of the High Court on appeal from a decision of the Tribunal cited Section 81 of the Co-operative Societies Act and stated as follows: **“In the instant matter, the Co-operatives Societies Act specifically limited the jurisdiction of the Court of Appeal, by providing that an**

appeal to the High Court shall be final. No appeal lies to this Court from the High Court and in the circumstances, we cannot therefore purport to grant leave to the applicants to file an appeal to this Court. In view of the finding that we would not have jurisdiction to grant the applicants leave to appeal against the decision of the Tribunal to this Court, it follows that we cannot grant the orders of stay of execution of the award of the Tribunal.”

11. Given the foregoing considerations, I do find that the Preliminary objection as raised has attained the threshold as set out in the *locus classicus* case of Mukisa Biscuit Company v Westend Distributor Limited, and it is hereby allowed.

12. The upshot from the foregoing analysis is that the 1st and 2nd Respondents' application dated 3/12/2025 is hereby struck out, for want of jurisdiction with costs to the Applicant.

DATED AND DELIVERED AT MERU THIS 24TH DAY OF FEBRUARY, 2026.

**S.M. GITHINJI
JUDGE**

In the Presence of:-

- 1) Mr. Gatotu M'Inoti for the Appellant.
- 2) Mr. Kimaita for the Respondent
- 3) Ms. Kerubo holding brief for Mr. Kiautha for the Interested party

