



REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CAUSE NO. 49 OF 2013

(Formerly Meru HCCC No. 34 of 2005)

MESHACK KIRIMI MWITHIMBU & 7 OTHERS.....CLAIMANTS

VERSUS

LIQUIDATOR NKUENE FARMERS CO-OPERATIVE

SOCIETY LIMITED & 16 OTHERS.....RESPONDENTS

RULING

1. The Liquidator (1st Respondent) objects to the efforts to commit him to civil jail. The Claimants sought his committal in execution of the decree of this court relative to the liquidation of the 3rd to 17th Respondents which are co-operative societies that owed the Claimants certain dues. The 1st Respondent asserts that he was Gazetted for a period and upon the period lapsing and the Commissioner of Co-operatives (2nd Respondent) having failed to Gazette an extension, his term has come to an end. The Liquidator thus opposes the committal on grounds that he was not liable for the decretal sum the subject of the execution and consequent committal sought.

2. The powers of the Liquidator and the role in as far as this dispute is concerned are provided for under Section 65 and 66 of the Cooperative Societies Act, 2012. These sections provide:-

65. Where the registration of a co-operative society is cancelled under section 61 or 62, the Commissioner may appoint one or more persons to be liquidator or liquidators of that society (hereinafter referred to as the liquidator) and all the property of such society shall vest in the liquidator from the date upon which the order of cancellation takes effect.

66. (1) The liquidator shall, subject to this Act, have the following powers—

(a) to appoint a day, in the prescribed manner, before which the creditors whose claims are not already recorded in the books of the cooperative society shall state their claims for admission, or be excluded from any distribution made before they have proved them;

(b) to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the Tribunal as litigant in person on behalf of the society;

(c)

(d) to refer disputes to the Tribunal in the prescribed manner;

(e)

(f) to investigate all claims against the society, and subject to this Act, to decide questions of priority arising between claimants;

(g) to call such meeting of members and creditors as may be necessary for the proper conduct of the liquidation;

(h) to sell the movable and immovable property and rights of action of the society, by public auction or private contract with power to transfer the whole thereof to any person or company or to transfer the same in parcels;

- (i) to carry on the business of the society as far as may be necessary for the proper liquidation of the affairs of the society;*
- (j) to determine, from time to time, by what persons and in what proportion the expenses of the liquidation are to be borne;*
- (k) to take possession of the books, documents and assets of the society;*
- (l) to arrange for the distribution of the assets of the society in a convenient manner when a scheme of distribution has been approved by the Commissioner;*
- (m) to give such directions in regard to the disposal of the books and documents of the society as may appear to him to be necessary for winding up the affairs of the society;*
- (n) to compromise, with the approval of the Commissioner, any claim by, or against, the society;*
- (o) to apply to the Commissioner for his discharge from the duties of liquidator after completion of the liquidation proceedings.***

(2)

(underline and bold for emphasis).

The law thus gives the Liquidator obligations cast in law for the mandate. It is clear the Liquidator has to seek a discharge upon completion of his duties. There is no mention of the running out of time set out in the Gazette. The Liquidation by parity of reasoning is only complete upon the liquidation of the society. Once this is done the Liquidator has to seek the discharge under Section 66(1)(o) by applying to the Commissioner for his discharge from the duties of liquidator after completion of the liquidation proceedings. In this case, there is no discharge that has been displayed and the Liquidator is therefore obligated to act until he seeks the discharge envisaged in law.

3. The Liquidator herein has not, as far as the court can discern, sought to be discharged and he therefore is liable for committal for non-payment of the decretal sum. The orders that were sought in the notice to show cause would therefore follow and the Liquidator Boniface Mwaura Karanja is liable on behalf of the 17 Respondents for committal in terms of the notice to show cause issued by the Deputy Registrar of this Court on 18th October 2018.

It is so ordered.

Dated and delivered at Nyeri this 24th day of September 2019

Nzioki wa Makau

JUDGE

I certify that this is a

true copy of the Original

Deputy Registrar