



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC SUIT NO. 175 OF 2002**

**JOSEPH MUTUA MBUVA.....PLAINTIFF**

**VERSUS**

**WAICHAKEHIRI FARMERS SOCIETY LTD**

(Sued through Chairman **ROBERT KIMATHI MARETE.....DEFENDANT**

**RULING**

1. By an application dated 15.11.2021 Festus Muritani Rware and Kelvin Mwirigi Riungu describing themselves as current chairmen of the defendant, seek for the review and or setting aside of orders issued on 9.11.2021 dismissing the application dated 30.4.2021.
2. The application is supported by an affidavit sworn by Festus Muritani Rware on 15.11.2021. The reasons for the application are that on 9.11.2021 they attended court but were disallowed by security from accessing the courtroom; that on 9.3.2020 they were duly elected as the new officials of the defendant and therefore they no longer wished to continue being represented by the current lawyers on record. They therefore filed a notice of withdrawal of advocates on 22.2.2021 and subsequently the application dated 30.4.2021.
3. The application is also supported by a supplementary affidavit sworn by Festus Muritani Rware on 31.1.2022 and filed on 1.2.2022 attaching correspondence from the relevant offices including the chief's office and the Department of Trade, Tourism & Cooperative Development, Meru County letters dated 31.1.2022.
4. The application has been opposed by an affidavit of Robert Kimathi Marete sworn on 4.2.2022.
5. The grounds are that the applicant's claims to be the current chairman of the defendant were baseless since he was not aware of any alleged mandate by the applicant. It is averred the applicant lack **locus standi** to withdraw the legal representation.
6. When the matter came up on 18.1.2022, parties were directed to file written submissions by 5.2.2022 and address the court on the issue of jurisdiction.
7. The firm of E.G. Mwangi and Co. advocates on record for the defendant submitted the applicants were purporting to withdraw the legal services after the case had been successfully litigated

8. It was submitted the issue of who are bonafide members and officials of the defendant was governed by the **Cooperative Societies Act Cap 490**.

**9. Section 78 (1) of Cap 450** gives the mandate to determine the bonafide members or officials to the Cooperative Tribunal hence the application is bad in law.

10. It was further is submitted the applicants have no valid authorization to lodge the proceedings. Reliance was placed on **Joseph Muthuri Ikunyua & 32 Others –vs- Cooperative Bank of Kenya Ltd & 14 Others [2018] eKLR** and **Moses Mwicigi & 14 Others –vs- Independent Electoral & Boundaries Commission & 5 Others [2016] eKLR**.

11. In order to contextualize the application, there is need to look at the court record. By a judgment dated 3.6.2019, the suit filed against the defendant regarding **Parcel No. 1693 Part A** seeking for a permanent injunction, a refund of money and removal of caveat was dismissed with costs on the basis that the sale agreement had not been validly entered into between the plaintiff and the defendant.

12. The plaintiff lodged a notice of appeal on 10.6.2019. Bill of costs was taxed at **Kshs. 204,275/=** and a certificate of costs issued on 11.1.2021. Thereafter, a notice to show cause was issued on 29.1.2021 and set for hearing on 15.4.2021.

13. The court record indicates a notice of withdrawal of advocates dated 19.10.2020 was filed on 22.2.2021. A consent letter allegedly signed by the plaintiff and officials of the defendant was filed on 23.2.2021 purporting to review the decree of the court by giving the plaintiff 3.80 acres out of **L.R No. Timau Settlement Scheme/693**. It also purported to withdraw the **Court of Appeal**, Appeal No. 25 of 2020.

14. The consent letter had been not signed by the firm of E.G. Mwangi & Co. Advocates currently on record for the defendant. Similarly, the consent “letter” was not endorsed. Further E.G. Mwangi & Co. Advocates by a letter dated 2.3.2021 indicated the consent had been signed by persons unknown to the defendant also purporting to withdraw legal representation.

15. With this background, this court has to determine if it has jurisdiction to entertain the applicant’s application and especially where the legal representation was in question.

**16. Section 76 (1) (b) of the Cooperative Societies Act** provides any dispute concerning the business of a cooperative society between members and the society, its committee or any offices of the society shall be referred to the tribunal.

17. In **Charles Keragita Arwenya –vs- Nyakoe Farmers Co-operative Society Ltd [2016] eKLR**, the court held **Section 76 of the Act** ousted the jurisdiction of the High Court in exercising original jurisdiction in disputes involving cooperative societies and its members.

18. The applicants are claiming to be the new bonafide elected officials of the defendant whereas the respondents are claiming to have been the bonafide officials throughout the life time of the suit up to the date the judgment was delivered.

19. This court has already determined the issue of the land and rendered its judgment. Therefore, the twin issues on whether the decree herein could be varied through a consent letter whose execution is contested and secondly, as to who could rightfully instruct advocates and or withdraw legal representation are matters that can only be determined after the issue of bonafide officials has been determined by the tribunal.

20. Consequently, my finding is that this court lacks jurisdiction to determine and entertain the consent letter filed on 23.2.2021, the notice of withdrawal dated 19.1.2021 and the application dated 15.11.2021 before the bonafide officials of the defendant are determined. The same are hereby struck out and expunged from the court records with no orders as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU THIS 16<sup>TH</sup> DAY OF**

**MARCH, 2022**

**In presence of:**

Anampiu for plaintiff – present

Festus Muritani – present

Mwirigi or ... present

Joseph Mutua - present

Karanja for defendant – present

Court assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**



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