



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 344 OF 2019

DAVID MATEGWA.....CLAIMANT

VERSUS

KENYA UNION OF SAVINGS & CREDIT CO-OPERATIVE

SOCIETY LIMITED.....RESPONDENT

RULING

The matter for determination is a Notice of Motion application dated 26.6.2019 filed on the same date seeking the following orders:-

1. *That this application be certified as urgent.*
2. *That pending the hearing and determination of this application and this case, there be stay of the suspension of the Claimant as a Member of the Board of Directors of Kenya Union of Savings and Credit Co-operatives limited.*
3. *That costs of this application be provided for.*

Based on the grounds on the face of the application supported by the affidavit of the claimant.

The same is opposed vide replying affidavit of *GEORGE OTOTO* secretary of the board filed on 1.7.2019.

The parties canvassed the application by way of written submissions.

The claimants filed a further affidavit on 22.8.2019. in their written submissions filed on 2.9.2019 the claimant has submitted that on or about 28.5.2012 he was elected as a director of the respondent and recognized for his invaluable contributions.

That he discharged his duties with utmost professionalism and fidelity.

That on 23.5.2019 he received a letter from the chairman asking him to vacate the board as per by-law 29 which provides for eligibility as a member and does not provide for suspension.

That the resolution of the members during the Annual delegates meeting form the decisions of the respondents, after following the laid down procedures and not vide unilateral and arbitrary actions of the chairman.

That vide the letter dated 23.5.19 the chairman unilaterally purported to suspend.

That the by-laws have nowhere stated that the board of directors have to verify considerations for appointment.

That only the board of directors can suspend a board member subject to rectification by the annual delegates meeting.

That there was resolution to suspend him for failure to submit academic certificate.

That by-law 29 provides for condition to be met for one to be eligible but does not provide for removal from office.

That by-law 33 (i) provides that a member can only be removed as provided by the by-laws.

That the supreme authority is vested in the delegates meeting.

In response the respondent submitted that by-law 29 has made it mandatory that ***“No person SHALL be eligible for membership of the board of the union or remain as member of the board if”***

That by-law 29 (L) provides for attainment of ordinary level of education on its equivalent.

That the Board of Directors sought to enforce compliance of by-law 29(L) in December 2017 and followed up with correspondence to the claimant to avail his certificate which was in vain.

That the by-law is a creation of the delegates and the claimant took oath to abide by it and ensure compliance with its provisions.

That the Board of Directors passed a resolution to ensure compliance with the provisions of by-law 29 (L) a mandatory requirement for one to be a member or to remain as such.

That the claimant has not demonstrated and/or proved attainment of the set mandatory requirement of the respondent.

That the claimant did not discharge its duty or burden of proof regarding the same.

That by-law 30(iv) permits the board to suspend a member and such decision be ratified by the Annual Delegates Meeting.

That the claimant has not demonstrated that the respondent Board has failed to represent his suspension to the delegates.

That the claim herein is pre-mature based on the provisions of by-law 45 (a), which requires that disputes concerning operations of the union be referred to the Board or delegates and when the said dispute cannot be resolved thereby then the same can be referred to the Tribunal.

That therefore the tribunal lacks the jurisdiction to entertain this claim.

That the suspension of the claimant is still pending rectification by the delegates and this dispute has not been referred to the delegate for determination.

We have carefully considered submission of the parties' evidence on record. We have also noted the provisions of by-law 29 which is crafted in mandatory terms for eligibility as of members of Board of Directors. We have also noted, resolution on page 8 of the minutes of the meeting held on 21.12.2017 which resolution recommended that all board members were to submit their academic/training certificate and Curriculum Vitae by 31.12.2017 and the same was rescheduled to 15.1.18 and the

said resolution was proposed by *DAVID OGEGE* seconded by *PETER KIAREAMANU* and approved unanimously and the claimant was member number 3 of the list of directors present at the meeting. This resolution has not been disputed by the claimant. We have also noted that the letter dated 6.7.2018 addressed to the claimant urging him to submit his updated Curriculum Vitae and certificates by 24.7.18.

We have also noted the email dated 20.7.18 on the same matter, the email dated 8.8.18 on the same reference, the letter dated 13.9.18. ALL these letters requesting the claimant to submit his academic, professional certificates and Bio data.

The claimant has not provided any evidence showing compliance/response to all these letters and the resolution of the full board members dated 21.12.2017 for which the deadline to submit was directed to be on 15.1.18.

The by-laws are clear on eligibility .

To membership of the board. By –law 29 introductory part is crafted in mandatory terms for requirement for membership and to remain a member.

In this regard there is no evidence or proof that the claimant was eligible for membership or to remain a member owing to the fact that the resolution of 21.12.17 of the full board was the unanimous decision for every member to comply with the specific by-law number 29 (L) by 15.1.18.

The letter addressed to the claimant was a culmination to all the remainders to the claimants to comply. Since there was no compliance it therefore goes without saying that the claimant in the first instance was not eligible to be a board member or to remain as a board member, we therefore find that the claimants application dated 26.6.19 seeking for stay of suspension of the claimants as a member of the board of directors of the respondent has no merit. This is for the main reason that the claimant was never in the first place eligible as such as a member having not complied to the mandatory by –law 29 (L).

We accordingly dismiss the said application with costs.

Read and delivered in open court, this 7th of November 2019.

In the presence of:

Claimant: Kibue holding brief for Chege for the Claimant.

Respondent: Mbuthia holding brief for Modi for the Respondent.

Court Assistant: Leweri and Buluma.

B.Kimemia - **Chairman-signed.**

R.Mwambura – **Member-signed.**

P.Swanya - **Member-signed.**



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