

Approved for tabling

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Paper laid by the Vice-Chair, Agriculture, Livestock and Cooperatives Dev (9/3/2016 Cmu)



REPUBLIC OF KENYA



ELEVENTH PARLIAMENT - FOURTH SESSION - 2016

THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES

REPORT ON THE PUBLIC PETITION BY THE STAKEHOLDERS OF THE KENYA PLANTERS COOPERATIVE UNOIN LTD FOR THE REMOVAL OF THE COMMISSIONER FOR COOPERATIVES DEVELOPMENT

10

DIRECTORATE OF COMMITTEE SERVICES,
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS,
NAIROBI

MARCH, 2016

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ABBREVIATIONS /ACRONYMS

CCMMAA - Commercial Coffee Millers and Marketing Agents Association

C.E.O - Chief Executive Officer

J.R - Judicial Review

KCCE - Kenya Cooperative Coffee Exporters Kenya

KCCM - Kenya Cooperative Coffee Millers

KPCU - Kenya Planters Cooperative Union

1.0 PREFACE

On behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives and pursuant to provisions of Standing Order 227, it is my pleasant privilege and honour to present to this House the Report of the Committee on the Public Petition by the stakeholders of the Kenya Planters Cooperative Union LTD for the Removal of the Commissioner for Cooperatives Development.

The petition was tabled before the House pursuant to Standing Order No. 225 (2) (a) by the Hon. Victor Munyaka, MP, on behalf of the stakeholders of KPCULtd on 13th December, 2014.

1.1 MANDATE OF THE COMMITTEE

The Committee is established pursuant to the provisions of Standing Order No. 216, with the following terms of reference: -

- a) to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
- b) to study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
- c) to study and review all legislation referred to it;
- d) to study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House or a Minister;
- f) to vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments); and
- g) to make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

The Committee under Standing Order 227 is mandated to respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the floor of the House.

1.2 COMMITTEE MEMBERSHIP

The Committee comprise of the following Members:-

1. The Hon. Adan M. Nooru, MBS, M.P - **Chairperson**
2. The Hon. Kareke Mbiuki, M.P - **Vice Chairperson**
3. The Hon. Daniel Maanzo, M.P
4. The Hon. Silas Tiren, M.P
5. The Hon. Maison Leshoomo, M.P
6. The Hon. Mary Wambui, M.P
7. The Hon. (Dr.) Victor Munyaka, M.P
8. The Hon. Korei Ole Lemein, M.P
9. The Hon. John B. Serut, M.P
10. The Hon. Peter N. Gitau, M.P
11. The Hon. Florence Mutua, M.P
12. The Hon. John Kobado, M.P
13. The Hon. Benjamin Washiali, M.P
14. The Hon. Patrick Wangamati, M.P
15. The Hon. Phillip Rotino, M.P
16. The Hon. Raphael Letimalo, M.P
17. The Hon. Ayub Savula Angatia, M.P.
18. The Hon. Waititu Munyua, M.P
19. The Hon. Kimani Ichung'wah, M.P
20. The Hon. Ferdinand Wanyonyi, M.P
21. The Hon. Kabando WaKabando, M.P
22. The Hon. Justice Kemei, M.P
23. The Hon. James Opiyo Wandayi, M.P
24. The Hon. Millie Odhiambo - Mabona, M.P
25. The Hon. Hezron Awiti Bollo, M.P
26. The Hon. Fredrick Outa, M.P

27. The Hon. Zuleikha Hassan Juma, M.P

28. The Hon. Alfred KiptooKeter, M.P

29. The Hon. Paul SimbaArati, M.P

1.3 COMMITTAL AND CONSIDERATION OF THE PETITION

The petition was referred to the Departmental Committee on Agriculture, Livestock and Cooperatives in accordance with Standing Order 227 (1) for consideration and preparation of a report within 60 days. The Committee considered the petition in accordance with the provisions of Standing Order 227 (1) and (2).

In considering the petition, the Committee invited and held meetings with the petitioners, (Mr. James N Mungai, Mr. Jackson Kinyua, Mr. Maina Mwangi), the management and officials of KPCU Ltd and the Ministry of Industrialization and Enterprise Development.

1.4 THE PRAYERS IN THE PETITION

The petitioners had **prayed that the National Assembly through the Departmental Committee on Agriculture, Livestock and Cooperatives:-**

- I. Investigates the conduct of the Commissioner for Cooperatives Development with a view to sanctioning, censoring and removing him from his position;
- II. Urges the government to support the Union's revival efforts by writing off its outstanding debts, injecting capital and granting the Interim Board a three-year operational period to allow for stabilization;
- III. Directs the Cooperative Bank of Kenya to forthwith cease meddling in KPCU's affairs and micro-managing the coffee industry.

1.5 COMMITTEE OBSERVATION

The Committee observed the following from the meetings held and the submissions presented;

- 1) The Commissioner for Cooperatives in question has since retired on 27th September 2015.
- 2) The prayers in the petition by Stakeholders of KPCU Ltd are substantially similar to the pleadings in a judicial review case no. 312 of 2014 before the Court of Appeal.

- 3) The Petitioners did not make full disclosures in accordance with the provisions of Standing Order 223 (g) that require Petitioner(s) to indicate in the Petition whether the issues in respect of which the petition is made are pending before any court of law or other Constitutional or Legal body.

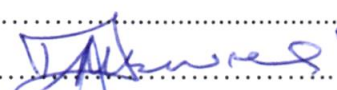
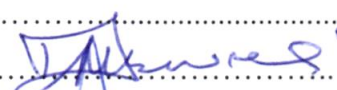
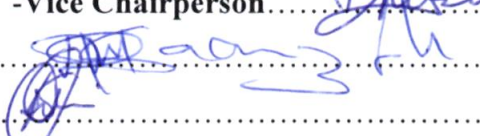
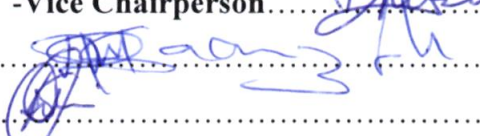
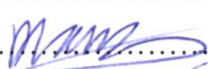
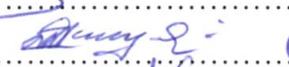
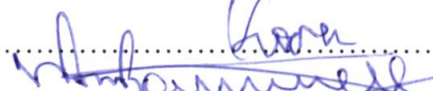
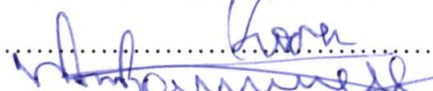
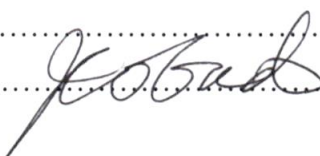
1.6 RESPONSE TO THE PRAYERS IN THE PETITION



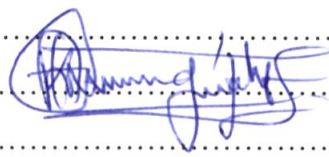
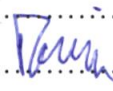

In response to the above prayers, **the Committee recommends that;**

The Committee resolved not to consider the petition further as the Committee cannot deliberate on the issues raised in the Petition without substantially commenting on the matters the Court has to determine in accordance with the provisions of Standing Order 89 on matters sub judice. However when the Judicial Review in the Court of Appeals finalized and petitioners are of the view that critical matters regarding their prayers to National Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.

1.7 ADOPTION OF THE REPORT

We, the members of the Departmental Committee on Agriculture, Livestock and Cooperatives, have pursuant to Standing Order 199, adopted this Report on the Petition by KPCU Stakeholders and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity.

- | | | |
|--|-------------------------|---|
| 1. Hon. Adan M. Nooru, MBS, M.P | -Chairperson |  |
| 2. Hon. Kareke Mbiuki, M.P | -Vice Chairperson |  |
| 3. Hon. Daniel Maanzo, M.P- | ..... |  |
| 4. The Hon. Silas Tiren, M.P- | ..... |  |
| 5. The Hon. Maison Leshoomo, M.P- | ..... |  |
| 6. The Hon. Mary Wambui, M.P - | ..... |  |
| 7. The Hon. (Dr.) Victor Munyaka, M.P- | ..... |  |
| 8. The Hon. Korei Ole Lemein, M.P- | ..... |  |
| 9. The Hon. John B. Serut, M.P - | ..... |  |
| 10. The Hon. Peter N. Gitau, M.P- | ..... |  |
| 11. The Hon. Florence Mutua, M.P- | ..... |  |
| 12. The Hon. John Kobado, M.P - | ..... |  |

13. The Hon. Benjamin Washiali, M.P-..... 
14. The Hon. Patrick Wangamati, M.P -.....
15. The Hon. Phillip Rotino, M.P-.....
16. The Hon. Raphael Letimalo, M.P -..... 
17. The Hon. Ayub Savula Angatia, M.P.-.....
18. The Hon. Waititu Munyua, M.P-.....
19. The Hon. Kimani Ichung'wah, M.P -..... 
20. The Hon. Ferdinand Wanyonyi, M.P -..... 
21. The Hon. Kabando Wa Kabando, M.P-.....
22. The Hon. Justice Kemei, M.P-.....
23. The Hon. James Opiyo Wandayi, M.P-..... 
24. The Hon. Millie Odhiambo, M.P-.....
25. The Hon. Hezron Awiti Bollo, M.P -.....
26. The Hon. Fredrick Outa, M.P -.....
27. The Hon. Zuleikha Hassan Juma, M.P-.....
28. The Hon. Alfred Kiptoo Keter, M.P -.....
29. The Hon. Paul Simba Arati, M.P-.....

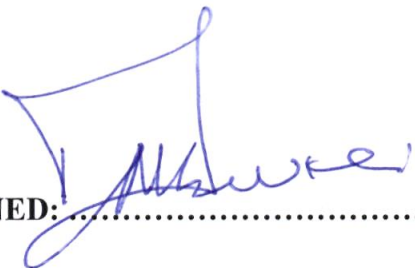
1.8 ACKNOWLEDGMENT

The Committee wishes to sincerely thank the Offices of the Speaker and the Clerk of the National Assembly for the support extended to it in the execution of its mandate.

I take this opportunity to thank all the Members of the Committee for their patience, sacrifice, endurance and hard work during the long sitting hours under tight schedules which enabled us to complete the tasks within the stipulated period.

The Committee wishes to record its appreciation for the services rendered by the staff of the National Assembly attached to the Committee. Their efforts made the work of the Committee and the production of this Report possible.

Finally, it is my pleasant duty on behalf of the Departmental Committee on Agriculture, Livestock and Cooperatives, to present this report to the House in accordance with the provisions of Standing Order 227 (2).

For
SIGNED: 

DATE: 9/03/2016

**THE HON. ADAN M. NOORU, MBS, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON AGRICULTURE,
LIVESTOCK AND COOPERATIVES**

2.0 BACKGROUND INFORMATION

Kenya Planters Cooperative Union (KPCU) is a farmers' wholly owned institution whose membership comprises of over 700,000 small scale farmers represented by over 400 cooperatives and about 2000 estate farmers owning small, medium and large scale farms. It has for a long time played a leading role in the development of the coffee sub-sector. It was instrumental to the rapid growth witnessed in the coffee industry immediately before and after independence. Its peak performance was in the 1987/88 crop year which it milled the country's highest production of 130,000 metric tons of clean coffee, when it was the only coffee mill in the country.

KPCU has an elaborate infrastructural network for coffee milling, storage, and warehousing which is strategically located in all the coffee growing areas with an installed milling capacity of 150,000 metric tons of clean coffee with electronic coffee color sorting equipment.

Liberalization of the coffee industry which started in early 1990s found KPCU, like many other institutions in the sector not well prepared for the change. It was adversely affected by the stiff competition by other players in its core activities of coffee milling and marketing.

In the year 2009 Kenya Commercial Bank (KCB) put KPCU under receivership due to its failure to service a loan amounting to Ksh. 644 million that dates back to January 1998 which accrued interest of Ksh. 1.4 billion. The bank appointed Deloitte Consulting Group as the Receiver and Manger.

On 15th September 2011, the former President, H.E Mwai Kibaki directed the ministries of Agriculture and Cooperative Development and Marketing to look into the revival of KPCU. This ultimately led into the convening of a special general meeting of KPCU on 20th July 2012 at the KPCU's mills, Dandora in Nairobi. During this meeting, grass-root shareholders elected seven (7) Board of Directors to spearhead KPCU's revival. The TOR for the Board were to include;

- i. Liquidation of KCB's outstanding debt
- ii. Settlement of debts from other creditors

- iii. Lifting of the receivership by KCB
- iv. Implement the resolution of the shareholders on the revival strategies and
- v. Review by-laws and Articles of Association

During the period of receivership, the receivers and managers made little progress in recovering KPCU's debts, as the core business of KPCU being coffee milling and marketing staled from April 2010 when the then Coffee Board of Kenya revoked both the milling and marketing license for KPCU. The receiver didn't attempt to run any of KPCU business but instead chose to rely on rental incomes from Wakulima House and other KPCU properties to meet his running cost.

In an attempt to lift the receivership, both KPCU and KCB engaged in mediation effort aimed at arriving at a compromise and workable solution. KCB subsequently agreed to reduce the amount to Ksh. 400 million in full and final payment of the debt. The settlement terms include payment of Ksh. 100 million upon signing of the deed of the settlement and lifting of the receivership and the balance of Ksh. 300 million to be recovered from 50% of rental incomes earned by KPCU.

The Board of KPCU paid Ksh. 100 million upon execution of the deed for settlement dated 27th June 2014 which resulted in the lifting of the receivership and the filing of the deed of revocation on 4th July 2014.

2.1 THE PETITION BY KPCU STAKEHOLDERS FOR THE REMOVAL OF THE COMMISSIONER FOR COOPERATIVE DEVELOPMENT

The petitioners of KPCU Stakeholders exercised their rights under Article 37 of the Constitution of Kenya 2010, which grants all persons the right to petition public authorities. The Petition by KPCU stakeholders was presented to the House by the Hon. Dr. Victor Munyaka, M.P, on 11th December, 2014 in accordance with Standing Order No. 225 (2)(a). The petition was referred to the Committee on 11th December, 2014 for consideration and preparation of a report within 60 days. The Committee considered the petition in accordance with the provisions of Standing Order 227. The petitioners wished to draw the attention of the House on the following, that:-

- a) Kenya Planters Cooperative Union (KPCU), is an institution wholly owned by over 700,000 shareholders registered in over 400 Cooperative Unions, Planters Plantations and Estates and which has played a leading role in the development of the coffee sub-sector but was put under receivership by Kenya Commercial Bank (KCB) for failure to service a Ksh. 644 million loan that accrued interest to Ksh 1.4 billion;
- b) The Commissioner for Cooperatives Development has been attempting to scuttle the revival efforts as evidenced by a serious conflict of interest as he sits in the Board of Directors of a competitor (Kenya Coffee Cooperative Exporters) and as proven by his failure to support the Union in its compensation claim against Cooperative Insurance Company;
- c) Intervention efforts at addressing the myriad challenges posed by the Commissioner of Cooperatives and sustaining KPCU's revival are best handled by appropriate government agencies;
- d) Issues in respect of which this petition is made are not pending before any court of law, constitutional or legal body.

3.0 SUBMISSIONS AND EVIDENCE

The Committee commenced its consideration by inviting the petitioners, Interim Board of Kenya Planters Cooperative Union, Acting Commissioner for Cooperative Development, Principal Secretary, State Department of Cooperatives, on diverse dates. During the meetings, written and oral evidence was adduced as recorded hereunder:-

3.1 Submission by the Petitioners' representative(Mr. James Mungai)

Mr. James Mungai, a representative of the petitioners appeared before the Committee on 19th March 2015, and submitted the following. That;

- a) Farmers were not paid their dues after the receivership.
- b) Farmers were not given ample time by the Commissioner to prepare for elections.
- c) The Commissioner is an interested party as he is a board member of several institutions and the Cooperative Union tried to seek redress but in vain.
- d) The management of KPCU is marred with a lot of misappropriations hence the Committee should investigate it with a view of finding a lasting solution.

- e) The 10th Parliament has compiled a report on the crisis facing the Cooperative Union (KPCU) hence the Committee may refer to it.

3.2 Submissions by Managing Director, Kenya Planters Cooperative Union Ltd.

Mr. Joseph Kioko, the Managing Director of Kenya Planters Cooperative Union Ltd Appeared before the Committee on 15th June 2015 and submitted the following. That;

- a) The KPCU management is in full support of the petition before the committee.
- b) The Commissioner for Cooperatives Development has not supported the revival of KPCU and has played no constructive role with regard to its bid on successful exit from receivership.
- c) The Board's first term of reference as from 20th July 2012 were as follows:
 - a) To clear a debt of Ksh. 1.2 billion.
 - b) To negotiate with KCB and other government entities on how to clear the debts and get the company out of receivership.
- d) That, the Commissioner of cooperatives through a representative observed our resolutions in all our company's general meeting but did nothing to facilitate our eventually successful negotiations with the Bank.
- e) The mandate of KPCU Board is to collect debts owed to them by various debtors e.g. large scale planters and some cooperatives .The debts stand at Ksh 3.5 billion.
- f) The Board was also mandated to review memorandum and articles of association and to make necessary amendments in view of the fact that constitutive documents were adopted in 1945.
- g) The annual general meetings were held on 30th July 2013 and on 30th July 2014.
- h) The KPCU Board reported to the annual general meeting that KCB had agreed in principle to renegotiate the debt but had aired concerns arising from disruptive publicity emanating from commission cooperatives' office.
- i) The meeting authorized the current board to stay in office for three years and conclude the negotiations with KCB.
- j) The Commissioner for Cooperatives was invited for the annual general meeting but did not attend.

- k) The Commissioner for Cooperatives has overstepped his mandate by issuing orders for a new board of KPCU Ltd. This led to violation of the property rights of the shareholders of KPCU which was first incorporated as a company limited by shares on 2nd June 1945.
- l) The officials requested the committee to look into the matter of interference by the Commissioner for Cooperatives which is prohibited in the Constitution of Kenya under article 40.
- m) They also requested for explanation on how a director uses his office to frustrate the company's business.
- n) The officials requested for an independent and impartial investigation into the conduct of the Commissioner for Cooperatives Development vis-a vis KPCU LTD.
- o) The officials requested for financial assistance from the government for its revival by writing off its outstanding debts.
- p) It was noted that this was a recommendation from the Parliamentary Committee inquiry in the 10th Parliament into receivership of KPCU which was adopted on 15th August 2012. The committee recommended an injection of Ksh. 1.2 billion as bail out.

3.3 Submissions by the Principal Secretary, State Department of Cooperatives

The Principal Secretary State of Department of Cooperatives, Mr. Ali Nur Ismail appeared before the committee on 11th February 2016 and submitted the following. That;

- a) The Commissioner for Cooperatives in question has since retired on 27th September 2015.
- b) Under the Cooperatives Societies Act, the Commissioner for Cooperative Development has not contravened any legal provisions to warrant sanctioning, censoring him and removing him from his position.
- c) The issue of Commissioner being Board member of Kenya Cooperative Coffee Exporters (KCCE) Ltd, Cooperative Insurance Company (CIC) Ltd or any other Cooperative organization should not cause any conflict of interest with KPCU mandate. The Commissioner's responsibility under the Cooperative law and to provide advisory role on the cooperatives growth and development.

- d) The interim Board went to the High Court challenging the elections of KPCU Ltd that was held on 31st July, 2014. The matter was heard and determined by Justice Weldon Korir whereby the Court called for fresh elections within 90 days. The complainants filed an appeal and the *matter is still pending in court*.
- e) The ministry has and will continue to support the revival of KPCU Ltd in order to provide the required services to its shareholders.
- f) The ministry recommends that coffee farmers be allowed to elect a substantive board as per Bylaws, Memorandum and Articles of Association of KPCU Ltd.
- g) Coffee cooperative societies are shareholders of Cooperative Bank and the ministry is not aware of any meddling by Cooperative Bank of Kenya on KPCU matters.

4.0 COMMITTEE OBSERVATIONS

The Committee made the following observations from the evidence adduced in the meetings held that:-

- 1) The Commissioner for Cooperatives in question has since retired on 27th September 2015.
- 2) The prayers in the petition by Stakeholders of KPCU Ltd are substantially similar to the pleadings in a judicial review case no. 312 of 2014 before the Court of Appeal.
- 3) The Petitioners did not make full disclosures pursuant to Standing Order 223 (g) which provide that " Petitioner(s) should indicate in the Petition whether the issues in respect of which petition is made are pending before any court of law or other Constitutional or Legal body".
- 4) The Committee while considering the Judicial Review in the Court of Appeal against the Petition by Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd noted the following similarities ; -

| | Public petition presented to the National Assembly | Judicial case no.312 of 2014 and memorandum of Appeal |
|----|--|---|
| 1. | In the prayers of the Petition, paragraph (ii) the Petitioner urges the government to support the Kenya Planters Co- | The Judicial case no.312 of 2014 was heard and determined and an order for fresh elections made for the Kenya |

| | | |
|--|--|---|
| | operative Union's revival efforts by writing off its outstanding debts, injecting capital and granting the interim Board a three year operational period to allow for stabilization. | Planters Co-operative Union. The Board however filed an appeal in court challenging the judgement stating that the judge erred in finding that there was a subsisting board but referred to it as interim and also finding that there has been no elections of board since the year 2006. The same matter is in the memorandum of appeal in paragraph 3 and 4. |
| 2. | The Petitioner prays that the Committee to direct Co-operative Bank to cease meddling with KPCU's affairs and micro-managing the coffee industry. | Paragraph 10 of the memorandum of appeal states that the judge failed to appreciate the interference with the management of KPCU and that this meddling is scheme to ensure KPCU is eventually liquidated. |
| Therefore, the Petition to the National Assembly is substantially similar to the matters before the Court of appeal and as such is <i>sub judice</i> . | | |

5.0 COMMITTEE RECOMMENDATION

In view of the above similarities between this Public Petition and Judicial Review case no. 312 of 2014, **the Committeerecommends that;**

Due to *Sub-Judice* rule in accordance with the provisions of Standing Order 89, the Committee cannot deliberate further on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However when the Judicial Review in the Court of Appeal is finalized and petitioners are of the view that critical matters regarding their petition to the National Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.



Approved for tabling,
R. J. SNA
11/12/14

THE NATIONAL ASSEMBLY

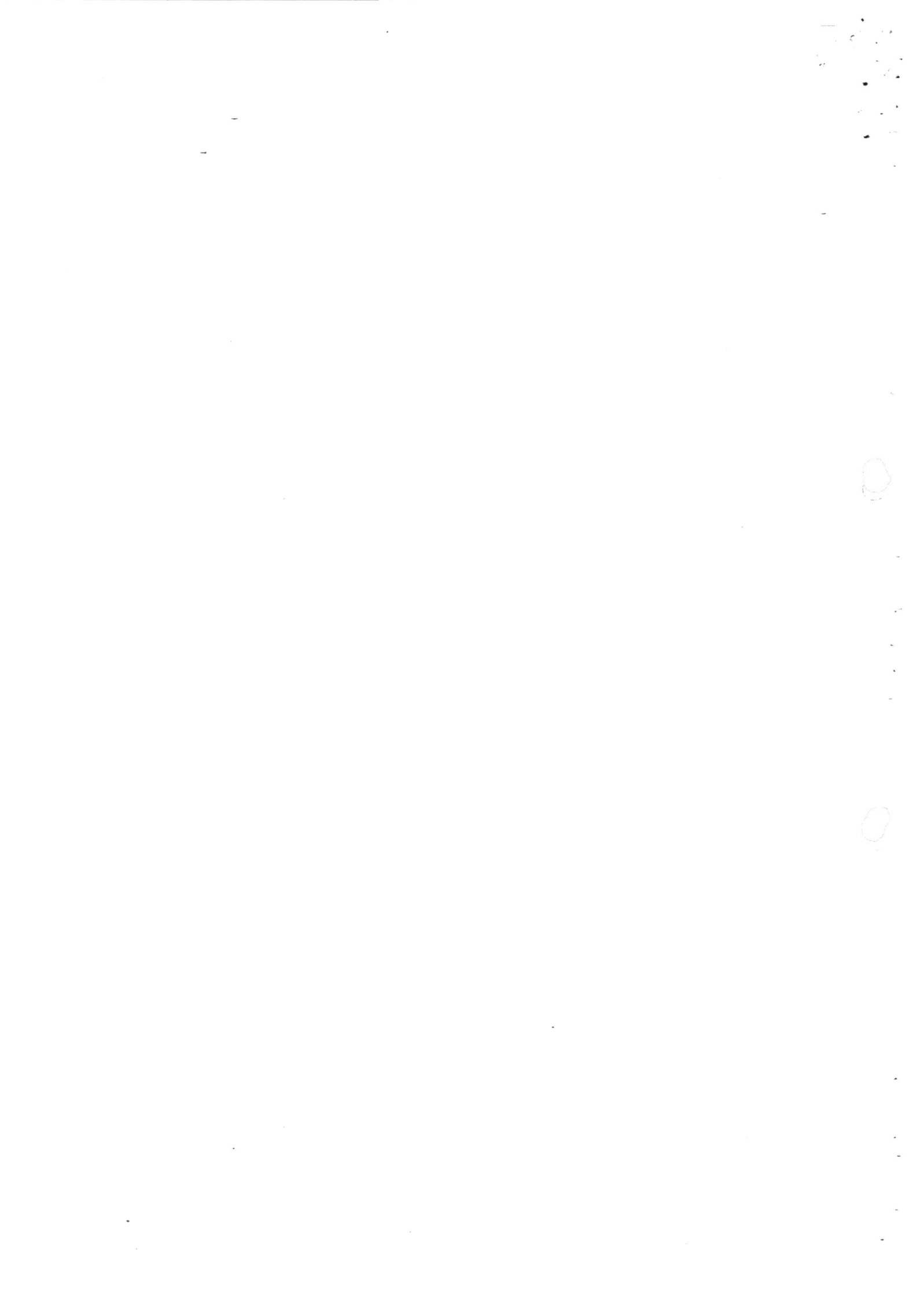
ELEVENTH PARLIAMENT- (SECOND SESSION)

PUBLIC PETITION

I, the UNDERSIGNED, on behalf of the Stakeholders of the Kenya Planters' Cooperative Union,

DRAW the attention of the House to the following;

- i) THAT, aware that the Kenya Planters' Cooperative Union (KPCU) Ltd is an institution wholly owned by over 700,000 shareholders registered in over 400 Cooperatives Unions, Plantations and Estates and which has played a leading role in the development of the coffee sub-sector but was placed under receivership by the Kenya Commercial Bank (KCB) for failure to service a Ksh 644 million loan that accrued interest to Ksh 1.4 billion;
- ii) THAT, despite a directive from former President Mwai Kibaki, EGH, MP to revive KPCU in September 2011 the Commissioner for Cooperatives Development has been attempting to scuttle the revival efforts as evidenced by a serious conflict of interest since he sits in the Board of Directors of a competitor (the Kenya Coffee Cooperative Exporters), and as proven by his failure to support the Union in its compensation claim against Cooperative Insurance Company despite being a Board Member at the insurance firm, his orders to call for elections that allowed persons barred by a National Assembly resolution of August 2012 to vie in irregularly convened elections, his deliberately unsupportive approach to all matters concerning the settling of the aforementioned KCB debt and lifting of the receivership of the Union, and generally by his failure to faithfully and diligently perform his duties and responsibilities to expected standards;



PUBLIC PETITION

BY THE STAKEHOLDERS OF THE KENYA PLANTERS'
COOPERATIVE UNION LTD

FOR

THE REMOVAL OF THE COMMISSIONER FOR COOPERATIVES DEVELOPMENT

iii) NOTING, that intervention efforts at addressing the myriad of challenges posed by the Commissioner of Cooperatives and sustaining KPCU's revival are best handled by appropriate government agencies;

iv) AND NOTING further that the issues in respect of which this Petition is made are not pending before any court of law or any constitutional or legal body,

THEREFORE your humble Petitioners PRAY that the National Assembly through the Departmental Committee on Agriculture, Livestock and Cooperatives

i) investigates the conduct of the Commissioner for Cooperatives Development with a view to sanctioning, censuring and removing him from his position;

ii) urges the Government to support the Union's revival efforts by writing off its outstanding debts, injecting capital, and granting the interim Board a three-year operational period to allow for stabilization;

iii) directs the Cooperative Bank of Kenya to forthwith cease meddling in KPCU's affairs and micro-managing the coffee industry.

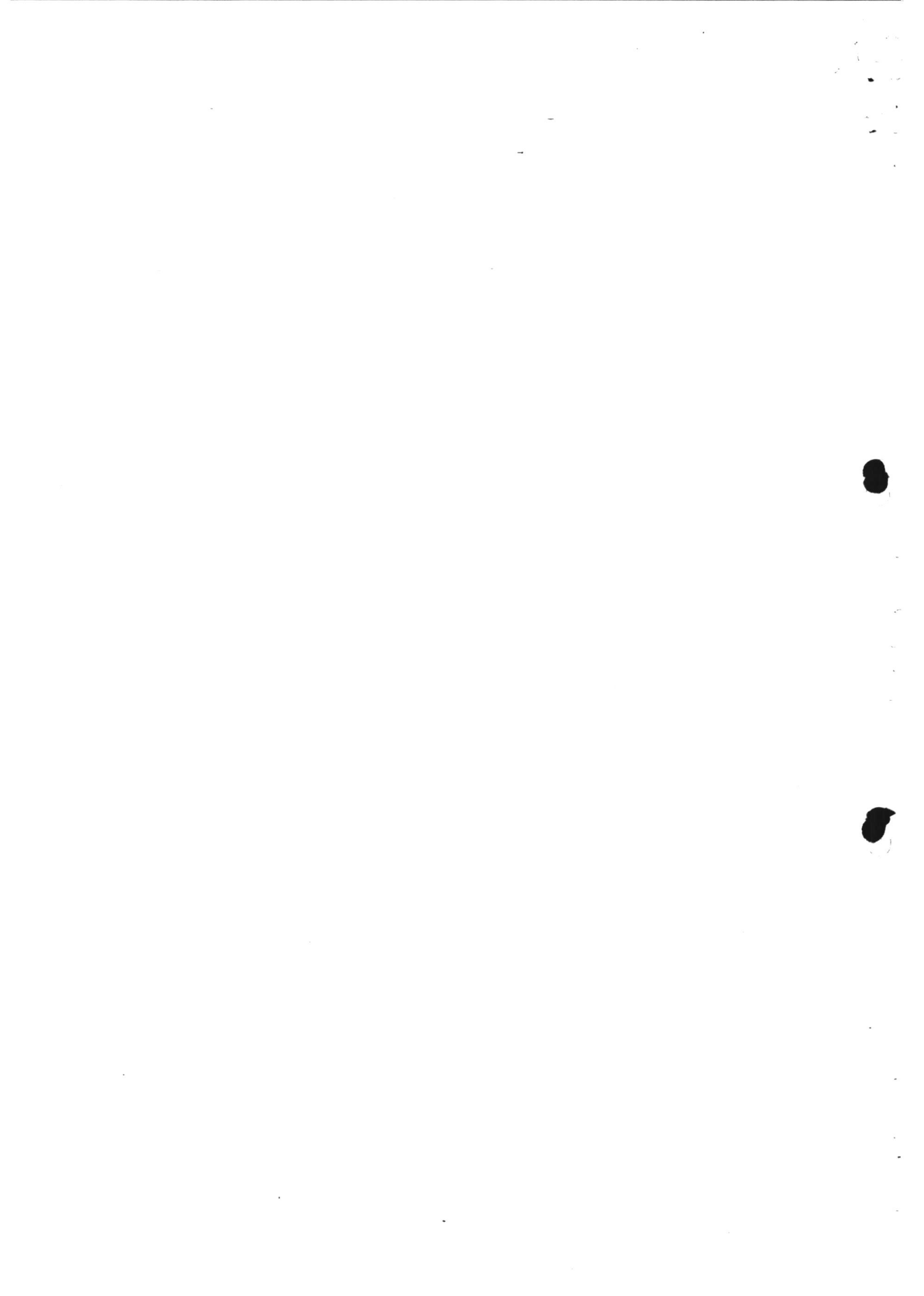
And your PETITIONERS will ever pray.

PRESENTED BY,


for HON. VICTOR MUNYAKA, MP

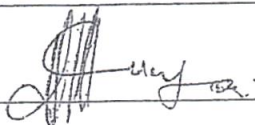





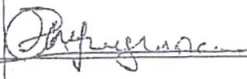


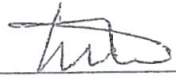
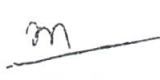
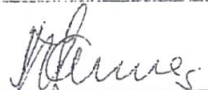
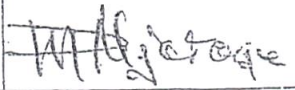
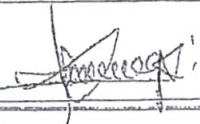
MEMBER FOR MACHAKOS TOWN CONSTITUENCY

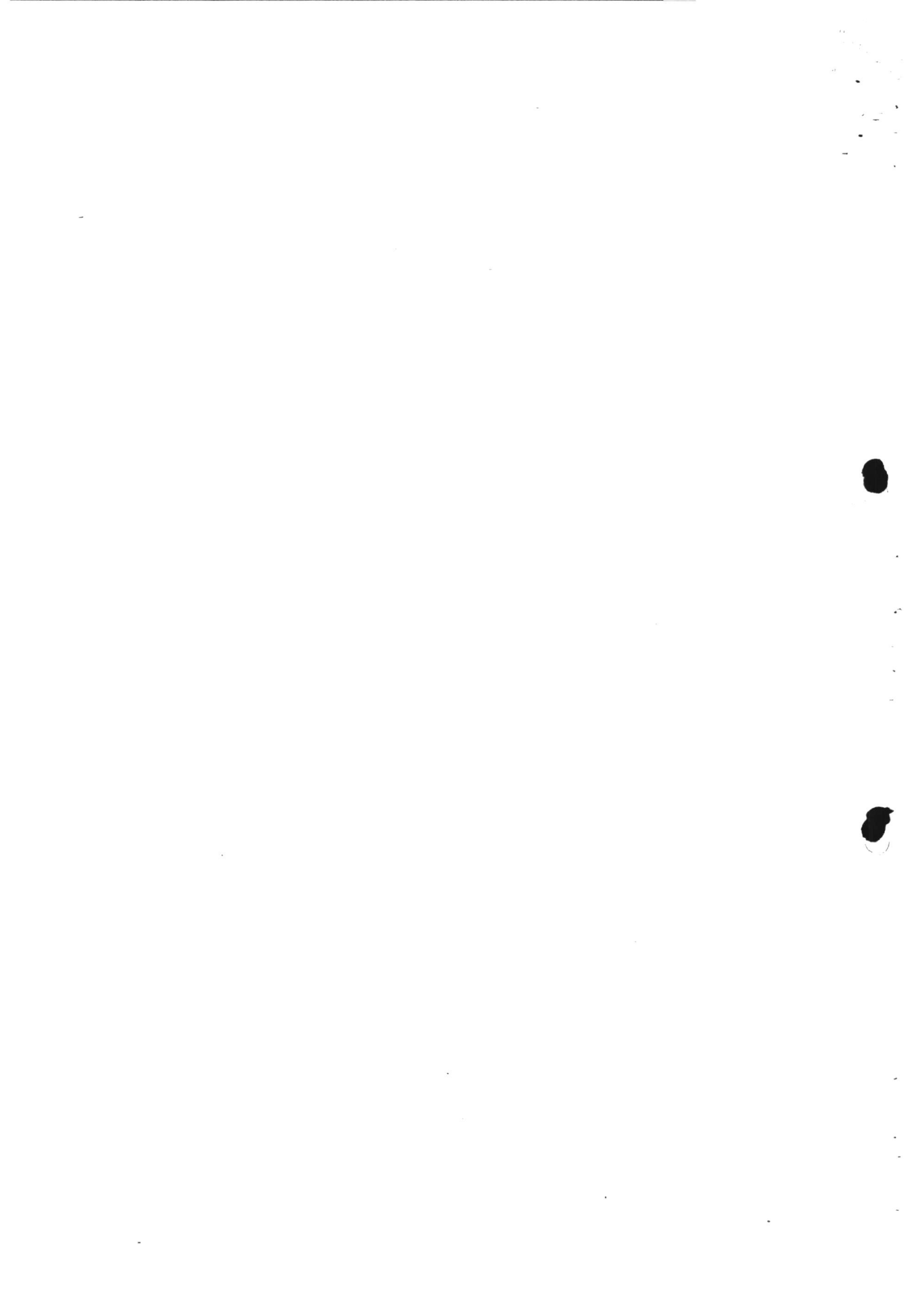
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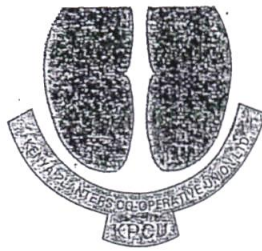


BY THE STAKEHOLDERS OF THE KENYA PLANTERS'
COOPERATIVE UNION LTD
FOR
THE REMOVAL OF THE COMMISSIONER FOR COOPERATIVES DEVELOPMENT

On Behalf of the Stakeholders of the Kenya Planters' Cooperative Union:

| | Name | Designation | I/D No. | Signature |
|----|--------------------|-----------------------------|-----------|---|
| 1 | JAMES N. MUNGI | Stakeholder | 6258458 |  |
| 2 | STEPHEN CUITAO | " | 23122753 |  |
| 3 | BEN MUNENE | " | 25085765 |  |
| 4 | MBAG KIRIMI | " | 18892299 |  |
| 5 | LAWRENCE NJUGUNA | " | 11755893 |  |
| 6 | DAVID MURIMI | " | 23405757 |  |
| 7 | JACK NJUGUNA | " | 71928716 |  |
| 8 | KIMYATI E. EDWARDS | " | 12494560 |  |
| 9 | SIMON NTOITI | Stakeholder | 072963784 |  |
| 10 | OBADIAH LANGAT | Stakeholder | 27453641 |  |
| 11 | MARIA MWANGI | Stakeholder | 08443296 |  |
| 12 | JAMES JUNJA | FARMER | 13865003 |  |
| 13 | PETER M. NYEROGI | STAKEHOLDER FARMER | 1890208 |  |
| 14 | Vincent Nyagoe W. | Businessman/ Stakeholder | 13676293 |  |





KENYA PLANTERS' CO-OPERATIVE UNION LTD.

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P.O.Box 72309 - 00200, Nairobi, Kenya

18th November 2014

HON. JUSTIN MUTURI
SPEAKER,
KENYA NATIONAL ASSEMBLY
REPUBLIC OF KENYA
NAIROBI

Dear Sir,

REF: PETITION ON THE MATTER OF KENYA PLANTERS CO-
OPERATIVE UNION (KPCU) LTD.

Preamble

We the Board of Directors of Kenya Planters Co-operative Union (KPCU) hereby seek to petition Parliament to sanction, censure and institute a public inquiry in the conduct of public affairs by the Commissioner of Co-operatives Development on the matters of KPCU Ltd.

KPCU is farmers' wholly owned institution whose membership comprises of over 700,000 small scale farmers represented by over 400 Co-operatives and about 2,000 estate farmers owning small, medium and large scale farms. It has for a long time played a leading role in the development of the coffee sub-sector. It was instrumental to the rapid growth witnessed in the coffee industry immediately before and after independence. Its peak performance was in the year 1987/88 crop year when it milled the country's highest production of 130,000 metric tons of clean coffee, when it was the only coffee mill in the country.



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KPCU has an elaborate infrastructural network for coffee milling, storage and warehousing which is strategically located in all the coffee growing areas with an installed milling capacity of 150,000 metric tones of clean coffee with electronic coffee color sorting equipments.

Liberalization of the coffee industry which started in early 1990s found KPCU, like many other institutions in the sector not well prepared for the change. It was adversely affected by the stiff competition by other players in its core activities of coffee milling and marketing.

In the year 2009 Kenya Commercial Bank Limited (KCB) put KPCU's under receivership due to its failure to service a loan amounting to **Ksh.644 million** dating back to January 1998 which accrued interest to **Kshs. 1.4 billion**. The Bank appointed Deloitte Consulting Group as the Receiver and Managers.

On 15th September 2011, the former President H.E Mwai Kibaki directed the Ministries of Agriculture and Co-operative Development & Marketing to look into the revival of KPCU. This ultimately led to the convening of a Special General Meeting of KPCU on 20th July, 2012 at the KPCU's mills Dandora in Nairobi. During this meeting, grassroot shareholders elected seven (7) board of directors to spearhead KPCU's revival (*minutes herein attached*). The TOR for the Board were to include

- Liquidation of KCB's outstanding debt
- Settlement of debts from other creditors
- Lifting of the receivership by KCB
- Implement the resolutions of shareholders on the revival strategies and
- Review by-laws and Articles of Association

All correspondence should be addressed to THE MANAGING DIRECTOR



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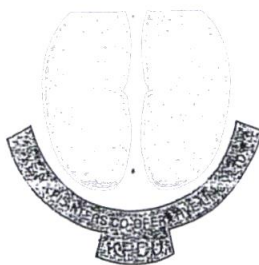
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The board had limited room for flexibility since the executive powers were vested with the receiver and therefore had no source of revenue, no office space and no staff to assist them in the day-to-day running of the Union. In spite and despite all this limitation, the board was able to engage in negotiation with KCB with a view of reducing the loan amount from Kshs. 1.4 Billion to 680 million.

It is worthwhile to note that even as KPCU Board members were engaging in negotiation with KCB on repayment and subsequent lifting of the receivership, the Commissioner of Co-operatives had initiated inquiry and investigations in the primary Co-operatives of KPCU board members with a view of coercing and intimidating them and hence scuttling the revival of KPCU.

Due to complexity and broad nature of the TOR's, an AGM was convened and held in July 2013 and the Board was confirmed and given a new mandate and a one term for a period of 3 years so that they could comprehensively address the above TOR's and revive the Company. (*Minutes herein enclosed*)

During the period of receivership, the receivers and managers made little progress in recovering KPCU's debts, as the core business of KPCU being coffee milling and marketing stalled from April, 2010 when Coffee Board of Kenya (CBK) revoked both the milling and marketing license for KPCU. The receiver did not attempt to run any of KPCU core business but instead chose to rely on rental incomes from Wakulima house and other KPCU properties to meet his running cost. In an effort to further frustrate and diminish any hopes of KPCU recovery, the receiver leased out KPCU Sagana Mills to a competing company (KCCE/M) whose sole intention was to takeover KPCU properties. Incidentally the Commissioner of Co-operatives sits in the Board of directors of KCCE, the mother company of KCCM and was therefore part of the grand scheme to fleece and strip KPCU off its core assets.



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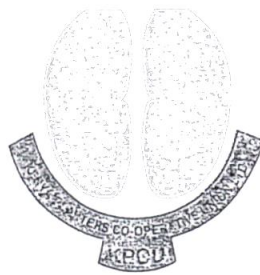
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Mr. Speaker, Kenya Coffee Co-operative Exporters (KCCE) and Kenya Coffee Co-operative Millers (KCCM), are the two companies that have been at the center of the coffee woes and wars in Mt. Kenya region especially Nyeri County. They have completely mishandled the coffee sector resulting in huge economic and financial losses to the ordinary/peasant coffee farmer. KPCU revival therefore offers the best alternative to farmers and thus a credible threat to both KCCE/M. As a director of KCCM, the Commissioner of Co-operatives loyalty evidently lies with KCCM and hence the deliberate effort to frustrate the revival program undertaken by the current KPCU directors.

By October 2013, the receiver had collected over Kshs. 312 million but had not paid any money to KCB towards the defraying of the outstanding debt (*attached Receivers Statement of Receipts and Payments for entire period*). During the same period of receivership KPCU also lost one of its most valued assets i.e. the Nairobi Coffee Mills which was valued at Kshs. 805 Million and insured by CIC insurance. The mill was equipped with a computerized color sorter which is the only one of its kind in the Kenyan coffee industry. It has been an uphill struggle to be given Insurance policy documents concerning the Nairobi Coffee Mills so as to pursue any meaningful claim from the insurer. As all of this was happening, the Commissioner of Co-operatives did nothing to assist KPCU even though he is a member of the board of directors of CIC insurance.

In the year 2013, after a process of intense consultation and negotiation, KPCU and KCB registered the 1st Deed of Settlement dated 19th December 2013 and the receivership was lifted on the 3rd of December 2013. The Deed of Settlement provide that KPCU was to pay KCB Kshs. 100 Million within the first 30 days of lifting of the receivership and the balance of Kshs. 580 Million to be paid by the 3rd



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of May 2014 or in 6 Months time from the lifting of the receivership. On resumption of activities, the board was shocked to discover that no original title deeds of all KPCU properties were available and hence no transactions could be completed. Both KCB and the Receiver-Manager admitted that for the Four (4) years that KPCU had been in Receivership, no attempt had been made to establish the whereabouts of KPCU's Original Title Deeds. Due to unavailability of documents of ownership/ title deeds, the terms of the deed of settlement could not be honored and KPCU was once again placed under receivership on 9th January 2014.

Progress attained:

In a second attempt to lift the receivership, Both KPCU and KCB again engaged in mediation effort aimed at arriving at a compromise and workable solution. KCB subsequently agreed to reduce the amount to **Kshs.400 million in full and final payment of the debt**. The settlements terms includes payment of Kshs.100 Million upon signing of the Deed of Settlement and lifting of the receivership and the balance of Kshs.300 Million to be recovered from 50% of rental incomes earned by KPCU.

The Board of KPCU paid **Kshs. 100 million** upon execution of the deed of settlement (*herein attached*) dated 27th June 2014 which resulted in the lifting of the receivership and the filing of the deed of revocation on Friday 4th July 2014 (*herein attached*).

KPCU is no longer under receivership but back to its rightful owners represented by the current Board.

To address the coffee farmers' creditors, the Board called farmers to immediately ~~embark on verification of amounts owed to them by KPCU before it was put under~~



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receivership. The Board sourced **Kshs. 135 million** which was to be used to offset money owed to coffee farmers by KPCU (*schedule attached*).

The Board convened a Special General Meeting on 30th July 2014 (*notice attached*) and appraised shareholders on the progress we have made in lifting the receivership and the way forward towards revival of KPCU and the industry in general.

Despite all these efforts KPCU directors have received no support from the Ministry of Industrialization and Enterprise Development which is in charge of co-operatives towards the revival of KPCU and settling of the debt with the Bank. They are instead blocking these efforts with current edicts from the Ministry regarding election of new directors. This does not bode well with the financing consortium that bailed out KPCU and they have thus stalled the releasing of funds to farmers citing uneasiness with the actions of the Ministry of Industrialization, and in particular the Commissioner of Cooperatives. The Commissioner of Co-operatives, without consulting the KPCU Board and in total disregard of KPCU directors, AGM resolutions and the Memorandum and Articles of Association called for grass root elections through the county co-operative commissioners. (*Letters herein attached*). The Ministry officials whether deliberately or by design refused to assist the Board in the revival and lifting of the receivership. These officials cannot therefore purport to have a higher mandate and a new zeal of reviving KPCU now that the receivership has been lifted.

In calling for the purported elections the Commissioner of Co-operatives acted in total disregard and contempt of the Parliamentary Departmental Committee on Agriculture, Livestock and Co-operative which had tabled their report in Parliament on the Inquiry into the Receivership of KPCU on 6th March 2012.



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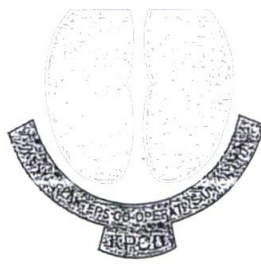
In their wisdom, the house barred the directors who were in office then from participating and holding office in KPCU for two terms for mismanagement of the Union to the extent of putting it to receivership. The said directors were further accused of not delivering their own coffee or that of their co-operative societies to KPCU mills despite milling being KPCU's core business. In that letter and by allowing participation of those named individuals, the Commissioner of Co-operatives acted in contempt of the **Parliamentary Report on Inquiry** which he is privy to.

The Commissioner of Co-operatives further without consulting the current KPCU Board and in total disregard of KPCU AGM resolutions and the Memorandum and Articles of Association called for grassroots elections through the county co-operative commissioners.

In the notice he issued, he breached the very Act; The Co-operative Societies Act, 2004, which he is supposed to enforce. Section 28 (4) (k) of the Act requires that during election of any co-operative society regulated by the said Act, one will not be eligible for election if he/she is adversely mentioned in an inquiry report which has been adopted in a general meeting. The **Parliamentary Report on Inquiry of Receivership in KPCU** was not only adopted by the KPCU general meeting but also the National Assembly on 15th August 2012.

OUR PRAYERS:

1. That the commissioner for Co-operatives and Development be named and shamed for abdicating and failing in his duties of guiding and giving necessary support to KPCU during the receivership status.



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2. That the Commissioner for Co-operative and Development be censured for acting in contempt of Parliamentary Report of inquiry on KPCU in receivership which he is privy to.
3. That the Commissioner for Co-operatives Development be censured for his action of calling for grassroots nominations of KPCU directors and ignoring the KPCU Memorandum and Articles of Association that govern the organization, and rules of Natural Justice by not informing the current directors of his intended actions.
4. That the Commissioner for Co-operative Development be censured for breach of the Co-operative Societies Act section 28 (4) (K) by allowing person adversely mentioned in an inquiry report to participate in the purported elections.
5. That the Commissioner for Co-operative Development to be stopped forthwith from interfering in the operations of KPCU Ltd after doing nothing for a period of five years when KPCU was in receivership; on the contrary, he has trashed the covenants that KPCU Board has entered with other partners in the rescue package and therefore putting in jeopardy the assets the coffee farmers have accumulated over time.
6. That the Commissioner of Co-operatives be censured for his unilateral and illegal actions amounting to interference with the tenure of office of the current directors and whose interference might trigger relapsing into receivership by KPCU on account of the terms of the financial bailout which are premised on the tenure of the current board.



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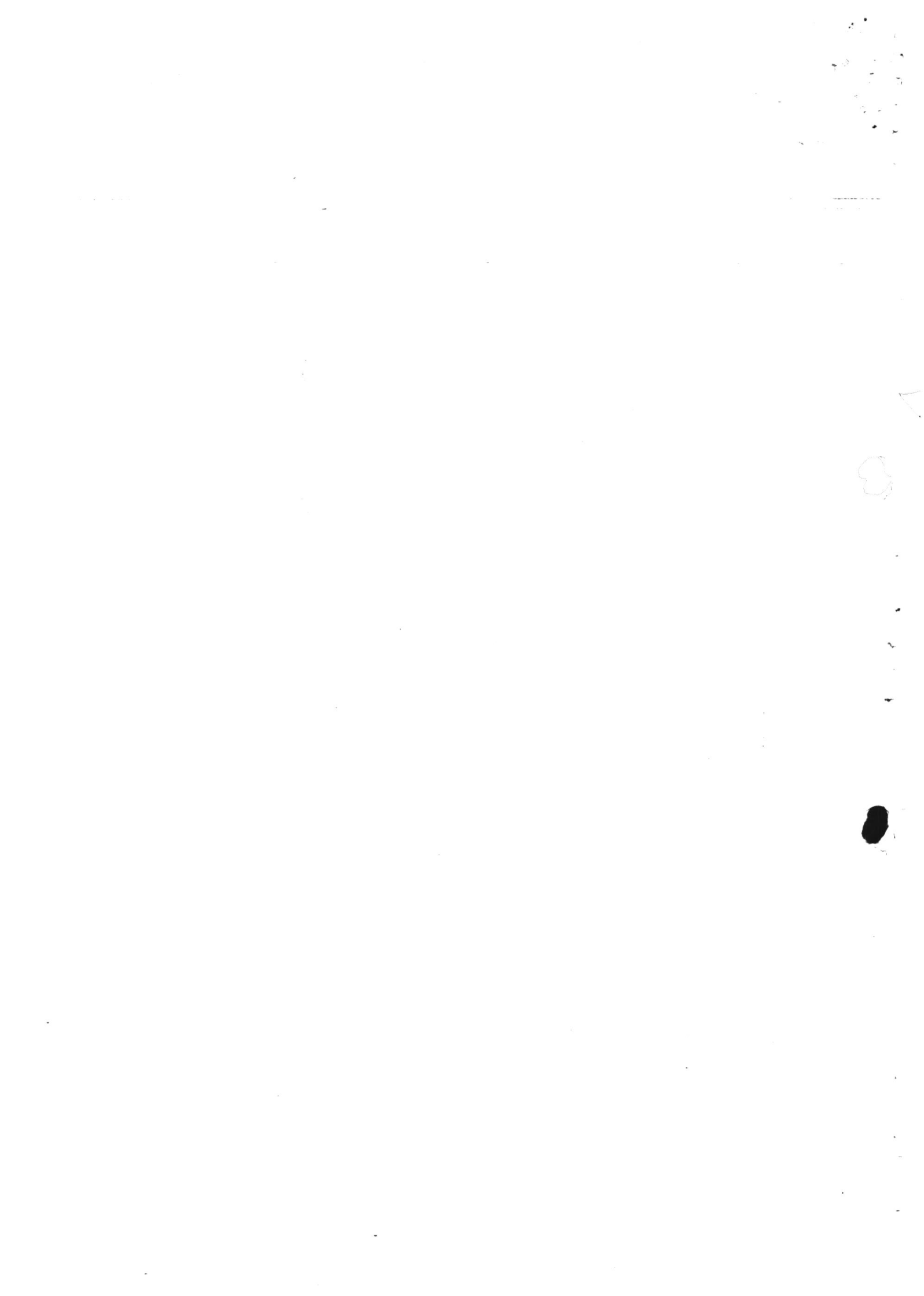
7. That the Commissioner of Co-operatives be censured for allowing individual and co-operatives to be members and shareholders of two Apex Co-operatives i.e. KPCU and KCCE(M) operating with similar mandate and goal contrarily to the provision of the Co-operatives Societies Act Section 18
8. That provides that "no person shall be a member of more than one co-operative society having the same or similar object".
9. That the Commissioner of Co-operatives be Sanctioned and censured for being in contempt of court by allowing and facilitating the purported directors to hold an illegal AGM, conduct illegal elections and subsequently storm the KPCU Headquarters at Wakulima House-Nairobi on the 15th of August 2014, despite being served with a court order, which was also published in the Daily Nation of 15th August 2014, stopping the purported illegal function.
10. That the National Assembly therefore constitutes a **public inquiry on the conduct of public affairs** by the Commissioner for Co-operative Development on the matters touching KPCU Ltd.

As a Board, we are committed to restoring KPCU to its rightful place in the coffee industry and also engage in other activities that would benefit coffee farmers and shareholders.

FOR AND ON BEHALF OF KPCU DIRECTORS


WILLIAM GATEI
CHAIRMAN


JOSPEH KIOKO
MANAGING DIRECTOR



MINUTES OF THE 7th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Adoption of KPCU, KTDA & Galana Reports) HELD ON THURSDAY 18th FEBRUARY 2016, AT 2nd FLOOR, PROTECTION HOUSE PARLIAMENT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Patrick Wangamati, M.P
6. Hon. John B. Serut, M.P
7. Hon. Benjamin Washiali, M.P
8. Hon. Silas Tiren, M.P
9. Hon. Peter N. Gitau, M.P
10. Hon. Maison Leshoomo, M.P
11. Hon. Phillip Rotino, M.P
12. Hon. Raphael Letimalo, M.P
13. Hon. Ferdinand Wanyonyi, M.P
14. Hon. Florence Mutua, M.P
15. Hon. (Dr.) Victor Munyaka, M.P
16. Hon. James Opiyo Wandayi, M.P
17. Hon. Zuleikha Hassan Juma, M.P
18. Hon. John Kobado, M.P

Apologies

1. Hon. Alfred K. Keter, M.P
2. Hon. Waititu Munyua, M.P
3. Hon. Millie Odhiambo - Mabona, M.P
4. Hon. Korei Ole Lemein, M.P
5. Hon. Fredrick Outa, M.P
6. Hon. Justice Kemei, M.P
7. Hon. Paul Simba Arati, M.P
8. Hon. Kabando Wa Kabando, M.P
9. Hon. Ayub Savula Angatia, M.P.

10. Hon. Kimani Ichung'wah, M.P

11. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Mr. David Ngeno | - Research Officer |

Min. 029/2016: Preliminaries

- I. The meeting was called to order at 10.49 a.m. and prayers were said by Hon. Kareke Mbiuki, M.P
- II. The agenda of the day's meeting was adopted as stipulated in the notice of meeting.

Min. 030/2016: Confirmation of Minutes

The minutes of the 5th sitting was confirmed as true record of the Committee's deliberation after it was proposed and seconded by Hon. Mary Wambui, M.P and Hon. Philip Rotino, M.P

Min. 031/2016: Matters Arising

Under min. 025/2016-III

The Committee resolved to visit Kenya Meat Commission (KMC) on Tuesday, 23rd February 2016 at 11.30 a.m. after the consideration of Budget Policy Statement (BPS).

Min. 032/2016: Adoption of Reports

- a) Adoption of the report of the petition by the Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd on the removal of the Commissioner for Cooperative Development

The Committee adopted the report of the petition by the Stakeholders of Kenya Planters Cooperative Union (KPCU) Ltd on the removal of the Commissioner for Cooperative Development with the following recommendation;

Due to *Sub-Judice* rule, the Committee cannot deliberate further on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However if and when the Judicial Review in the Court of Appeal is finalized and petitioners are of the view that critical matters regarding their prayers to National

Assembly are not addressed, the Petitioners have a right to Petition the National Assembly afresh.

b) Adoption of the report on The Petition on the Alleged Change of the Management Model of Kenya Tea Development Authority to Kenya Tea Development Agency (A Private Entity)

The Committee adopted the report on the petition on the Alleged Change of The Management Model of Kenya Tea Development Authority to Kenya Tea Development Agency (A Private Entity) with the following recommendation;

Due to the Sub Judice rule, the Committee cannot deliberate further, on the issues raised in the Petition without substantially commenting on the matters the Court has to determine. However if when the Petition in the High Court is finalized and petitioners are of the view that critical matters regarding their prayers to National Assembly are not addressed the Petitioners have a right to Petition Parliament afresh.

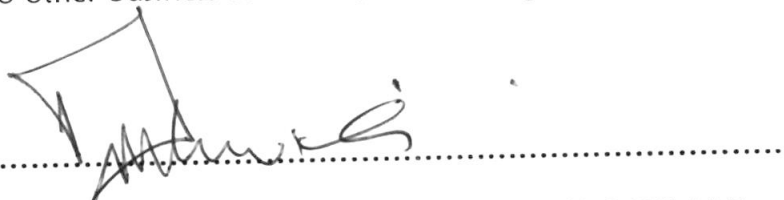
c) Adoption of the Report of the Galana/Kulalu Food Security Project (GKFSP)

The Committee has deliberated on the Galana/Kulalu Food Security Project report and resolved that all the necessary documents such as copies of the signed loan agreement, the lease agreement between National Irrigation Board (NIB) and Agricultural Development Corporation (ADC) be availed to the Committee before it reaches conclusive recommendations.

Min. 033/2016: Adjournment

There being no other business to discuss, the meeting was adjourned at 11.58 a.m.

Signature



HON ADAN MOHAMED NOORU, MBS, M.P.

(Chairperson)

Date.....

MINUTES OF THE 4th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Meeting with PS Cooperative Development and Managing Director KTDA on KPCU & KTDA Petitions respectively) HELD ON THURSDAY 11th FEBRUARY 2016, AT COMMITTEE ROOM 7 MAIN PARLIAMENT BUILDINGS AT 10.00 A.M.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairperson
2. Hon. Kareke Mbiuki, M.P
3. Hon. Daniel Maanzo, M.P
4. Hon. Mary Wambui, M.P
5. Hon. Patrick Wangamati, M.P
6. Hon. John B. Serut, M.P
7. Hon. Benjamin Washiali, M.P
8. Hon. Silas Tiren, M.P
9. Hon. Maison Leshoomo, M.P
10. Hon. Waititu Munyua, M.P
11. Hon. Phillip Rotino, M.P
12. Hon. Ferdinand Wanyonyi, M.P
13. Hon. Florence Mutua, M.P
14. Hon. Justice Kemei, M.P
15. Hon. Zuleikha Hassan Juma, M.P
16. Hon. Millie Odhiambo - Mabona, M.P
17. Hon. (Dr.) Victor Munyaka, M.P
18. Hon. James Opiyo Wandayi, M.P
19. Hon. Korei Ole Lemein, M.P
20. Hon. Fredrick Outa, M.P

Apologies

1. Hon. Alfred K. Keter, M.P
2. Hon. Paul Simba Arati, M.P
3. Hon. Raphael Letimalo, M.P
4. Hon. Kabando Wa Kabando, M.P
5. Hon. Peter N. Gitau, M.P
6. Hon. Ayub Savula Angatia, M.P.
7. Hon. Kimani Ichung'wah, M.P
8. Hon. John Kobado, M.P
9. Hon. Hezron Awiti Bollo, M.P

In Attendance:

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut - First Clerk Assistant
2. Mr. Ahmad Adan Guliye- Third Clerk Assistant
3. Ms. Brigita Mati - Legal Counsel
4. Mr. Stephen Nyakuti- Audio Office

State Department of Cooperative Officials

1. Mr. Ali Noor Ismail, CBS - Principal Secretary, State Department of Cooperatives Development
2. Mr. Philip N Gichuki - Ag. Commissioner for Cooperative Development
3. Mr. David K Obonyo - Assistant Commissioner for Cooperative Development
4. Mr. Symon Mburia - Chief Cooperative Officer

KTDA Management

1. Mr. Lerionka Tiampati - Managing Director, Kenya Tea Development Agency
2. Mr. John Kennedy Omanga - Company Secretary, Kenya Tea Development Agency

Min. 014/2016: Preliminaries

1. The meeting was called to order at 10.30 a.m. and prayers were said by Hon. Korei Lemein, M.P.
2. The Chairperson welcomed the members and the witnesses to the meeting.
3. The agenda was adopted as stipulated in the notice of meeting.

Min. 015/2016: Presentation by the Principal Secretary, State Department of Cooperatives

The Principal Secretary informed the Committee of the following in response to the prayers raised in the petition;

- i) Under the Cooperatives Societies Act, the Commissioner for Cooperative Development has not contravened any legal provisions to warrant sanctioning, censoring him and removing him from his position.
- ii) The issue of Commissioner being Board member of Kenya Cooperative Coffee Exporters (KCCE) Ltd, Cooperative Insurance Company (CIC) Ltd or any other

Cooperative organization should not cause any conflict of interest with KPCU mandate. The Commissioner's responsibility under the Cooperative law and to provide advisory role on the cooperatives growth and development.

- iii) The interim Board went to the High Court challenging the elections of KPCU Ltd that was held on 31st July, 2014. The matter was heard and determined by Justice Weldon Korir whereby the Court called for fresh elections within 90 days. The complainants filed an appeal and the matter is still pending in court.
- iv) The Ministry has and will continue to support the revival of KPCU Ltd in order to provide the required services to its shareholders.
- v) The Ministry recommends that coffee farmers be allowed to elect a substantive board as per Bylaws, Memorandum and Articles of Association of KPCU Ltd.
- vi) Coffee cooperative societies are shareholders of Cooperative Bank and the Ministry is not aware of any meddling by Cooperative Bank of Kenya on KPCU matters.

Committee Observation

- i) The Ministry was asked to liaise with the office of the Attorney General and fast track the pending matter before the court to its logical conclusion as farmers have been suffering for a long time.
- ii) The Ministry was asked to submit to the Committee copies of the appeal filed by the complainant by Tuesday, the following week.

Min. 016/2016: Presentation by KTDA Management

The Managing Director informed the Committee of the following raised in the petition;

- i) The Committee was informed that a petition of the same substance and nature as that of the petition before the Committee is pending before the High Court. The petition was filed the Governor of Kericho County on 15th December 2014 and is referenced as petition no. 18 of 2014.
- ii) The pleadings pleaded in the High Court Petition are similar to the prayers in the petition before the Committee.

Committee Observation

The Committee directed the legal counsel to analyze the petition before the High Court and determine whether the pleadings are similar to the prayers in the petition before the Committee.

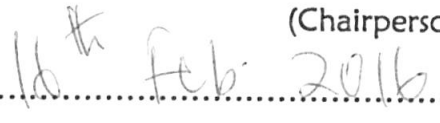
Min. 017/2016: Adjournment

Since there is no other business to transact, the meeting was adjourned at 1.20 p.m.

Signature 

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairperson)

Date 

MINUTES OF THE 35th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES(Meeting with KPCU Management) HELD ON THURSDAY 25thJUNE, 2015 AT 7th FLOOR CONTINENTAL HOUSE, PARLIAMENT BUILDINGS AT 10:30AM.

Present

1. Hon. Adan M. Nooru, MBS, M.P - Chairman
2. Hon. KarekeMbiuki, M.P -Vice Chairperson
3. Hon. Daniel Maanzo, M.P
4. Hon. (Dr.) Victor Munyaka, M.P
5. Hon. Justice Kemei, M.P
6. Hon. Zuleikha Hassan Juma, M.P
7. Hon. Paul Simba Arati, M.P
8. Hon. John B. Serut, M.P
9. Hon. Mary Wambui, M.P
10. Hon. Florence Mutua, M.P
11. Hon. Raphael Letimalo, M.P
12. Hon. Patrick Wangamati M.P
13. Hon. WaitituMunyua, M.P
14. Hon. MaisonLeshoomo, M.P
15. Hon. Alfred K. Keter, M.P
16. Hon. Phillip Rotino, M.P.
17. Hon. Korei Ole Lemein, M.P
18. Hon. Silas Tiren, M.P
19. Hon. Fredrick Outa, M.P
20. Hon. James OpiyoWandayi, M.P

Apologies

1. Hon. Kimani Ichung'wah, M.P
2. Hon. Benjamin Washiali, M.P
3. Hon. Millie Odhiambo - Mabona, M.P
4. Hon. Peter N. Gitau, M.P
5. Hon. AyubSavulaAngatia, M.P
6. Hon. John Kobado, M.P
7. Hon. Ferdinand Wanyonyi, M.P
8. Hon. KabandoWaKabando, M.P
9. Hon. HezronAwitiBollo, M.P

In Attendance:

Kenya National Assembly Secretariat

1. Mr. Benjamin Magut - First Clerk Assistant
2. Mr. Ahmad Adan Guliye - Third Clerk Assistant
3. Ms. Angeline Naserian - Third Clerk Assistant
4. Mr. David Ngeno - Research Officer

Kenya Planters Cooperative Union (KPCU) LTD

- 1) Mr. William Gatei - Chairman, KPCU LTD
- 2) Mr. Joseph Kioko - Managing Director, KPCU LTD
- 3) Mr. Mwalimu Mati - Consultant, KPCU LTD
- 4) Mr. Justus Kiago - Operations Director, KPCU LTD
- 5) Ms. Waithera Njogu - KPCU
- 6) Mr. Charles Mwangi - Administrative Assistant, KPCU LTD

Min. 163/2015: Preliminaries

- I. The meeting was called to order at 10.50am and prayer was said.
- II. The Chairman informed the Committee of the day's agenda and it was adopted as stipulated in the notice of meeting.

Min. 164/2015: Presentation by KPCU Officials.

The KPCU management informed the Committee of the following;

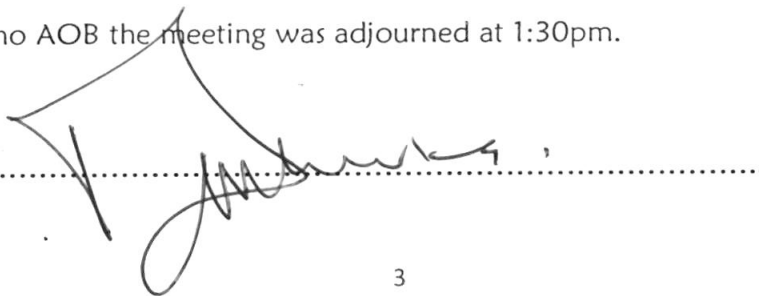
- I. That KPCU management is in full support of the petition before the committee.
- II. The Commissioner for Cooperatives Development has not supported the revival of KPCU and has played no constructive role with regard to its bid on successful exit from receivership.
- III. The board's first term of reference as from 20th July 2012 were as follows:
 - a) To clear a debt of Ksh.1.2 billion.
 - b) To negotiate with KCB and other government entities on how to clear the debts and get the company out of receivership.
- IV. That the Commissioner of cooperatives through a representative observed our resolutions in all our company's general meeting but did nothing to facilitate our eventually successful negotiations with the Bank.

- V. The mandate of KPCU Board is to collect debts owed to them by various debtors e.g. large scale planters and some cooperatives .The debts stand at Ksh3.5 billion.
- VI. The Board was also mandated to review memorandum and articles of association and to make necessary amendments in view of the fact that constitutive documents were adopted in 1945.
- VII. The annual general meetings were held on 30th July 2013 and on 30th July 2014.
- VIII. The KPCU Board reported to the annual general meeting that KCB had agreed in principle to renegotiate the debt but had aired concerns arising from disruptive publicity emanating from commission cooperatives' office.
- IX. The meeting authorized the current board to stay in office for three years and conclude the negotiations with KCB.
- X. The Commissioner for Cooperatives was invited for the annual general meeting but did not attend.
- XI. The Commissioner for Cooperatives has overstepped his mandate by issuing orders for a new board of KPCU Ltd. This lead to violation of the property rights of the shareholders of KPCU which was first incorporated as accompany limited by shares on 2nd June 1945.
- XII. The officials requested the committee to look into the matter of interference by the Commissioner for Cooperatives which is prohibited in the Constitution of Kenya under article 40.
- XIII. They also requested for explanation on how a director use his office to frustrate the company's business.
- XIV. The officials requested for an independent and impartial investigation into the conduct of the Commissioner for Cooperatives Development vis-a vis KPCU LTD.
- XV. The officials requested for financial assistance from the government for its revival by writing off its outstanding debts.
- XVI. It was noted that this was a recommendation from the Parliamentary Committee inquiry in the 10th Parliament into receivership of KPCU which was adopted on 15th August 2012. The committee recommended an injection of Ksh. 1.2 billion as bail out.

Min. 165/2015: Adjournment

There being no AOB the meeting was adjourned at 1:30pm.

Signature

A handwritten signature in black ink, written over a dotted line. The signature is stylized and appears to be a name with a large initial.

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairman)

Date.....

MINUTES OF THE 18th SITTING OF THE DEPARTMENTAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND COOPERATIVES (Meeting with KPCU Petitioners) HELD ON THURSDAY 19TH MARCH, 2015 AT CONTINENTAL HOUSE 5TH FLOOR, PARLIAMENT BUILDINGS AT 10.30 A.M.

Present

1. Hon. Kareke Mbiuki, M.P
2. Hon. Adan M. Nooru, MBS, M.P
3. Hon. Phillip Rotino, M.P.
4. Hon. Daniel Maanzo, M.P
5. Hon. James Opiyo Wandayi, M.P
6. Hon. Raphael Letimalo, M.P
7. Hon. Korei Ole Lemein, M.P
8. Hon. Patrick Wangamati, M.P
9. Hon. Alfred K. Keter, M.P
10. Hon. Justice Kemei, M.P
11. Hon. Silas Tiren, M.P
12. Hon. Kabando Wa Kabando, M.P.
13. Hon. Benjamin Washiali, M.P
14. Hon. (Dr.) Victor Munyaka, M.P
15. Hon. John Kobado, M.P
16. Hon. John B. Serut, M.P
17. Hon. Waititu Munyua, M.P
18. Hon. Fredrick Outa, M.P
19. Hon. Peter N. Gitau, M.P
20. Hon. Ferdinand Wanyonyi, M.P

Chairing

Apologies

1. Hon. Millie Odhiambo - Mabona, M.P
2. Hon. Mary Wambui, M.P
3. Hon. Zuleikha Hassan Juma, M.P
4. Hon. Kimani Ichung'wah, M.P
5. Hon. Maison Leshoomo, M.P
6. Hon. Florence Mutua, M.P
7. Hon. Paul Simba Arati, M.P
8. Hon. Ayub Savula Angatia, M.P.
9. Hon. Hezron Awiti Bollo, M.P

In Attendance:

KPCU Petitioners

- | | |
|------------------------|----------------------------------|
| 1. Mr. Joseph Kioko | - Managing Director, KPCU |
| 2. Mr. William Gatie | - Chairman, KPCU |
| 3. Ms. Waithera Njogu, | - Deputy Managing Director, KPCU |
| 4. Mr. Justus kiaoqo | - Operations Director, KPCU |
| 5. Mr. Mwalimu Mati | - KPCU Consultant |
| 6. Mr. David Murimi | - Farmers Representative |
| 7. Mr. Mbae Keneth | - Farmers Representative |
| 8. Mr. Maina Mwangi | - Farmers Representative |
| 9. Mr. Jackson kinyua | - Farmers Representative |
| 10. Mr. James Mungai | - Farmers Representative |

Kenya National Assembly Secretariat

- | | |
|--------------------------|-------------------------|
| 1. Mr. Benjamin Magut | - First Clerk Assistant |
| 2. Mr. Ahmad Adan Guliye | - Third Clerk Assistant |
| 3. Ms. Angeline Naserian | - Third Clerk Assistant |
| 4. Mr. David Ngeno | - Research Officer |
| 5. Mr. Elijah Ichwarah | - Audio Officer |

MIN.81/2015: PRELIMINARIES

- I. The meeting was called to order at 10.45 hours and prayers were said by Hon. Kareke Mbiuki, M.P
- II. The Vice Chairman who was chairing the day's session welcomed the members and the witnesses to the meeting and thanked them for turning up to the meeting. Introductions were undertaken.

MIN. 82/2015: PRESENTATION BY HON. VICTOR MUNYAKA, M.P- THE PETITIONER

Hon. Victor Munyaka, M.P presented a petition on behalf KPCU stakeholders with the following prayers, that the National Assembly through the Departmental Committee on Agriculture Livestock & Cooperatives;

- I. Investigates the Commissioner for Development with a view to sanctioning, censuring and removing him from his position;

- II. Urges the Government to support the Union's revival efforts by writing off its outstanding debts, injecting capital, and granting the interim Board a three-year operational period to allow for stabilization;
- III. That, the Cooperative Bank should forthwith cease meddling in KPCU's affairs and micro-managing the Coffee industry.

MIN. 83/2015: PRESENTATION BY FARMERS REPRESENTATIVES

Mr. James Mungai, representing farmers informed the Committee of the following;

- I. Farmers were not paid their dues after the receivership
- II. Farmers were not were not given enough time by the Commissioner to prepare for elections.
- III. The Commissioner is an interested party as he is a Board member of several institutions which are competitors with KPCU e.g. CIC and Kenya Cooperative Coffee Exports .
- IV. The management of KPCU is marred with a lot of misappropriations hence the Committee should investigate it with a view of finding a lasting solution.
- V. The 10th Parliament has compiled a report on the crisis facing the Cooperative Union (KPCU) hence the Committee may refer to it.

MIN. 84/2015: PRESENTATION BY KPCU MANAGEMENT

The Managing Director of KPCU informed the Committee of the following, that:-

- I. In the first year of receivership, Kshs. 100 million was recovered but no cash was paid to KCB.
- II. The main Coffee sorting machine was vandalized but CIC insurance only paid five (5) million on account servant theft.
- III. In the Annual General Meeting (AGM) of 2012, it was resolved that a lean Board be constituted and its mandate be extended to three (3) years in the year 2013 under its Articles of Association.

The Committee observed the following, that

- I. Mr. Mungai and other stakeholders present documentations to the Committee on alleged misappropriations of KPCU.
- II. Other meeting allocated to the Management of KPCU to discuss further issues raised in the petition as time was not enough to exhaust the matter comprehensively.

MIN. 86/2015: ADJOURNMENT

Since no other business to discuss, the meeting was adjourned at 12.12 hours.

Signature

HON ADAN MOHAMEDNOORU, MBS, M.P.

(Chairman)

Date.....

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI.
JUDICIAL REVIEW DIVISION
JR CASE NO. 312 OF 2014

REPUBLIC.....APPLICANT

VERSUS

COMMISSIONER FOR
CO-OPERATIVE DEVELOPMENT.....1ST RESPONDENT

CABINET SECRETARY,
MINISTRY OF INDUSTRIALIZATION
& ENTERPRISE DEVELOPMENT.....2ND RESPONDENT

ATTORNEY GENERAL.....3RD RESPONDENT

AND

AMOS MWANGANGI.....1ST INTERESTED PARTY

CHARLES KIGWE.....2ND INTERESTED PARTY

PETERSON MUTHATHAI.....3RD INTERESTED PARTY

FRED KIRUBI.....4TH INTERESTED PARTY

SIMON NJOROGE.....5TH INTERESTED PARTY

CHARLES KARIUKI.....6TH INTERESTED PARTY

KIONGO WA NJUGUNA.....7TH INTERESTED PARTY

BERNARD WANJALA MAJANJA.....8TH INTERESTED PARTY

KIMATHI MUTUERANDU.....9TH INTERESTED PARTY

WACHIRA MWAGO.....10TH INTERESTED PARTY

ROWLAND NDEGWA.....11TH INTERESTED PARTY

FRANCIS GATIMO.....12TH INTERESTED PARTY
JOHN MUKUYA.....13TH INTERESTED PARTY
JACOB CHEMEI.....14TH INTERESTED PARTY
OREN MURIGI.....15TH INTERESTED PARTY

EX-PARTE
KENYA PLANTERS CO-OPERATIVE UNION LIMITED

JUDGMENT

The ex-parte Applicant, the Kenya Planters Co-operative Union Limited, hereinafter simply referred to as KPCU, has through the Notice of Motion application dated 22nd August, 2014, prayed for orders that:

1. An ORDER OF PROHIBITION do issue prohibiting the Respondents and the interested parties, their agents, servants and/or associates from convening or presiding over or in any way holding a special general meeting (SGM) or an Annual General Meeting (AGM) of the Applicant or in any other way purporting to carry on the business, management and the operations of the applicant.
2. An ORDER OF CERTIORARI to issue quashing the decision contained in the letter reference MCDM/10/20/(135) dated 25th June 2014 by Dr. Wilson Songa, MBS., regarding convening special general meeting in respect of the Applicant.
3. An ORDER OF CERTIORARI do issue to quash the decision contained in the letter reference MCDM/2/10/VOL. VI/131 by P. L. M. Musyimi, HSC., dated 11th June, 2014

including the undated notices issued by the County Commissioners on behalf of the 1st Respondent pertaining to the convening and conducting of a special general meeting (SGM) on 31st July 2014 to elect Directors of Kenya Planters' Co-operative Union Limited.

4. An ORDER OF CERTIORARI do issue to quash the letter dated 28th July, 2014 and conveyed to the applicant's directors on 28th July, 2014 at 8.15 pm calling for and or purporting to give notice of elections and intention to convene a Special General Meeting of the applicant.
5. An ORDER OR CERTIORARI do issue to quash the illegal and irregular elections of the applicant held on 31st July, 2014 and any other form of election held prior thereto whether grassroots or by whatever name so called.
6. An ORDER OF PROHIBITION permanently prohibiting the respondents and the interested parties, their agents, servants and/or associates from negatively interfering with the property, management, and operations of the Applicant in any manner.
7. The applicant be granted leave to commence judicial review proceedings for an ORDER OF PROHIBITION restraining the 1st respondent and the interested parties, their agents, their servants, employees or any other authority from blocking and or preventing the handover and or takeover of the applicant from the receiver manager in whichever manner.

8. That the cost of this application be provided for."

The 1st, 2nd and 3rd respondents are Commissioner for Co-operative Development, the Cabinet Secretary in charge of the Ministry of Industrialization and Enterprise Development and the Attorney General respectively. There are fifteen interested parties led by Amos Mwangangi.

According to the pleadings filed in Court, this judicial review application has been filed on behalf of the ex-parte Applicant by "its board of directors." The application is supported by a statutory statement, the verifying affidavit of the Managing Director, Mr. Joseph Kioko and several documentary exhibits all filed on 12th August, 2014 with the chamber summons application for leave.

According to the verifying affidavit of Mr. Joseph Kioko, KPCU is a limited liability company incorporated in Kenya under the Companies Act, Cap 486 Laws of Kenya under Certificate of Incorporation No. C.1/45 dated 2nd June, 1945 in the name of Kenya Planters' Co-operative Union Limited.

The Managing Director avers that the 1st Respondent and the 2nd respondents issued notices to convene a Special General Meeting for KPCU to be held on 31st July, 2014. The 1st Respondent's letter dated 11th June, 2014 is addressed to County Co-operative Commissioners and it states:

**"KENYA PLANTERS CO-OPERATIVE UNION (KPCU) LTD
(IN RECEIVERSHIP) DIRECTORS' GRASSROOT ELECTIONS**

Pursuant to Section 27(8) of the Cooperative Societies Act (CAP. 490), you are hereby requested to convene a Special General Meeting (SGM) to elect new Directors of Kenya Plants (sic) Co-operative Union (KPCU) Ltd. on Thursday 31st July, 2014 at a venue convenient to all shareholders.

Kindly note that the term of office of the current interim directors expires in July, 2014. Note further that the grassroots elections of directors were last held on 28th June, 2006. It has therefore become prudent for the directors to seek fresh mandate from the members as part of the Union's revival strategies. The fifteen (15) Electoral Zones....."

The author of the letter then goes ahead to list the electoral zones and urges the recipients to liaise with the county executives in charge of co-operative matters for logistical support including securing venues and publicizing the meetings.

The second letter is that of Dr. Wilson Songa, the Principal Secretary of the Ministry of Industrialization and Enterprise Development. The letter which is addressed to the governors is dated 25th June, 2014 and it states:

"KENYA PLANTERS CO-OPERATIVE UNION (KPCU) LIMITED (IN RECEIVERSHIP)-ELECTION OF NEW DIRECTORS

Kenya Planters Co-operative Union (KPCU) Limited is a farmers organization founded in 1937 with a current membership of over 700,000 small scale farmers through over 400 coffee Co-operative Societies and about 300 coffee estates. It has an asset base valued at over Kshs.5 billion and a share capital estimated at Kshs.76 million with a ratio of three (3) shares in the cooperative sector to every one (1) share in the coffee estate sector.

Over the years, the Union has successfully served coffee farmers through services which include; farm inputs supply, credit, warehousing, milling, marketing, quality control and extension.

It was the sole coffee miller for the peak production of about 130,000 metric tonnes of coffee realized in 1987/88 crop year. It therefore contributed significantly to making coffee a leading foreign exchange earner in the 1970s and 1980s.

However, KPCU's performance has since declined due to factors which include adverse effects of liberalization on the coffee sector, the removal of its milling monopoly in

1996, stiff competition from coffee millers and marketers, poor governance and heavy indebtedness. This led to its being put under receivership by Kenya Commercial Bank (KCB) in October 2009 over failure to service an outstanding debt of about Kshs.644 million.

As part of the Union's revival strategies, the Ministry has organized Special General Meetings (SGM) pursuant to Section 27(8) & (10) of the Co-operative Societies Act (CAP. 490) in all its fifteen (15) electoral zones to elect 15 new directors.

The Special General Meetings will be held on Thursday 31st July, 2014 at venues convenient to all shareholders and will be presided over by the County Co-operative Commissioners. The zonal meetings will be followed by the Union's national SGM in August 2014 at its Dandora premises. This will enable the shareholders to give a fresh mandate to the new directors and pass resolutions on the Union's revival strategies including the lifting of the receivership by KCB.

In this regard, I hereby appeal for your logistical, financial and technical support through your County Executive Committee (CEC) in charge of co-operative matters and the County Co-operative Commissioners to make the meetings successful..."

The author then proceeds to list the electoral zones.

Although this application is brought in the name of KPCU, it is apparent that the same is brought in the interest of the current directors of KPCU.

It is their case that the 1st and 2nd respondents are not members of KPCU and they therefore do not have power to call its meetings. According to them, the duty of calling and conducting meetings of the KPCU belongs to its directors.

It is the current directors' case that KPCU is going through a recovery process of redeeming itself from the receivership appointed by Kenya Commercial Bank Limited (KCB), over a loan of Kshs. 644 million it owes to the bank. By a letter dated 3rd June, 2014 it was proposed that a special general meeting be held on 29th July, 2014 so that the shareholders could be notified of the emergence of KPCU from receivership. A notice to this effect was put in the newspapers. After the issuance of the notice, 29th July, 2014 was through a Gazette Notice dated 18th July, 2014 declared a public holiday (Id ul fitr) and a fresh notice was placed in the newspapers that the special general meeting scheduled for 29th July, 2014 would now be held on 30th July, 2014.

It is the current directors' case that the 1st and 2nd respondents were on their part planning another special general meeting for KPCU but never relayed the information of the meeting up to 28th July, 2014 when the information was relayed to the chairman through an email. It is therefore their case that the special general meeting planned by the 1st

and 2nd respondents and whose key agenda was elections was malicious, mischievous, done in bad faith and only intended to actualize fraudulent activities.

The Managing Director averred that although KPCU was not originally registered as a co-operative society it operated partially as a co-operative movement but was exempted from some of the provisions of the Co-operative Societies Ordinance 1945 under Gazette Notice No. 1095 of 18th December, 1945. That after the enactment of the Co-operative Societies Act No. 12 of 1997, the Companies Act ceased to apply to co-operative societies necessitating the revocation of all the exemptions that had been granted to KPCU under the Co-operative Societies Ordinance of 1945. The revocation was done through Gazette Notice No. 3099 contained in the Kenya Gazette of 25th April, 2005.

Mr. Kioko averred that on 19th October, 2009 KCB appointed a receiver and manager after KPCU failed to pay a loan amounting to Kshs.644 million. That when the current directors were elected, they found that the receiver and manager had intentionally failed, neglected and or refused to review the coffee marketing and milling licences with a view to making KPCU insolvent and thereby placing it under liquidation.

The Managing Director averred that the current directors had succeeded in removing the receiver and manager and they were in the process of starting the milling and processing of coffee which is the sole business of KPCU. It is the current directors' case that the 1st Respondent is acting in bad faith as he had not assisted KPCU to come out of the management of the receiver and manager. Further, that evidence of bad faith of the 1st Respondent is shown by the fact that on 25th June, 2009 he had registered a new outfit by the name of Kenya Co-operative Coffee Exporters (KCCE).

The Managing Director at Paragraph 24 of the verifying affidavit outlines what he says are signs of conspiracy between the 1st Respondent and other parties. He avers:

"24. THAT the Directors and the Applicant only became aware of the 1st and 2nd Respondent's actions on the 25th of July 2014 through a whistle blower who to the shock of the Directors informed them that the 1st and 2nd Respondents were secretly planning for a Special General Meeting to oust the current Directors as they have become a threat to their interests for it was not envisaged that they would have the capacity to remove the KPCU from receivership. Which was not intended to happen and the whistle blower gave the following reasons, which I have now confirmed of my own knowledge, through publicly available

documents and other information which has come within my personal knowledge in the course of time:-

- a) Sometimes early in 2009, the 1st respondent with others conspired to bring down the KPCU and the best method of bringing the KPCU down was for the 1st respondent to register another new outfit passing off as the KPCU to take over the role of the KPCU.
- b) On 25th of June 2009, the 1st Respondent and others registered this new outfit in the name of the Kenya Co-operative Coffee Exporters (hereinafter referred to as KCCE)
- c) The 1st Respondent sits in the Board and is involved in the deliberations and decisions of the said outfit registered as KCCE.
- d) Being aware that the KPCU has a huge loan with the Kenya Commercial Bank, the 1st Respondent and others conspired that the best way to bring down the KPCU was to have a receiver and manager appointed to run it down to insolvency.
- e) Successfully, three months after the registration of the KCCE, on the 19th of October 2009, a receiver and manager were appointed to take over the management and running of the KPCU and immediately the KPCU was put under receivership.
- f) The 1st Respondent and others prevailed on the receiver and manager to ensure that the coffee processing, milling and marketing licenses of the KPCU were terminated in order to bring the KPCU into dormancy.

- g) The 1st respondent and others agreed that the best way to dismantle the KPCU is to sell by public auction its core asset in a clever manner. The 1st respondent and others agreed that the best period to auction the KPCU property known as Wakulima House was when least expected and conspiracy was hatched to dispose of the property during the new Constitution referendum period on August, 6th 2010 (*I now annex and mark as "JK 11" copies of advertisements for auction of the aforesaid properties*)
- h) It was agreed that the receiver and manager to cleverly hand over and put KCCE into possession of KPCU in a manner disguised as a license (*I now annex and mark as "JK 12" copies of the aforesaid licenses*)
- i) The 1st and 2nd respondents and others seriously believed that the current directors of the KPCU were persons of no financial might able to mobilize the huge finances required to remove the KPCU from receivership.
- j) There was a panic in December 2013 when the current board managed for a short time to have the receiver and manager revoked and there was a celebration thereafter in January, 2014 when the receiver and manager were reinstated.
- k) During the month of May and June 2014, the 1st, 2nd respondents and others became aware that the current directors were in the process of raising money to have the KPCU receivership and management revoked, they were in a panic but adopted a wait and see attitude. But when they finally became aware that the Directors had raised some money in June and paid to the Kenya Commercial

Bank. The respondents and others declared the current directors of KPCU as dangerous and people who were likely to derail their gravy train and that they must be removed immediately the receivership is limited to be replaced with others amenable to the designs of dismantling the KPCU from within resulting in the secretive intended Special General Meeting for the KPCU. (sic).

- l) THAT the respondents and their other conspirators in their scheme of things are of the firm belief that without the assets of KPCU and the KPCU being operational, the KCCE would be unviable *ab initio*.
- m) THAT the whistle blower ended his reasons by stating that a visit to the KCCE website vide a banner at the bottom of every page discloses the fact the KCCE partners are the, the Cooperative Bank, CIC Insurance, and the 2nd respondent. This partnership is the one which caused the stealing of the KPCU coffee milling machine and is involved in frustrating the insurance claim from the CIC insurance with regards to the theft. It is highly likely that the milling machine is hidden somewhere in Kenya waiting for the KPCU to collapse (*I now annex and marked "JK13" a copy of a printout showing the partners of KCCE*).

It is the current directors' claim that they negotiated with KCB and agreed on the removal of the receiver and manager which led to the revocation of the appointment of the receiver and manager by KCB on 4th July, 2014. The current directors assert that they are now in the

middle of taking over KPCU from the receiver and manager which include verifying the inventory of all the property, equipment, machines and documents and establishing the level of any liability. That since the appointment of the receiver and manager on 19th October, 2009 and until the revocation of that appointment not a single cent was paid towards the loan with KCB. Further, that KPCU's bank accounts were empty at the time the receiver and manager left.

It is the current directors' view that the aim has been to bring down KPCU so that unscrupulous people can benefit from its assets. Further, that KCCE is operating from the premises of KPCU hence KPCU's revival is definitely going to disrupt the operations of KCCE and its existence. The current directors' case is that KCCE is a government backed outfit.

KPCU's current directors assert that they are in office legally and the 1st and 2nd respondents had no reasons for calling elections.

The Managing Director of KPCU averred that on 29th February, 2012 Hon. John Michael Mututho published a detailed report (the Mututho Report) of an inquiry into the circumstances under which KPCU was put under receivership. Among the recommendations in the report is that those individuals who were directors at the time of receivership should

not assume board membership until after the expiry of two terms from the date of that report. It is the current directors' case that some of the individuals elected in the elections called by the 1st and 2nd respondents had been barred from contesting by the Mututho Report.

The Managing Director averred that on 20th July, 2012 an interim board made up of the current directors was set up and endorsed at a special general meeting. The interim board was, among other things, tasked with organizing elections. He averred that on 31st July, 2013 the current board was endorsed after annual elections. It is the current directors' assertion that on 30th July, 2014 at an annual general meeting the members resolved that KPCU stops operating under a dual statutory regime but only operates as a limited liability company under the Companies Act, Cap 486.

Further, that the persons elected in the elections called by the 1st and 2nd respondents are not members of the Applicant. The current directors also contend that they were no nominations of delegates by the farmers' cooperative societies and there could not have been any valid election of representatives to KPCU's board.

The current directors listed several grounds why the orders of judicial review should issue in this matter. Some of the grounds are a rehash of the arguments of the current directors as already reproduced. In summary the current directors assert that the 1st and 2nd respondents had no jurisdiction to act as they did. Their actions are *ultra vires*, arbitrary and contrary to the statutory provisions. They also contend that the respondents' actions are *male fides*, illegal, fraudulent and only amount to machinations to wrestle away the property of KPCU so as to personally benefit certain entities and/or individuals with no relationship to the organization. The current directors also contend that they have obtained money and property from third parties based on the legitimate expectation that the current board of directors will serve its full term. Further, that unless the current directors are allowed to continue serving, the ongoing process of redeeming KPCU from the receiver and manager may never be concluded thus leading to the liquidation of KPCU. They argue that the aim of the 1st Respondent is to ensure that KPCU's recovery plans are derailed permanently.

The current directors' case is that the 1st Respondent issued notices calling for elections surreptitiously, irregularly, illegally and against the rules of natural justice. Further, that their term of office has not expired

and their continued occupation of office has never been challenged through any legal channels. It is their assertion that they were elected in 2013 for a term of three years which expires in 2016. Further, that the 1st Respondent has no role, responsibility or mandate whatsoever over KPCU and therefore lacks the jurisdiction to interfere with the running of its business.

The current directors assert that the acts of the respondents amount to political interference in the business of a limited liability company which is contrary to the best corporate governance standards. They argue that the purported grassroots elections were marred by illegalities which included election of persons previously found unfit to hold office or excluded from holding office for a period of two terms as per the Mututho Report.

The current directors contend that the 1st Respondent being a creature of the Co-operative Societies Act has no role to play over KPCU, a limited liability company incorporated and managed under the Companies Act.

The current directors assert that the 1st Respondent is illegally presiding over the fraudulent liquidation of KPCU by allowing KCCE of which he is a board member, to operate using the assets and facilities of KPCU and

to illegally recruit members of KPCU into the membership KCCE in contravention of the provisions of the Co-operative Societies Act.

The Commissioner for Co-operative Development and Marketing swore an affidavit on 1st September, 2014 in opposition to the application. He averred that he is responsible for the growth and development of co-operative societies and he oversees the management of co-operative societies all over the country. It is the 1st Respondent's case that the application is fatally defective and an abuse of the court process. He averred that KPCU with a membership of about 750,000 drawn from about 452 co-operative societies and 20 coffee cooperative unions, is registered under the Co-operative Societies Act as well as the Companies Act. Approximately 2/3 of members are drawn from cooperative societies while 1/3 of the shareholding belongs to coffee related institutions like Coffee Research Foundation and Coffee Board of Kenya.

It is the 1st Respondent's case that it is a fallacy and a falsehood for the current directors to assert that he has no powers to call elections of KPCU whereas sections 27 (8) & (10), 93 and 93A (a) and (b) of the Co-operative Societies Act mandates him to convene a special general meeting of a society, call elections of a society, attend meetings of a

society and require every society to send him notices of the agenda and minutes of its meetings.

Further, that Clause 1 of the Articles of Association of KPCU clearly provides that the Articles of Association together with the Memorandum of Association shall also constitute regulations for the purposes of the Co-operative Societies Act. Further, that the subject matter at hand was fully dealt with by Majanja, J in a judgement delivered on 20th December, 2012 in **Nairobi High Court Petition No. 343 of 2012**. That the current directors of KPCU led by Mr. William Gatei Muiruri were elected at a Special General Meeting called by the 1st Respondent on 20th July, 2012 pursuant to the provisions of Section 27(8) & (10) of the Co-operative Societies Act for a period of one year. The 1st Respondent asserts that the current directors failed to deliver on their terms of reference which included safeguarding the interests of the coffee farmers and facilitation of grassroots elections to elect a substantive board of 15 directors in accordance with sections 61 and 62 of the Articles of Association. The 1st Respondent denies that the current directors' term of office was extended for three years at an Annual General Meeting held on 31st July, 2014.

The 1st Respondent avers that with the impending end of term in office of the current directors, he invoked his powers under the Co-operative Societies Act and called a special general meeting in which elections were to be conducted to enable shareholders elect their own board of directors as the interim committee's term had lapsed. Acting on the said powers he issued a notice on 11th June, 2014 for a special general meeting of KPCU to be held on 31st July, 2014.

According to him, once the current directors learned of his notice they immediately thereafter called a meeting for 30th July, 2014 in which it was resolved that KPCU continues operating as a limited liability company with the notion and understanding that this will effectively dislodge KPCU from the operations of the Co-operative Societies Act and place it squarely and exclusively under the provision of the Companies Act. It is the 1st Respondent's case that the said meeting was held in bad faith with a view to scuttling and pre-empting the objectives and agenda of the meeting he had scheduled for 31st July, 2014.

The 1st Respondent contends that the current directors had failed to disclose that the court had refused to grant them leave to challenge the grassroots elections scheduled for 31st July, 2014. The 1st Respondent's case is that the grassroots elections were successfully held on 31st July,

2014 where the shareholders elected 15 directors in all electoral zones as stipulated under sections 61 and 62 of the Articles of Association and the said 15 directors were on 15th August, 2014 elected and confirmed as the duly elected board by the shareholders. That the 15 directors who were elected were eligible in accordance with Article 61 of KPCU's Articles of Association and the provisions of the Co-operative Societies Act and were genuine registered coffee farmers and shareholders.

The 1st Respondent denied that he schemed with other individuals and entities to ensure that KPCU was put under liquidation so that KCCE can take over its property. He asserts that KCCE was registered in June 2009 and KPCU was put under receivership on 19th October, 2009 due to failure to service outstanding debts with KCB and hence KCCE is a stranger to these proceedings. The 1st Respondent asserts that he intervened in the matter due to the huge number of co-operative societies forming the shareholding of KPCU and in public interest. The 1st Respondent denied that he has made it difficult for the current directors to extricate KPCU from KCB's receivership.

It is the 1st Respondent's case that the purported resolution at the special general meeting held on 30th July, 2014 that KPCU continue to

operate as a limited liability company is *prima facie* illegal and the issue was not listed as a substantive agenda for the purported meeting.

Further, that the current directors' attempts to nominate themselves as directors of KPCU is in breach of the Articles of Association which provides for a substantive board of 15 directors excluding the managing director. The 1st Respondent thrashes the submission that the Co-operative Societies Act does not apply to the Companies Act by pointing out that Section 64 of the Co-operative Societies Act provides that certain sections of the Companies Act relating to winding up of companies shall apply *mutatis mutandis* to the winding-up of a cooperative society. He pointed out that KPCU's exemption from the provisions of the Co-operative Societies Act was revoked vide Gazette Notice No. 3099 of 25th April, 2005 and it is therefore governed by the Co-operative Societies Act.

The 1st Respondent rebutted the current directors' claim that he has never assisted KPCU from the time it was put under receivership and points out that in June, 2009 the President of Kenya directed that a rescue package similar to the ones used to salvage New KCC and Uchumi Supermarkets be availed to KPCU. Further, that in May 2010 he put a caveat on KPCU's Wakulima House to save it from auction by the

KCB receiver and manager in order to safeguard the interests of the coffee farmers. Still in September 2012 the 2nd Respondent presented a cabinet memorandum to the Treasury requesting for Kshs.1.2 billion as a rescue package for KPCU.

The interested parties' opposition to the application was presented to the Court through the replying affidavit sworn by Kiongo Wa Njuguna on 1st September, 2014. He started by introducing himself as KPCU member No. AA0780. He confirmed that KPCU has dual registration under the Co-operative Societies Act and the Companies Act. He averred that this dual registration is indeed acknowledged by Clause 1 of the Articles of Association. It is the interested parties' case that the only way of disengaging KPCU from the operations and binding provisions of the Co-operative Societies Act is through a process that culminates in the dissolution of the institution as a co-operative society and the process has not been initiated or even contemplated in respect of KPCU which therefore remains a co-operative society. It is the interested parties' case that the institution of these proceedings, on behalf of KPCU is not in compliance with the law in that there is no evidence of the resolution of members or directors authorizing the filing of the case. Further, that the advocate on record has not been properly appointed and he has no

authority to act for KPCU. The interested parties contend that the 1st Respondent is given the mandate by the Co-operative Societies Act to get involved in the affairs of co-operative societies.

The interested parties informed the Court that on 20th July, 2012 the 1st Respondent convened a meeting for KPCU's shareholders under the Co-operative Societies Act and among the items deliberated upon was a report by the 1st Respondent whose recommendations included the setting up of an interim committee since the term of the previous board had expired whilst KPCU was under receivership. The interim committee that was formed was, among other things, mandated to set up a new substantive board for KPCU. The tenure of the interim committee was one year from the date of establishment. Through letters dated 5th September, 2012 two other persons were appointed by the 1st Respondent to join the interim committee.

The interested parties assert that the purported resolution made in the meeting of 31st July, 2013 to confirm the current directors, who were the members of the interim committee, as substantive directors for KPCU for a period of three years was *ultra vires* the Articles of Association of KPCU and the interim committee's terms of reference. Further, that the decision did not have the blessings of the 1st Respondent who was the

originator of the interim committee in the first instance. That the action of converting the interim board into a substantive Board of KPCU is not in agreement with the terms of reference establishing the interim committee and does not therefore meet the legitimate expectation of the general membership of KPCU. It is the interested parties' case that the only legitimate board of directors of KPCU is one elected in compliance with its Articles of Association and that the current board is not the board contemplated by the Articles of Association. In support of this contention the interested parties point out that directors are supposed to represent electoral zones and they are supposed to be fifteen but the current board of directors do not meet these requirements. Further, that the 1st Respondent's letter dated 11th June, 2014 calling for elections of KPCU directors complied with the law as it indicated the electoral zones.

The interested parties also submit that the 1st Respondent separately wrote to the interim committee disbanding it and thanking its members for the service they had rendered to KPCU and also informed the members of the interim committee that they could participate in the grassroots elections if they so desired.

The interested parties disclosed that the 1st Respondent's decision to call for elections was necessitated by a memorandum by farmers

complaining about non-representation in the interim committee and asking for grassroots elections. They state that they were elected as directors of KPCU. It is the interested parties' case that it is not known how Zippora Wambua, Jacinta Njogu, Julius Kiago and Kamau Muiruri became directors of KPCU as they are not eligible for elections as per the Articles of Association.

The interested parties assert that the current directors are irregularly disposing the assets of KPCU and they cite the disposal of L. R. No. Kisumu Municipality /Block 3/118 as an example. Further, that the directors are disposing assets of KPCU by placing clandestine advertisements in the papers only giving the name of the contact person but without disclosing the vendor. In this regard the interested parties identified parcels of land in Nakuru and Nanyuki.

The interested parties assert that the 1st Respondent's action to call election was a legitimate exercise of power as part of the normal performance of duties including supervision as mandated by the Co-operative Societies Act. It is the interested parties' case that the current directors are the ones who have acted illegally, irregularly, arbitrarily and *ultra vires* the rules governing the management of KPCU.

The interested parties contend that the meeting held on 30th July, 2014 in which the interim committee was converted into the board of KPCU was tainted with irregularities as it was an invite only meeting and some of the members were locked out. The interested parties exhibited an invitation to one R. Bundi to a Special Annual General Meeting to be held on 31st July, 2013 at Dandora KPCU compound. The invitee was directed to carry the invitation card in order to gain entry into the meeting. Further, that at the meeting the interim committee asked for an extension of its term in office for one more year and the issue of conversion of the interim committee into a substantive board of KPCU was therefore not discussed at the meeting. They aver that elections were not on the agenda of the meeting convened by the interim committee and the purported conversion was irregular.

Mr. Joseph Kioko swore a further affidavit on 18th August, 2014. That affidavit is not relevant to the core issues in this application as it confines itself to the alleged violent takeover of office by the interested parties.

The said Managing Director also swore another affidavit on 10th September, 2014 in which he responded to the issues raised by the respondents and the interested parties. In this further affidavit he avers that the 1st Respondent has deliberately misled the Court by annexing a

document showing that KPCU is only made up of co-operative societies from the regions of Kisii, South Nyanza, Central Nyanza and Kisumu. He avers that the 1st Respondent is merely a regulatory authority and not a manager or administrator of KPCU to assume management or control of its affairs at will and wish without following due process.

It is the current directors' case that the decision of Majanja, J in **Petition No. 343 of 2012** did not deal with the issues raised in this application. Mr. Kioko avers that Mr. Kamau was co-opted to the board by the AGM on recommendation of the Office of the President as the said office was a stakeholder in the recovery process. He deposed that the minister for cooperatives was also mandated by the AGM of 2013 to co-opt two directors to represent gender and that is how Zipporah Wambua and Madam Njogu joined the board.

It is the case of the current directors that the advertised agenda included amendment to the Articles of Association and that took care of the removal of KPCU from the jurisdiction of the Co-operative Societies Act. The current directors assert that they were mandated by the supreme organ of KPCU and they did not nominate themselves as alleged by the 1st Respondent.

On the 1st Respondent's claim that he sought the intervention of the President, the current directors assert that it was them who reached out to the President and efforts to have the proposed rescue plan forwarded to the President were frustrated by the 2nd Respondent. The current directors deny the assertion that the Coffee Board of Kenya and Coffee Research Foundation are KPCU members, saying that the said organizations cannot be members since they are not growers, planters or members of a co-operative society.

The current directors insisted that Murata Sacco or any other savings and credit cooperative do not own any shares of KPCU and that the interested parties are not members of KPCU and were therefore not eligible to stand for elections. It is the current directors' case that the purported meeting convened by the 1st Respondent on 14th August, 2014 was in clear contravention of the order issued by Mumbi Ngugi, J in these proceedings. The current directors denied that they have sold KPCU's property.

In my view this matter boils down to the following issues:

1. Whether this Court has jurisdiction;

2. Whether the 1st Respondent had jurisdiction to call a special general meeting and elections for KPCU
3. If the answer to Issue No. 2 is in the affirmative, whether the 1st Respondent exercised his powers properly;
4. Who should meet the costs of these proceedings?

The interested parties argued that this Court has no jurisdiction to hear this dispute. It was claimed that the issues raised by the current directors had been dealt with by Majanja, J in **KENYA PLANTERS CO-OPERATIVE UNION LTD (IN RECEIVERSHIP) & 2 OTHERS v MINISTER FOR CO-OPERATIVE DEVELOPMENT & MARKETING & 4 OTHERS [2012] eKLR**.

I have looked at the said decision and I do not see any correlation between it and the current proceedings. The only ironical thing to note is that the current directors were the interested parties in that case and the previous directors were objecting to their installation as directors following the resolution made on 20th July, 2012 by a special general meeting of KPCU. Majanja, J concluded that:

"In my view, the issues raised concerning the elections of a cooperative society are better resolved by the Tribunal and in the circumstances, I decline to exercise my jurisdiction and grant relief under Article 23 of the

Constitution. The petition is dismissed with no order as to costs."

I will in due course demonstrate why the matter before me attracts the supervisory jurisdiction of this Court.

An issue was raised about the propriety of this application. The interested parties contended that the current directors had not established that they had the authority to file this matter on behalf of KPCU. The answer to this argument is that these are judicial review proceedings and the rules governing the ordinary civil matters are not strictly applicable.

It was submitted by the current directors that the 1st Respondent has no jurisdiction over the affairs of KPCU since by a resolution made in the meeting of 30th July, 2014 KPCU was removed from the jurisdiction of the Co-operative Societies Act and placed under the sole jurisdiction of the Companies Act.

It is not disputed by the parties herein that KPCU enjoyed dual registration prior to the purported resolution of 30th July, 2014. It is also clear that any exemption that had been granted to KPCU was revoked vide Gazette Notice No. 3099 of 29th April, 2005. Therefore as at the

At the time the 1st Respondent called the elections of KPCU on 11th June, 2014, he had full jurisdiction over KPCU.

The general jurisdiction is found in Section 3 of the Co-operative Societies Act. Under the Co-operative Societies Act, the 1st Respondent is also given special jurisdiction to call for a special general meeting of a co-operative society. The power extends to calling for elections and even attending meetings. Sections 27 (8), 27 (10) and 93A are very clear on the powers of the 1st Respondent to that effect.

The only question is whether the 1st Respondent exercised his powers in good faith. Before addressing this question, I propose to deal with another reason given by the current directors as to why the 1st Respondent had no jurisdiction to call the special general meeting and elections.

The current directors contend that the shareholders resolved in a meeting held on 30th July, 2014 that KPCU be removed from the provisions of the Co-operative Societies Act. First and foremost, it must be noted that the resolution came after the 1st Respondent had called the special general meeting through his letter of 11th June, 2014. At the time he called the meeting, he had jurisdiction to do so.

Secondly, and for purposes of putting the record straight, it must be stated that the Co-operative Societies Act provides for the dissolution or winding up of a co-operative society and Section 61(5) firmly states that **"no co-operative society shall be dissolved or wound up save by an order of the commissioner."**

The 1st Respondent is empowered by Section 62 of the Co-operative Societies Act to cancel the registration of a co-operative society. Section 64 provides that the liquidation of a co-operative society is to be done using the provisions of the Companies Act. No evidence was adduced by the current directors to show that the Co-operative Societies Act was complied with. In essence the purported resolution to remove KPCU from the jurisdiction of the Co-operative Societies Act does not amount to anything.

There is also the issue of the legitimacy of the purported resolution. It is clear from the evidence on record that the elections of the KPCU have not been held since 2006. A big decision like the one purportedly made by the current directors cannot be made by people riding on the goodwill of the 1st Respondent. The current directors are in office on interim basis and the only way they could have legitimized their leadership was by facing the electorate in the electoral zones. It must always be

remembered that leadership of a co-operative society is gained through democratic elections. Those elections have to be held annually. There is no evidence that the current directors have been subjected to an open democratic process as required by the Co-operative Societies Act.

Further still, the interested parties demonstrated that the meeting which purported to endorse the removal of KPCU from the provisions of the Co-operative Societies Act was an-invite-only affair. Such a meeting does not have the hallmarks of democracy. The current directors cannot therefore hide behind that resolution in order to avoid supervision of KPCU by the 1st Respondent.

One must also take note of the fact that the membership of KPCU is purely sourced from the co-operative movement. Why should an apex co-operative society like KPCU opt to operate outside the law governing co-operative societies?

The only issue that remains for the determination of the Court is whether the 1st Respondent's power to call special general meetings and elections of co-operative societies was exercised in accordance with the law. In calling elections, the 1st Respondent must comply with the law for calling elections. He must also comply with the law for convening meetings

when he decides to convene a meeting. Of concern to this Court is whether the elections of 31st July, 2014 in which the interested parties were elected complied with the provisions of the Co-operative Societies Act.

KPCU is an apex society. Its elections are two-tier in nature. The first election is the grassroots election where members in a given electoral zone meet to elect delegates. A director for the zone is elected by the delegates. The directors will then move to the national office where they will be confirmed. For KPCU elections to have a semblance of democracy, genuine members should participate in the zonal elections.

In accordance with Section 27(5) of the Co-operative Societies Act, “[a] **general meeting of a co-operative society shall be convened by giving at least fifteen days written notice to the members.**” Election of a co-operative society’s office bearers can only be done during a general meeting or a special general meeting. In order for KPCU’s members to participate in elections in their zones, 15 days’ notice ought to have been issued. The venue of the elections ought to have been specifically stated. The notice to the members should be in writing. The 1st Respondent has not shown that he did all these. He only exhibited the letter dated 11th June, 2014 which was addressed to the County Co-

operative Commissioners. There is no evidence that the County Co-operative Commissioners in turn issued notices to all the members of KPCU in the 15 electoral zones. The purported election of the interested parties on 31st July, 2014 therefore fell short of the requirements of the Co-operative Societies Act. The 1st Respondent is therefore guilty of acting contrary to the provisions of the law governing elections in co-operative societies.

This Court has been asked to review the exercise of power by public bodies. In judicial review, the court looks at the process leading to the making of a decision and not the merits of the decision. A judicial review court is not a court of plaudits and accolades. It is neither a court of rebukes and reprimands. It does not issue bouquets or barbs. The key question asked by a judicial review court is whether the process provided by the law was followed in doing a certain act.

The parties herein traded accusations and counteraccusations about the management of KPCU. How a co-operative society is run is not within the province of this Court. Election of office bearers of a co-operative society is the preserve of the members of the given society. If members decide to remove an effective team and replace it with an inept one, the court has no say.

It is however imperative that the genuine members of KPCU step forward and take charge of their organization. They need to elect leaders and mandate them to revitalize their society or perform the last rites on it. The respondents and this Court cannot help them in making that decision.

On the other hand, the management of KPCU must wake up to the realities of the current times. Times have changed and competition is stiff. Blaming KCCE for its woes will not get KPCU out of the rut. In fact I have not found it fit to comment on the current directors' allegations against KCCE as they did not make KCCE a party to these proceedings.

The interested parties asked this Court to take the route taken by Justice Majanja in **Nairobi High Court Petition No. 343 of 2012** and find that election disputes are the preserve of the Co-operative Tribunal created by the Co-operative Societies Act. The current directors who were the beneficiaries of that judgement feebly attempted to distinguish the said decision from this case. The reasons why the learned Judge arrived at the said decision are self-explanatory and I need not comment on them.

What I only need to state is that where judicial review is the most efficacious remedy, an applicant need not exhaust the statutory process

or file an appeal. This reasoning receives support from H.W.R Wade and C.F. Forsyth the authors of **Administrative Law, 9th Edition, 2008** at Page 703 where they state that:

"In principle there ought to be no categorical rule requiring the exhaustion of administrative remedies before judicial review can be granted. A vital aspect of the rule of law is that illegal administrative action can be challenged in the court as soon as it is taken or threatened. There should be no need first to pursue any administrative procedure or appeal to see whether the action will in the end be taken or not. An administrative appeal on merits of the case is something quite different from judicial determination of the legality of the whole matter. This is merely to restate the essential difference between review and appeal which has already been emphasized. The only qualification is that there may occasionally be special reasons which induce the court to withhold discretionary remedies where the more suitable procedure is appeal."

The availability of an alternative remedy is not a bar to the commencement of judicial review proceedings. Judicial review proceedings are more often than not aimed at correcting defects in the decision-making process whereas an appeal is directed at the merits of a decision.

In Civil Appeal No. 234 of 1995, **THE COMMISSIONER OF LANDS v KUNSTE**

HOTEL LIMITED, the Court of Appeal defined the scope of judicial review thus:

"But it must be remembered that judicial review is concerned not with private rights or the merits of the decision being challenged but with the decision making process. Its purpose is to ensure that the individual is given fair treatment by the authority which he has been subjected."

In the case before me, the current directors have successfully demonstrated that the 1st Respondent failed to comply with the law when calling for KPCU's elections. Judicial review therefore comes into play.

In conclusion, I find that the application before this Court partly succeeds. The decision of the 1st Respondent calling for a special general meeting and elections for KPCU is called into this Court and quashed. Any action or decision arising therefrom is also quashed. For avoidance of doubt, I find that the election of the interested parties was an outcome of an unlawful and improper process and their election is therefore nullified. That means the current directors will remain in office pending elections. The current directors have asked for orders of

prohibition. I find that the orders of prohibition cannot issue as couched as this would amount to curtailing the 1st Respondent's statutory powers.

Each party will meet own costs of these proceedings.

Dated, signed and delivered at Nairobi this 30th day of October, 2014


W. KORIR,

JUDGE OF THE HIGH COURT

I CERTIFY THIS IS A TRUE
COPY OF THE ORIGINAL
DATED: 4/11/2014
.....
DEPUTY REGISTRAR
HIGH COURT OF KENYA
NAIROBI