



REPUBLIC OF KENYA

IN THE INDUSTRIAL COURT OF KENYA

AT NAIROBI

CAUSE NO. 47 OF 2014

**PAUL IRUNGU MWANGI & 32 OTHERS.....
...CLAIMANTS**

VERSUS

**ORTHODOX ARCHBISHOPRIC OF KENYA & IRINOUPOLIS.
.....RESPONDENT**

**MILIKI SAVINGS AND CREDIT SOCIETY LIMITED.....
.....INTERESTED PARTY**

**ORTHODOX TOWERS MANAGEMENT COMPANY LIMITED.....APPLICANT/INTENDED
INTERESTED PARTY**

Mr. Timothy Waweru for Applicant/Intended Interested Party

Mrs. Christine Githii for Respondent

Mr. Arthur Ingutia for Claimants/Respondent & Interested Party

RULING

1. Application dated 5th December, 2014 and filed on 9th December, 2014 seeks for an order in the following terms inter alia;

3. *That an interim injunction do issue against the Commissioner for Co-operative Development and the Ministry for Industrialization and Enterprise Development restraining them from enforcing an agency notice issued by them under Section 35 of the Co-Operative Societies Act (Cap. 490) of the Laws of Kenya with respect to account number 3000091854 held by the Applicant/Intended Interested Party with Prime Bank Limited, Riverside Branch pending the hearing and determination of this application inter partes.*

2. The Application was heard inter partes on 11th December, 2014 and interim orders granted pending the ruling of the court.

3. The Applicant, is the Intended Interested Party, Orthodox Towers Management Company Limited.
4. The Application is supported by the grounds set out on the face of the Application and the Supporting Affidavit of Athinodoros Papaevripiades, a resident of Cyprus.
5. The Applicant deposes that it is a different and separate legal entity from the Respondent herein, Orthodox Archbishopric of Kenya and Irinoupolis.
6. That the Commissioner for Co-Operative Development under the Ministry of Industrialization and Enterprise Development wrote to Prime Bank Limited, the Applicant/Intended Interested Party's bankers on 13th November, 2014 appointing them agents under Section 35 of the Co-operative Societies Act, and requiring the said Bank to remit the sum of Ksh.41,399,284.50 to Miliki Savings and Credit Society Limited ("the SACCO") the Interested Party herein, being sums allegedly owed by the Respondent herein in respect of SACCO contributions from its employees.

7. **Common Cause**

1. It is indisputable that Orthodox Towers Management Company Limited, the Applicant and Intended Interested Party herein was incorporated on 25th April, 2014 during the pendency of this suit brought by 76 of the employees of the Respondent and filed on 22nd January, 2014.
2. That the subject of the suit is alleged failure by the Respondent "*to make any of the monetary contributions on behalf of its employees owed to the National Social Security Fund (NSSF), the National Hospital Insurance Fund (NHIF), the Orthodox Development Savings and Credit Society Ltd (SACCO), the National Industrial Training Authority under the Ministry of Labour, the Kenya Revenue Authority (KRA) as well as payments with respect to union dues deducted from the employees who are members of KUDHEIHA*".

8. **Replying Affidavit**

The Interested Party, Miliki Savings and Credit Society Limited formerly Orthodox Development Savings and Credit Society Limited, filed a Replying Affidavit to the Application deposed to on 10th December, 2014 and filed on the same date.

9. The pertinent matters raised in opposition to the Application in the said Affidavit are that;
 - a. The Orthodox Towers Management Company Limited was incorporated on 25th April, 2014 with the sole objective of acquiring assets and liabilities of the Respondent herein.
 - b. The Respondent holds 99% shares of the applicant company albeit through trustees who included the deponent of the Supporting Affidavit and the Theodoros II Nikolaos Choreftakis who is also a Director in both the Respondent and the Applicant while the remaining 1% is held by Theodoros II Nikolaos Choreftakis.
 - c. That a special resolution dated 30th May, 2014, directed the funds belonging to Orthodox Archbishopric of Kenya and Irinoupolis (the Respondent) held at Prime Bank be transferred to the Applicant's account with the same bank. That the Deponent and other Directors of the Applicant and Theodoros II Nikolaos Choreftakis himself signed the resolution. The transfer of the findings in terms of the resolution was confirmed by the Prime Bank of 14th July, 2014.
 - d. The claimant is aware but has not disclosed that the money transferred include funds due to Kenya Revenue Authority, National Social Security Fund, National Hospital Insurance Fund, Orthodox Development Savings and Credit Society Limited (Miliki Savings and Credit Society Limited) amongst other creditors save that only Kenya Revenue Authority was paid vide the resolution referred to above on the force of an agency notice by the Commissioner General of Kenya

Revenue Authority.

- e. The deponent was well aware but did not disclose that the transfer aforesaid was made during the pendency of this suit and in particular the ruling of the court which was delivered on 17th October, 2014 and the transfer was calculated to defeat the ends of justice taking into account that there were subsisting agency notices issued in April, 2014 annexed and marked "PWJ" to the Replying Affidavit.

10. By the time the said ruling was made all the funds had been transferred.

11. The deponent was aware but did not disclose that there is pending before the High Court, a derivative suit that challenges the legitimacy of the Intended Interested Party. Pleadings are annexed and marked "PW6". The Applicant is represented by the same firm of Advocates.

12. **Determination**

It is clear that the Respondent and the Intended Interested Party share a special bond and common interest and in particular the responsibility that falls on the applicant to apply the assets of the Respondent to offset liabilities such as moneys owed to the Interested Party.

13. The non-disclosure by the Applicant is clear evidence of bad faith and dirty hands as it were.

14. This Application is therefore tainted with unclean hands. It is a well-established principle of equity, that equity does not come to the aid of he who comes to it with dirty hands.

15. The Application is intended to circumvent the decisions of this court that may be unfavourable to the Applicant.

16. As a matter of fact, the Applicant is seeking the assistance and connivance with this court to evade the Ruling of the court delivered on 17th October, 2014.

17. The action by the Commissioner of Labour is in compliance with the relevant labour laws as per annex "PW7" to the Replying Affidavit.

18. The Application to injunct the government from exercising its lawful mandate has no merit at all and is an abuse of the process of this court.

19. The Application is dismissed with costs as against the Respondent and the Intended Interested Party jointly and severally.

Dated and Delivered at Nairobi this 4th day of February, 2015.

MATHEWS N. NDUMA

PRINCIPAL JUDGE