



REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 293 OF 2019

KWA MATINGI FAMERS CO-OP. SOCIETY LTD.....CLAIMANTS

VERSUS

DAVID KALOKI NGANGA & 4 OTHERS.....RESPONDENTS

RULING

The matter for determination in a Notice of Motion application dated 4.6.2019, 10.6.2019 and 17.6.2019. The application dated 4.6.2019 seeks for following orders;

1. Spent

2. Spent

3. That the respondents, their agents or servants be restrained by way of a temporary injunction from taking over as the management committee of the claimant or in any other way interfering, acting and presenting themselves as the management committee of the claimant or in any way holding meetings in the claimants premises or in any other way interfering with the claimants duly constituted and elected management committee activities transferring pending the hearing and determination of this claim.

4. That the Respondents their agents or servants be restrained by way of injunction from convening, presiding or in any way organizing a special general meeting in respect of the claimant pending the hearing and determination of this claim.

5. That the cost of this application be provided for.

6. That the tribunal be pleased to grant any other relief it deems fit to grant.

Based on the grounds on the face of the application and supported by the affidavit of **M. WAMBUA** the Chairman of the claim.

The same is opposed by the reply affidavit of *David Kaloli* 1st respondent.

The application dated 10.6.2019 seek the following orders; -

1. THAT, this application be certified as extremely urgent service of the same be dispensed with and the same heard ex-parte in the first instant.

2. THAT, this Honourable court tribunal be pleased to order a stay of its orders issued on 4th June, 2019 in this case pending the hearing and determination of this application interparties.

3. THAT, this Honourable tribunal be pleased to set aside and or vacate its ex-parte orders issued on the 4th June, 2019.

4. THAT, costs of this application be provided for.

Based on the grounds on the face of the application and supported by the affidavit of **David Kaloki** the 1st respondent.

The third application dated 17.6.2019 seek for the following orders;-

1. THAT, this application be certified as extremely urgent service of the same be dispensed with and the same heard ex-parte in the first instant.

2. THAT, this tribunal be pleased to give an interpretation of its order issued on 4th June, 2019 with a view to clarifying the obligations of and duties of all the parties affected by the order.

3. THAT, the costs of this application be in the cause.

Based on the grounds on the face of the application and supported by the affidavit of David Kaloki. The two applications are opposed by the replying affidavit of the claimant filed on 1st .7. 2019.

The 1st respondent filed a supplementary affidavit in respect to both applications. The applications were canvassed by way of written submissions.

The claimant filed their written submission on 8.8.2019 and submitted that the claimant was an elected Management Committee comprising of nine members who periodically held office for a period of 3 years provided that 1/3 shall retire every year.

That due to a dispute with the county commissioner of Co-operative regarding the calling by management of Annual General Meeting scheduled for 19.2.2019, the claimant filed judicial review proceedings and obtained orders barring the commissioner, his agents or employees from convening an Annual General Meeting pending the hearing and determination.

That thereafter, the Respondent with others secured a Special General Meeting and later on scrutiny of the signatures, it was discovered that it consisted the list of non-members, deceased member and zone was not represented.

That they had not reached the threshold of asking for the meeting and they came up with a number of resolutions which includes election of interim management committee, five members affecting Article 35 of the by-laws.

That there was no register. That there were co-operative officers presiding in contempt of the court order and the term for the interim Management committee was 90 days calculated to oust the existing committee.

That the actions by the respondents were illegal, unlawful and in contempt, hence it cannot be conferred by protection of the Tribunal.

That the application dated 10.6.2019 seeks to set aside or vacate the orders issued vide application dated 17.6.2019 seeks interpretation of the orders issued on 4.6.2019.

That on 3.7.2019 the respondents were ordered to comply with the orders issued on 4.6.2019 hence both application are spent as they sought to overturn the interim orders.

That the claimant has met the threshold required in granting interlocutory injunction.

The respondents filed their written submissions on 19.8.2019 and submitted that the applicant filed the application on interim orders to restrain the respondents from taking over office from the Management Committee.

That in the statement of claim, the validity of the election is challenged.

That the former chairman of the Management Committee Antony M. Wambua, who admits that there was election held on 9.5.2019 during a Special General Meeting convened by members and in which the respondents were elected as Management committee.

That the claimant is challenging the manner in which the Annual General Meeting was convened and validity of the election.

That upon election, the respondents took over office and filed indemnity forms and their names were forwarded as signatories.

That on 4.6.2019 the respondents were already in office as the management committee.

That the former chairman and other members were removed from the office therefore cannot initiate the claim on behalf of the claimant.

That they could only initiate the proceedings in their personal capacities. That this matter was filed a month after elections and averred that the outgoing management committee did not sign the handover sheet does not negate the exercise.

That the interim orders issued were obtained through misrepresentation.

That the respondents were yet to assume of office.

That there was contempt of court orders, the commissioner could have been cited for contempt.

That the commissioner had only been barred from convening a Special General Meeting.

That unless the orders issued are vacated, the claimant's Sacco will remain without management committee until the claim is heard and determined and this will cripple the operation of the society.

That this function cannot be carried out by the former Management Committee since their indemnity lapsed and they were voted out.

We pray for the application to be dismissed.

We have carefully considered the written submission and the documents on records we note the High Court orders dated 31.1.2019 and the subsequent Notice of Motion filed 31.1.2019.

We have also noted the complaints by the respondents to the claimant demanding for members Special General Meeting dated 10.4.2019. We have noted the response dated 20.4.2019 explaining why the demand for Special General Meeting failed to meet the required threshold for Special General Meeting. We note that thereafter there is a notice to convene a Special General Meeting to be held on 9.5.2019. The said notice is dated 29.4.2019.

We have noted the agenda of the said notice signed by 7 members including the 1st and 3rd respondents. We have also noted the handing over letter dated 15.5.2019 signed by G.K.Munyoli the Administrative Manager.

We also noted the minutes of Special General Meeting held on 9.5.2019 which indicates that the 470 members present. But the list of the said members is not attached therein and that the present committee members were not present.

We have noted that the minutes one of the agenda is appointment of the presiding chairman and minutes 6 is the election of the interim committee. Minute 7 election of office bearers.

Minute 8 confirmation of elected committee.

We note that in the minutes the District Co-operative Officer presided, over the election and only 5 zones were represented.

We note that there was no agenda in the notice for the members Special General Meeting for elections.

We have noted the provision of section 27(6) and (7) and note that a notice to the members for Special General Meeting should state the objectives and reasons for the meeting.

In this matter we note that no list of the members present in the meeting was attached. The agenda in the meeting held on 9.5.2019 was basically elections and the reasons given in the notice were not seen discussed.

We are not told why there was need for formation of an interim committee yet there was a management committee in place during the said Special General Meeting. We are also not informed what happened to the current management committee of the claimant.

In the said minutes there is nothing to show that the present administration had been dissolved. Minutes No. 4 allegedly introduces elections of interim committee to take over the society's office.

We note that a notice for elections should have been issued for elections and replacement of the current committee members.

We also note that there is no reason given why the Management Committee were being replaced together with changes of the bank signatories and indemnities yet there were no introduction letters. There was no handing over reports.

In totality we find that the manner, in which the respondents purports to have been elected is highly questionable and this matter requires further proof by way of the evidence.

In the circumstances we find that the application by the applicant/claimant has merits and it has met the threshold as enumerated in **GIELLA .VS CASSMAN BROWN (1973) EA 638.**

We accordingly grant the application dated 4.6.2019 with costs in the cause.

We find that the application dated 10.6.2019 has no merits and we accordingly order the respondents to handover the running of the claimant to the management committee as constituted on 7.5.2019 that is before the purported Special General Meeting pending the hearing and determination of the main suit.

These are further orders and interpretation of the orders issued on 4.6.2019. The application dated 17.6.2019 is granted with costs in the cause subject only to the interpretation of the orders granted in the application dated 4.6.2019.

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

In the presence of:

Claimant: Kibue Advocate holding brief for Mutisya.

Respondent: Ndolo holding brief for Mwendwa.

Court Assistant: Leweri and Buluma.

B.Kimemia - Chairman-signed.

R.Mwambura - Member-signed.

P.Swanya - Member-signed.



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