

REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS COURT OF KENYA

AT MERU

CAUSE NO. 53 OF 2018

(Formerly Nyeri ELRC 180 of 2018)

FRANCIS GITONGA MURUCHA & 8 OTHERS.....CLAIMANTS

VERSUS

THE CHAIRMAN & MANAGEMENT COMMITTEE

MUIRU FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

RULING

1. The Respondent/Applicant seeks through the motion dated 24th June 2019 for orders staying the principal sum and interest as the Applicant is in dire financial straits. The Applicant asserts that all efforts to clear the accrued sums being the principal and interest has become impossible. The Respondent urged the court to grant the motion as failure to do so would render it impossible to operate and lead to eventual collapse since it has no collateral such as land to offer. The Respondent thus sought an order that it be allowed to liquidate the decretal sum on or before the 20th day of December each year until payment in full. The Respondent sought the first mention be on 20th December 2019 and subsequent mentions to follow in succeeding years till the decretal sum is paid. The Respondent asserts that the only source of income is coffee sales and urged the court to note it utilizes the properties belonging to the mother co-operative society namely Chuka Farmers Co-operative Society Limited which is currently undergoing liquidation.

2. The Claimants are opposed and filed a replying affidavit sworn by the 1st Claimant on his own behalf and on behalf of the other 8 Claimants. The Claimants assert that upon delivery of judgment the Respondent sought 14 days to enable it pay the decretal sum and that since then they have never bothered to inform the court of any measures taken to pay the claimed sum. The Claimants assert that there are no arrears for the payments for the delivery of coffee cherries. The Claimants deponed that the Respondent was obligated to pay salaries due and not periodically as and when it chooses. It was asserted that there is no merit in the Respondent's motion which ought to be dismissed and the Chairman committed to civil jail.

3. The motion was argued and the Respondent submitted through Mr. Nyamu that the income from coffee sales is to be apportioned in the ratio 20/80 with 20% going to debts and accruals while 80% is for payment of the farmers who deliver cherry. He argued that the 20% covers the current workers and liabilities and the Respondent was constrained financially hence the motion before court. He submitted that if the orders are not granted it would escalate the woes the Respondent faced and would hasten the demise of the Respondent Society. The Claimants responded through the 1st Claimant who stated that the Respondent was not honest as there was no balances on the payment of cherry and that the Respondent had all along argued that it was applying the 80/20 ratio yet no payments were made towards the Claimants. He submitted that from the records of payments made there was payment for coffee twice a year and that the Respondent was allocated land in the liquidation. In reply Mr. Nyamu reiterated the averments of the Respondent and indicated that the Respondent had responded adequately in the further affidavit.

4. From the material before me, it seems the Respondent asserts that it undergoing tough financial times. However, it is clear that it has been the recipient of assets from the liquidation of Chuka Farmers Co-operative Society (In Liquidation) and further it did not avail the financials to show how much the 599,233 tonnes of coffee produced in 2014 fetched, or how much the 673,954 tonnes of coffee produced in 2015 fetched or what the 423,927 tonnes in 2016, the 256,702 tonnes in 2017 or the 191,383 tonnes brought in during 2018. The figures for 2019 were not even availed. In the premises it would seem there is no merit in the motion by the Respondent which is accordingly dismissed. The Respondent to make payment within the next 2 weeks failing which the Notice to Show cause can be revived.

It is so ordered.

Dated and delivered at Nyeri this 4th day of December 2019.

Nzioki wa Makau

JUDGE