



Case Number:	Tribunal Case 242 of 2019
Date Delivered:	07 Nov 2019
Case Class:	Civil
Court:	Cooperative Tribunal
Case Action:	Ruling
Judge:	B.Kimemia - Chairman, R.Mwambura – Member & P.Swanya - Member
Citation:	Charles Murimi Mwenje v Fortune Sacco Limited [2019] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Tribunal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application dismissed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

The information contained in the above segment is not part of the judicial opinion delivered by the Court. The metadata has been prepared by Kenya Law as a guide in understanding the subject of the judicial opinion. Kenya Law makes no warranties as to the comprehensiveness or accuracy of the information.

REPUBLIC OF KENYA

IN THE CO-OPERATIVE TRIBUNAL AT NAIROBI

TRIBUNAL CASE NO. 242 OF 2019

CHARLES MURIMI MWENJE.....CLAIMANT

VERSUS

FORTUNE SACCO LIMITED.....RESPONDENT

RULING

The matter for determination is a Notice of Motion application dated 8.5.2019 seeking the following orders:-

1. *That this honorable court be pleased to certify this application as urgent and dispense with its service in the first instance.*
2. *That this honorable court be pleased to order suspension of the claimant on 6th May 2019 from being director of the Respondent Sacco be stayed pending the hearing and determination of this application interparties.*
3. *That this honorable court be pleased to order notice to call for an annual general meeting to ratify the suspension of the claimant be stayed pending the hearing and determination for this application interparties.*
4. *That this honorable court be pleased to order notice for elections to replace the claimants as a director of the Sacco society be stayed pending hearing and determination for this application interparties.*
5. *That this honorable court be pleased to order the suspension of the claimant on 6th May 2019 as a director of the respondent Sacco be stayed pending the hearing and determination of the main claim.*
6. *That this honorable court be pleased to order notice to call for an annual general meeting to ratify the suspension of the claimant be stayed pending the hearing and determination of the main claim.*
7. *That this honorable court be pleased to order notice for elections in the annual general meeting to replace the claimant as a director of the sacco society be stayed pending the hearing and determination of the main claim.*
8. *That costs of the application be provided for.*

Based on the grounds on the face of the application and supported by the affidavit of *CHARLES MURIMI MWENJE* filed on 9.5.2019. The same is opposed by the replying affidavit of *AMOS KIMOTHO* filed on 25.5.2019 and a further supplementary affidavit filed on 28.8.2018. The application was canvassed by way of written submissions.

The applicant filed their submission on 1.10.2019 while the respondents filed their submissions on 14.10.2019. we also note that there is another application filed on 11.6.19 which seeks for committal of the chairman of the board of directors one *DICKSON KARAI* and *CEO AMOS NJERU* to be committed to civil jail for contempt of court orders.

We wish to determine both applications together noting that the 2nd application arises from interim orders issued on the 1st application the said orders dated 9.5.2019 of which the respondent is alleged to be in contempt of

The application dated 8.5.2019, the parties opted not to partially submit in the said application however we issue the ruling

based on the affidavits on record and thereafter determine the second application based on the 1st application and the submissions of the parties. The applicant sought orders to stay the suspension of the claimant on 6.5.2019 and to stay the annual general meeting to ratify the said suspension.

The grounds given are that the claimant was suspended verbally on allegation that he was inciting other sub delegates against one *RUFUS KAMAU* and by questioning how he became a director yet he did not hold an "O" level certificate education.

That the applicant was the one who had incited this fellow delegates to write the said letter dated 8.4.2019. In the supporting affidavit of the claimant, he stated there was a director's meeting on or about the 6th May 2019 which alleged that the claimant and one *WILFRED MWANGI* had incited other delegates against the said *RUFUS KAMAU*.

In response we note that the replying affidavit and the supplementary affidavit of *AMOS KIMOTHO* one filed specifically for the application dated 10.6.19 but have also addressed the issues arising in the application dated 8.5.2019 and presume therefore the respondents opted not to specifically file a replying affidavit for the application dated 8.5.2019.

However, since we are considering both application together for purpose of saving time in litigation, we have noted the replying affidavit that address the issues raised in the application dated 8.5.2019. The respondent avers that the claimant incited the delegates into writing a damaging letter addressed to the commissioner of cooperatives.

That they raised issues in the letter which had been conclusively addressed in the annual general meeting of 27.4.18. Therefore the said letter was an act of sabotage.

That on investigations they established that the claimant together with one *WILFRED KIBAKI* had incited the delegates into signing the said memorandum /letter and they were to face disciplinary proceedings.

That the said *WILFRED* opted to resign and the claimant was advised that he would be required to defend himself during the next board meeting to be held on 6.5.19.

That there was no suspension on the 6.5.2019 and no annual general meeting was called to suspend the claimant as a director and that no evidence has been led to proof this allegations.

That there being no suspension there was also no notice issued for directions to replace the claimant.

That the claimant therefore misled the tribunal with allegation of suspension when in fact disciplinary proceedings had not commenced .

That following resolutions passed in the annual general meeting of 27.4.18, the board meeting of 6.5.19, ratified the decisions to approve the amendments of the by-laws.

That a special general meeting for 17.5.2019 was issued and the claimant was invited but he did not attend.

That while the special general meeting was about to end it came to the attention of the delegation of the instant proceedings instituted by the claimant and a resolution was passed expelling the claimant as a delegate for his actions in by-passing the internal dispute resolution mechanism laid out in the by-laws and the charter.

That the expulsion was of his capacity of him as a delegate only.

That due to the chaos confusion occasioned on 17.5.19 at the special general meeting caused by the claimants action, there was a decision not to invite the claimant to the education visit for delegates at Mombasa from 3rd – 7th June 2019 in a bid to maintain law and order.

That the claimant has not been sidelined as a director.

In the light of all that the documents and the pleadings on record there is nothing to show that the claimant was suspended on 6.5.19 hence orders issued on 9.5.19 were as a result of mis-representation of the claimant to the tribunal hindered there was no documents filed to confirm the said suspension to show that indeed the claimant was ever suspended by the board.

It is therefore surprising for the claimant to impute/allege contempt of the tribunal orders knowing very well that there was mis-representation/no proof presented on the alleged suspension.

On the issue of contempt it was paramount for the claimant to strictly demonstrate that indeed that there was a suspension on the 6.5.2019 and the resignation letter of WILFRED MWANGI KIBAKI of 26.5.2019, we have also noted the minutes of the meeting of the board of directors held on 6.5.2019 and specifically minute number 0305/2019, headed **directors discipline issues** in which the said memorandum dated 8.4.2019 was discussed in the presence of the claimant.

There was a resolution that the 2 directors had a case to answer and were required to show cause why disciplinary action should not be taken against them, and in the said meeting one WILFRED MWANGI KIBAKI tabled his resignation letter which was accepted by the board.

That the board ratified the decision to call for a special general meeting on 17.5.19 to discuss the amendments to the by-laws.

We have also noted the notice for special general meeting issued, and the attendance register for the board of directors meeting of 21.6.2019 as shown in annexure AK6.

That the claimant has been dishonest in his allegations for contempt and is using this proceedings to blackmail the board of directors in an attempt to stall the disciplinary proceeding against him.

We have carefully, considered the pleadings and documents on record and submission by the parties and address both application as follows:-

(i) That the alleged suspension of the 6.5.19 was not strictly demonstrated by the claimant since it is alleged it was a verbal communication.

We have noted that there was an annual general meeting on 27.4.18 in which the claimant was present and there was a proposal for amendment of by-laws.

We have also noted the letter dated 8.4.2019 and the meeting held that day discussed the discipline issues of the directors and the claimant was expected to show cause why disciplinary action should not be taken against him. The minutes are clear on what transpired on the material dates. That indeed the claimant was never suspended as a director.

In the minutes of the special general meeting held on the 17.5.2019 was also confirmed that the claimant was suspended as a delegate but confirmed to serve as a director in the board.

In the essence on 6.5.19 there was no suspension proved by the claimant to warrant the orders issued by the tribunal on 9.5.2019 be that as it may it follows then that there is no contempt demonstrated by the claimant.

(ii) We find that the claimant on the 6.5.2019 was put on notice of disciplinary action to be commenced against him but instead of showing cause and following the laid out procedure laid out in the by-laws as per by-law 18, he came to the tribunal and filed a suit. There is no evidence provided in the first instance by the claimant that indeed there was such oral suspension to warrant citation of contempt. However since the matter is still pending for determination, we will rest at this point pending the hearing and determination of the main claim.

In the circumstances we find that the application dated 8.5.19 and filed on 9.5.2019 and the application dated 10.6.2019 filed on 11.6.2019 have no merits and accordingly dismiss both application with costs.

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

In the presence of:

Claimant: None-appearance

Respondent: Kibue advocate

Court Assistant: Leweri and Buluma

B.Kimemia - Chairman-signed

R.Mwambura – Member-signed

P.Swanya - Member-signed



While the design, structure and metadata of the Case Search database are licensed by [Kenya Law](#) under a [Creative Commons Attribution-ShareAlike 4.0 International](#), the texts of the judicial opinions contained in it are in the [public domain](#) and are free from any copyright restrictions. Read our [Privacy Policy](#) | [Disclaimer](#)