



Kenya Union of Commercial, Food and Allied Workers v Endarasha Dairy Farmers Cooperative Society Limited (Cause E014 of 2020) [2022] KEELRC 3909 (KLR) (16 September 2022) (Ruling)

Neutral citation: [2022] KEELRC 3909 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NYERI
CAUSE E014 OF 2020
DKN MARETE, J
SEPTEMBER 16, 2022**

BETWEEN

**KENYA UNION OF COMMERCIAL, FOOD AND ALLIED
WORKERS CLAIMANT**

AND

**ENDARASHA DAIRY FARMERS COOPERATIVE SOCIETY
LIMITED RESPONDENT**

RULING

1. This is an application dated March 21, 2022 and come out thus:
 1. That this Honourable court be pleased to grant leave to the Applicant to add Commissioner For Cooperative Development.
 2. The parties be allowed to amend their pleadings as necessary..
 3. The costs of this application be in the cause.
2. It is grounded as follows;
 1. The instant dispute relates to the employees of the Applicant/Respondent.
 2. The employees are seeking the Applicant/Respondent to comply with a notice of the Minister for Labour requiring that the Applicant/Respondent to deduct and remit union dues from the Applicant/Respondent.
 3. The Applicant/Respondent is regulated by the Commissioner for Co-operative Development and it is a requirement under Rule 27(2) that the Applicant/Respondent obtains written approvals in order to effect the Gazette Notice.



4. The joinder of the commissioner for Cooperative Development in these proceedings is necessary for effectual and complete adjudication of the matter between the parties.
5. Failure to join the Commissioner for Co-operative Development in the first place by the claimant was as a result of inadvertency on the part of the claimant.
6. No prejudice will be suffered by the claimant herein if the orders sought are granted. If anything, the Applicant by their proceedings have alluded that justice will be served by the joinder of the Commissioner for Cooperative Development.
7. It is in the interests of justice that this Honourable court grants the orders sought.

3. The Claimant/Respondent in a rejoinder sworn on March 30, 2022 opposes the Application.

The Claimant/Respondent further narrates the series of events leading to the current situation and application and avers that this is evasive and a callous attempt at circumlocution. This is further exemplified by the Respondent's dalliance as evidenced at conciliation of the dispute inter partes earlier in the day.

4. The Respondent further submits a case of deliberate and unnecessary delay of the matter by the Respondent. It is her case that through and through, the Applicant has always sought for ways and means of delaying the prosecution and outcome in this matter. The quest for joinder therefore also comes out as unnecessary delay tactic intended for untoward purposes. This must be stopped.

We observe that in the past, there have been several other situations where Co-operative matters in this sector have been transacted and finalized without touching the Commissioner of Cooperative Development. This surely is an attempt at going round circles. Delay and dalliance.

5. This application is clearly intended to scuttle due process. It is also an attempt to obfuscate and distract justice. It is frivolous, vexatious and an abuse of the process of court.

This application comes out in favour of the Respondent due to the foregoing reasons. It must fail and fail it has.

I am also inclined to dismiss this application with costs to the Claimant/Respondent.

DATED AND DELIVERED AT NYERI THIS 16TH DAY OF SEPTEMBER 2022.

D.K. Njagi Marete

JUDGE

Appearances

Mr.Sagini holding brief for Orina instructed by Orina Riechi & Company Advocates for the Applicant/
Respondent

Ms.Lilian Manene for the Claimant Union/Respondent.

