



**REPUBLIC OF KENYA**

**IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI**

**CAUSE NO 2543 OF 2016**

**VINCENT MOKUA OIGO.....CLAIMANT**

**VERSUS**

**WAKENYA PAMOJA SACCO SOCIETY LIMITED.....1<sup>ST</sup> RESPONDENT**

**SACCO SOCIETIES REGULATORY AUTHORITY.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Claimant's application brought by Notice of Motion under certificate of urgency dated 8<sup>th</sup> December 2016 seeks the following orders:

- a) An order restraining the 1<sup>st</sup> Respondent from filling the position of Chief Executive Officer previously held by the Claimant;
- b) An order quashing the 2<sup>nd</sup> Respondent's letter dated 25<sup>th</sup> October 2016, suspending the Claimant from being an officer of a Sacco Society in Kenya for a period of 3 years.

2. The application which is supported by the Claimant's affidavit sworn on 8<sup>th</sup> December 2016 is based on the following grounds:

- a) The Claimant worked as the Chief Executive Officer of the 1<sup>st</sup> respondent until 25<sup>th</sup> October 2016 when he was unlawfully removed from office by the 2<sup>nd</sup> Respondent;
- b) The 1<sup>st</sup> Respondent illegally and unlawfully acting on the instructions of the 2<sup>nd</sup> Respondent terminated the Claimant's employment on 27<sup>th</sup> October 2016;
- c) The 2<sup>nd</sup> Respondent had no power to terminate the services of the Claimant who was employed by the 1<sup>st</sup> Respondent;
- d) The 1<sup>st</sup> Respondent had advertised a vacancy in the Claimant's position of Chief Executive Officer and was in the process of recruiting a substantive Chief Executive Officer ignoring the Claimant's appeal to the Cabinet Secretary, Ministry of Co-operatives;
- e) The Claimant will suffer irreparable loss and damage if the orders sought are not granted.

3. The 1<sup>st</sup> Respondent's response is contained in a replying affidavit sworn by its acting Chief Executive

Officer, Isabella Masinde on 30<sup>th</sup> January 2017.

Masinde depones that the 1<sup>st</sup> Respondent was issued with a directive by the 2<sup>nd</sup> Respondent dated 5<sup>th</sup> August 2016 to suspend the Claimant pending the hearing and determination of allegations of misconduct leveled against him. The said directive was served upon the Claimant and the 1<sup>st</sup> Respondent's Board on the same day and the Claimant was suspended.

4. Upon consideration of the Claimant's response to the allegations leveled against him dated 16<sup>th</sup> August 2016, the 2<sup>nd</sup> Respondent reached the conclusion that no sufficient cause had been given as to why supervisory enforcement action ought not to be taken against the Claimant. The 2<sup>nd</sup> Respondent therefore directed the 1<sup>st</sup> Respondent to remove the Claimant from its service as an officer. The removal directive dated 25<sup>th</sup> October 2016, together with the findings and determination by the 2<sup>nd</sup> Respondent were served upon the Claimant on 26<sup>th</sup> October 2016.

5. The 1<sup>st</sup> Respondent implemented the removal directive by its letter dated 27<sup>th</sup> October 2016 terminating the Claimant's services.

6. In a replying affidavit sworn by the 2<sup>nd</sup> Respondent's acting Chief Executive Officer, John M. Mwaka on 17<sup>th</sup> January 2017, he depones that in the course of exercising its supervisory and regulatory mandate over the 1<sup>st</sup> Respondent in accordance with Sections 49, 50 and 51 of the Sacco Societies Act, the 2<sup>nd</sup> Respondent received complaints on the conduct of the 1<sup>st</sup> Respondent's business and activities.

7. The 2<sup>nd</sup> Respondent, in exercise of its powers under Section 51 of the Sacco Societies Act as read together with Regulations 66, 67 and 68 of the Regulations, 2010 undertook supervisory enforcement actions against the 1<sup>st</sup> Respondent and several of its officers including four (4) Directors and the Claimant who was the Chief Executive Officer.

8. The said Directors and the Claimant were thereby suspended from office. The Claimant was required to respond to the allegations of misconduct leveled against him within thirty (30) days. He was also given notice of the 2<sup>nd</sup> Respondent's intention to issue supervisory enforcement action directing his removal and prohibition from serving as an officer of a Sacco Society.

9. The Claimant responded to the allegations leveled against him by his letter dated 16<sup>th</sup> August 2016 and having considered the specific responses to the allegations, the 2<sup>nd</sup> Respondent determined that the Claimant had not shown sufficient cause why supervisory enforcement action should not be taken against him. The 2<sup>nd</sup> Respondent therefore directed the 1<sup>st</sup> Respondent to remove the Claimant from its service. The 1<sup>st</sup> Respondent complied with this directive by terminating the Claimant's employment. The 2<sup>nd</sup> Respondent also barred the Claimant from the service of any Sacco Society for a period of three (3) years.

10. In response to the replying affidavits sworn on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the Claimant swore a supplementary affidavit on 24<sup>th</sup> February 2017. In this affidavit, the Claimant takes issue with the two replying affidavits which have similar averments. He alleges that the 2<sup>nd</sup> Respondent was pressured by anonymous memos leading to the unfounded opinion that the 1<sup>st</sup> Respondent's business and activities were not conducted in accordance with the law. The Claimant adds that the said memos began doing the rounds after he had suspended three senior managers.

11. The Claimant further depones that he was not accorded a fair hearing in that the 1<sup>st</sup> Respondent, who was his employer did not participate in the deliberations leading to his removal from office. He also states that the decision to remove him from office was made in haste and that his response was not considered.

12. The 2<sup>nd</sup> Respondent's Senior Compliance Officer, Anthony I. Mkabane also swore an affidavit on

24<sup>th</sup> March 2017 deponing that the Claimant was suspended from office on 5<sup>th</sup> August 2016 pursuant to statutory directives issued by the 2<sup>nd</sup> Respondent as part of its supervisory and regulatory mandate over the 1<sup>st</sup> Respondent.

13. The Claimant's prayers in this application are in the nature of mandatory and prohibitive injunctive orders. The conditions for granting of such orders were well stated in the famous case of ***Giella v Cassman Brown & Company Limited [1973] EA*** as follows:

- a) An applicant must show a *prima facie* case with a probability of success;
- b) An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages;
- c) If the Court is in doubt, it will decide the application on the balance of convenience.

14. The question before the Court is whether the Claimant's application satisfies the conditions set out in ***Giella v Cassman Brown*** (supra). From the various affidavits filed by the parties, it would appear that the circumstances and legality of the 2<sup>nd</sup> Respondent's letter suspending the Claimant from being an officer of a Sacco Society in Kenya for a period of 3 years are issues in contest. In my view, a fair determination of these issues can only be achieved pursuant to calling of evidence in a full trial. The order sought which is final in nature cannot therefore be granted at the interlocutory stage.

15. Regarding, the prayer for an order barring the filling of the position previously held by the Claimant, I am persuaded by the holding in ***Tom***

***Otieno Odongo v Cabinet Secretary Ministry of Labour Social Security & Services & National Social Security Fund Board of Trustees (Cause No 1174 of 2013)*** and ***Gladys Boss Shollei v Judicial Service Commission [2013] eKLR*** that the court should not bar institutions from running as litigation with their employees progresses.

16. For the foregoing reasons, the Claimant's application dated 8<sup>th</sup> December 2016 is declined. The costs of the application will be in the cause.

17. The interim orders granted on 9<sup>th</sup> December 2016 are vacated.

18. Orders accordingly.

**DATED SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 31<sup>ST</sup> DAY OF MAY 2017**

**LINNET NDOLO**

**JUDGE**

**Appearance:**

Mr. Nyabena for the Claimant

Miss Mutinda for the 1<sup>st</sup> Respondent

Miss Adionye for the 2<sup>nd</sup> Respondent