



REPUBLIC OF KENYA
IN THE INDUSTRIAL COURT OF KENYA AT NAIROBI

CAUSE NO. 789 OF 2013

ROBERT NYONGESACLAIMANT

VERSUS

THE SACCO SOCIETIES REGULATORY AUTHORITY1ST RESPONDENT

HARAMBEE CO-OPERATIVE SAVINGS AND

CREDIT SOCIETY LIMITED2ND 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 Regulatory 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 claim 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 and 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 urged that the 1st Respondent’s name be struck out as court does not have jurisdiction to entertain the claim against it.

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 this court to hear and determine employment matters 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 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 goes even wider, it seeks to ban the Claimant from holding any office in a SACCO Society for a period of 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 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;

76. Disputes

“ 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.”

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

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. The Claimant would therefore not be able to prosecute its case against the 2nd Respondent without involving the 1st Respondent.

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

Orders accordingly.

Read in open Court this 11th day of July 2014

HON. LADY JUSTICE MAUREEN ONYANGO

JUDGE

In the presence of:

Ouma h/b for Simiyu for Claimant

Mrs. Okech for 1st Respondent

Ouma for 2nd Respondent