



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 789 OF 2013

ROBERT NYONGESA.....CLAIMANT

VERSUS

THE SACCO SOCIETIES REGULATORY AUTHORITY HARAMBEE

CO-OPERATIVE SAVINGS &.....1ST RESPONDENT

CREDIT SOCIETY LIMITED.....2ND RESPONDENT

RULING

By a Memorandum of Claim dated 23rd May 2013 and filed in court on 24th May 2013 the Claimant filed suit against the 1st and 2nd Respondents being the SACCO Societies Regulations Authority and Harambee Co-operative Savings and Credit Society Limited following his removal from office by the 2nd Respondent on the directives of the 1st Respondent.

The 1st Respondent filed a Notice of Preliminary Objection citing the following grounds:-

1. There is no employer/employee relationship between the Claimant and the 1st Respondent. (Article 162 (2) (a) of the Constitution of Kenya, 2010).
2. The 1st Respondent is not privy to the contract of employment between the Claimant and the 2nd Respondent.
3. The Claimant's remedy against the 1st Respondent if any, lies with the Minister in charge of Co-operative Societies pursuant to Regulation 72 (7) of the Sacco Societies (Deposit – taking Sacco Business) Regulations, 2010.
4. Any dispute between the Claimant and the 1st Respondent ought to be referred to the Co-operative Tribunal pursuant to Section 67 (3) of the Sacco Societies Act.
5. The Claimant's claims against the 1st Respondent are therefore an abuse of the court process.
6. The Court has no jurisdiction to entertain the Claimant's claims against the 1st Respondent and the claims should be struck out with costs.

The Preliminary Objection was argued on 3rd October 2013. Mrs. Okech instructed by Hamilton Harrison & Mathews Advocates appeared for the 1st Respondent while Mr. Simiyu instructed by Wafula Simiyu & Company Advocates appeared for the Claimant. There was no appearance for the 2nd Respondent.

Mrs. Okech submitted that the 1st Respondent is a state Corporation established under the Sacco Societies

Act with functions as set out in Section 5 of the Act.

She submitted that there is no employer employee relationship between the Claimant and the 1st Respondent, that the 1st Respondent was performing its statutory duty. That any appeals against the decisions of the 1st Respondent should be referred to the Co-operative Tribunal. She further submitted that the Claimant's prayers are not directed at the 1st Respondent, that the claim against the 1st Respondent is an abuse of court process, that the claim is brought under provisions of statute that have been repealed. She prays that 1st Respondent's name be struck out as court does not have jurisdiction to hear cases against the 1st Respondent.

Mr. Simiyu opposed the preliminary objection. He submitted that the grounds of objection would require the court to interrogate the pleadings filed by the parties, that the Preliminary Objection raises factual issues that are disputed, that there have been no proceedings and there is no pending charge against the Claimant under Regulation 72. That it is not in dispute that there is no employment relationship between the Claimant and the 1st Respondent who however is purporting to fire the Claimant. That the claim made against the 1st Respondent is because of usurping the role of the employer. That Section 87 (2) of the Employment Act gives exclusive jurisdiction to hear employment matters to this court while Section 76 of Co-operative Societies Act sets out disputes to be heard by the tribunal. That the law does not give the tribunal jurisdiction over employment matters.

I have considered the grounds of preliminary objection and the oral submissions made in court.

It is a fact that the 1st Respondent wrote directly to the Claimant and to the 2nd Respondent demanding first the suspension of the Claimant and Secondly the removal of the Claimant from office.

The demand by the 1st Respondent is even wider, it seeks to ban the Claimant from holding any office in a SACCO Society for a period of 3 years. In effect this would render the Claimant jobless and unemployable for 3 years.

The Constitution and the Industrial Court Act are explicit on jurisdiction on employment and Labour matters. The Industrial Court has exclusive jurisdiction. The tribunal of the Co-operative Tribunal is defined under Section 76 of the Co-operative Societies Act (Cap 490) of the Laws of Kenya. It is limited to settlement of disputes as defined therein as follows:-

(1) If any dispute concerning the business of a co-operative society

Arises:-

(a) Among members, past members and persons claiming through

Members, past members and deceased members; or

(b) Between members, past members or deceased members, and the

Society, its Committee or any officer of the society; or

(c) Between the society and any other co-operative society,

It shall be referred to the Tribunal.

(2) A dispute for the purpose of this section shall include—

(a) A claim by a co-operative society for any debt or demand due to it

from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) A claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;

(c) A claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

[Act No. 2 of 2004, s. 35, Act No. 14 of 2008, s. 71.]

From foregoing, it is clear that the Tribunal has no jurisdiction over employment matters.

The Claimant cannot resolve his dispute over his employment unless the 1st Respondent is involved as it is the 1st Respondent who directed the 2nd Respondent to terminate his employment. The 2nd Respondent has pleaded that it was directed by the 1st Respondent to remove the Claimant from office. It did not of its own volition decide to remove the Claimant from office.

It will therefore not be possible to resolve this dispute without involving the 1st Respondent.

For the foregoing reasons the Preliminary Objection has no merit and is dismissed.

Read in open court this 28th day of March, 2014.

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

Simiyu for Claimant

Gathoni holding brief for Mr. Okech for 1st Respondent

Obok holding brief for Ouma for 2nd Respondent