



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: OUKO (P), NAMBUYE & ASIKE-MAKHANDIA, J.J.A.)**

**CIVIL APPLICATION NO. 89 OF 2020**

**BETWEEN**

**KAGAA FARMERS CO-OPERATIVE SOCIETY.....APPELLANT**

**AND**

**DANIEL GITHIORA GARUHA.....1<sup>ST</sup> RESPONDENT**

**JOE KARANJA NJOROGE.....2<sup>ND</sup> RESPONDENT**

*(Being an application for orders of stay of liquidation in execution of the*

*Judgment of the High Court of Kenya at Nairobi (C. Kariuki, J.)*

*dated 20<sup>th</sup> December, 2019*

*in*

*H.C.C.C. No. 327 of 2017)*

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**RULING OF THE COURT**

It is established from the pleadings and proceedings in this dispute that, pursuant to directions issued by the Co-operative Tribunal on 14<sup>th</sup> March, 2014, in Tribunal Suit No. 234 of 2011, the Commissioner for Co-operatives Development, by Gazette Notice No. 6199 of 5<sup>th</sup> September, 2014 appointed a liquidator, Peter L. Kimotho, to wind up the affairs of Kagua Farmers Cooperative Society, the applicant.

The gazette further gave notice that the registration of the applicant was cancelled with immediate effect, and asked any member aggrieved by the gazette notice to appeal to the Minister within 30 days of the notice.

The applicant moved the Tribunal by an application brought on 8<sup>th</sup> January, 2016, almost 2 years after the decision to liquidate it, seeking to be made a party to Tribunal Suit No. 234 of 2011. It also applied for a temporary order to stay the appointment of the liquidator and for the setting aside of all the orders made by the Tribunal. The application was supported by the affidavit sworn by John Gitau Mburu, who described himself as a member of the applicant with the authority of "like-minded" members to do so.

The Tribunal, after hearing arguments on the application, found no merit in it and rejected it.

Aggrieved by that decision, the applicant lodged an appeal to the High Court. C. Kariuki, J. heard the appeal, and not being persuaded, too, dismissed it.

Noting first that the applicant was already placed under liquidation on the 14<sup>th</sup> day of March, 2014, the Judge went on to state that by the date the applicant moved him, the orders issued by the tribunal had taken their full course; that the effect of the cancellation of registration and appointment of the liquidator was that, by **section 63** of the Co-operative Societies Act, the applicant ceased to exist as a body corporate and therefore could neither defend nor institute suits in its own name.

As we have indicated above, the learned Judge, for those reasons, found no merit and dismissed the appeal with no orders as to costs.

The applicant now wishes to challenge that decision in this Court, arguing, in fulfillment of the twin principles under **Rule 5(2)(b)** of the Court of Appeal Rules, that the appeal, which it has instituted, No. 89 of 2018 is arguable and further that, the appeal will be of no purpose for it if it succeeded, in the absence of an order of stay to preserve its status, as liquidation, once complete, will be irreversible.

The 1<sup>st</sup> respondent has opposed the application, urging us to see the applicant as being used by busy bodies and selfish individuals to derail the liquidation of the applicant, whose usefulness to its members is spent; and that the applicant would best serve the interests of its members by being liquidated and its assets distributed to the members.

We return now to consider whether or not the application meets the threshold of **Rule 2(5)(b)**. The applicant has applied for stay of execution of orders made on 14<sup>th</sup> March, 2014, and “**...more particularly the appointment of a liquidator to the applicant society**”.

That can only be the order of the tribunal and not of the High Court. This Court, in the circumstances of this dispute, can only stay the orders of 20<sup>th</sup> December, 2019, because the notice of appeal as well as the appeal only relates to it. Secondly, by dismissing the applicant’s application, the learned Judge did not make any order capable of being executed.

In the end, this application is bereft of merit. It is accordingly dismissed with costs to the 1<sup>st</sup> respondent.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of April, 2021.**

**W. OUKO, (P)**

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**JUDGE OF APPEAL**

**R. N. NAMBUYE**

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**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**