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4/5/2021

PARLIAMENT OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – FIFTH SESSION – 2021

DEPARTMENTAL COMMITTEE ON LANDS

REPORT ON THE CONSIDERATION OF A PETITION BY MEMBERS OF
KAGAA FARMERS COOPERATIVE SOCIETY REGARDING LIQUIDATION OF
THE SOCIETY

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 04 MAY 2021	DAY: <i>Wednesday</i>
TABLED BY:	<i>Chambers, DG Lands</i>
CLERK-AT THE-TABLE:	<i>Hon. Dr. Nyamai</i> <i>M. Wanjiku</i>

DIRECTORATE OF DEPARTMENTAL COMMITTEES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

MAY, 2021

EDDY VAN H

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CHAIRPERSON'S FOREWORD

The Petition by members of Kagaa Farmers Cooperative Society regarding the liquidation of the society was presented to the House through the Hon. Sabina W. M. Chege, MP on 2nd December, 2020.

In considering the Petition the Committee held a meeting with the Petitioners on 17th March 2021. The Committee also received additional submissions from the petitioners relating to a ruling of the High Court in Civil Appeal Number E165 of 2020 dated 25th February, 2021 on an application for stay of execution of orders of the Cooperative Tribunal regarding the liquidation of the Kaaga Farmers Cooperative Society.

The petitioners prayed that the National Assembly through the Departmental Committee on Lands:

- i. Recommend that the issuance of title deeds be completed immediately so that members can wind up Kagaa Farmers Cooperative Society;
- ii. Recommend that the Police commence investigations into the case that was reported under OB No. 09/10/08/2020 regarding office documents that were stolen on 10th August 2020 from the Society 's Office;
- iii. Recommend that the Commissioner of Cooperative should withdraw the liquidator with immediate effect; and
- iv. Makes any other recommendations it deems appropriate in the circumstances of the petition.

The submissions made to the Committee by the Petitioners indicated that the matters raised in the Petition were pending before the High Court in Civil Appeal Number E165 of 2020 lodged by the Petitioners.

The Committee noted that there is an appeal pending before the High Court.

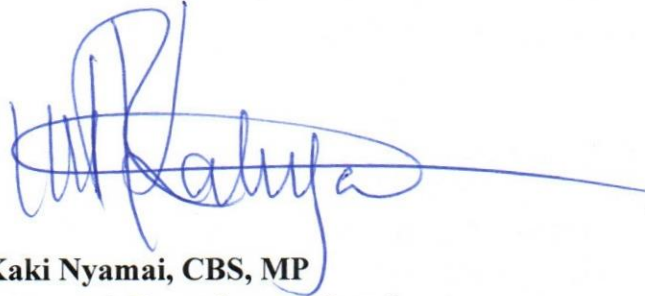
Standing Order 89(1) provides that no Member shall refer to any matter which is *sub judice* and a matter is *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

Additionally, Standing Order 89(3) provides that civil proceedings shall be deemed to be active if they refer to civil appellate proceedings when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.

In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition are pending before the High Court in Civil Appeal Number E165 of 2020 and are therefore *sub judice* in terms of Standing Order 89, the Petitioners do exhaust the judicial process in addressing the prayers sought in the Petition.

The is also Committee is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings.

On behalf of the Committee, and pursuant to Standing Order, 227 it is my pleasant duty to table the Report of the Departmental Committee on Lands on its consideration of the Petition by members of Kagaa Farmers Cooperative Society regarding the liquidation of the society.



Hon. Dr. Rachael Kaki Nyamai, CBS, MP
Chairperson, Departmental Committee on Lands

1.0 PREFACE

1.1 Mandate of the Committee

1. The Departmental Committee on Lands is established pursuant to the provisions of Standing Order No. 216 (1) and (5) with the following terms of reference: -
 - (i) make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (ii) investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and departments;
 - (iii) study the programme and policy objectives of Ministries and departments and the effectiveness of the implementation;
 - (iv) study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (v) 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.
 - (vi) study and review all legislation referred to it.

1.2 Committee subjects

2. The Committee is mandated to consider the following subjects:
 - a) Lands
 - b) Settlement

1.3 Oversight

3. The Committee oversees the Ministry of Lands and Physical Planning; and the National Land Commission.

1.4 Committee Membership

4. *The Committee membership comprises: -*

Chairperson

Hon. Dr. Rachael Nyamai, CBS, MP
MP for Kitui South Constituency
Jubilee Party

Vice Chairperson

Hon. Khatib Mwashetani, MP
MP for Lunga Lunga Constituency
Jubilee Party

Hon. Benjamin Washiali, CBS,
MP
Member for Mumias East
Constituency
Jubilee Party

Hon George Risa Sunkuyia, MP
Member for Kajiado West
Constituency
Jubilee Party

Hon Joshua Kutuny Serem, MP
Member for Cherangany
Constituency
Jubilee Party

Hon. John Muchiri Nyaga, MP
Member for Manyatta Constituency
Jubilee Party

Hon. Mishi Mboko, MP
Member for Likoni Constituency
Orange Democratic Movement
(ODM)

Hon. Josphat Gichunge Kabeabea,
MP
Member for Tigania East
Constituency
Party of National Unity (PNU)

Hon. Omar Mwinyi, MP
Member for Changamwe
Constituency
Orange Democratic Movement
(ODM)

Hon. Lilian Tomitom, MP
Member for West Pokot County
Jubilee Party

Hon. Ahmed Kolosh, MP
Member for Wajir West
Constituency
Jubilee Party

Hon. Owen Yaa Baya, MP
Member for Kilifi North
Constituency
Orange Democratic Movement
(ODM)

Hon. Ali Mbogo, MP
Member for Kisauni Constituency
**Wiper Democratic Movement
(WDM)**

Hon. Babu Owino, MP
Member for Embakasi East
Constituency
**Orange Democratic Movement
(ODM)**

Hon. Caleb Kipkemei Kositany,
MP
Member for Soy Constituency
Jubilee Party

Hon George Aladwa, MP
Member for akadara Constituency
**Orange Democratic Movement
(ODM)**

Hon. Patrick Munene Ntwiga, MP
Member for Chuka/Igambangombe
Constituency
Jubilee Party

Hon. Samuel Kinuthia Gachobe,
MP
Member for Subukia Constituency
Jubilee Party

Hon. Teddy Mwambire, MP
Member for Ganze Constituency
**Orange Democratic Movement
(ODM)**

1.5 Committee Secretariat

5. The Committee secretariat comprises: -

Lead Clerk

Mr. Leonard Machira

Senior Clerk Assistant

Mr. Ahmad Guliye

Second Clerk Assistant

Dr. Kefa Omoti

Principal Researcher

Ms. Jemimah Waigwa

Legal Counsel I

Mr. Adan Abdi

Fiscal Analyst II

Mr. Joseph Okongo

Media Relations Officer

2.0 INTRODUCTION

6. The Petition by members of Kagaa Farmers Cooperative Society regarding the liquidation of the society was presented to the House through the Hon. Sabina W. M. Chege, MP on 2nd December 2020.
7. The Petitioners wished to draw the attention of the House to the following, that:
 - i. Kagaa Farmers Cooperative Society was registered in 1964 as number 1203;
 - ii. The objective of the society was to farm coffee and rear cattle;
 - iii. The Society owns two farms in Muranga County namely; Kabuku Estate measuring 500 acres and Santamore Estate measuring 200 acres as well as a plantation measuring 4167 acres in Kilifi County;
 - iv. The three land parcels have been subdivided in equal portions amongst the 2041 members of the society most of whom had already settled on the said pieces of land;
 - v. Some members of the Kaaga Cooperative have settled in the Kilifi plantation farm after being issued with title deeds;
 - vi. Members of the Society who had settled at the Kilifi plantation farms were chased away from their land during the 1992 tribal clashes and have not been resettled;
 - vii. The Commissioners of Cooperative appointed a liquidator to wind up the society without informing members of the intention;
 - viii. In the prevailing circumstances members of the society risk losing their pieces of land in Kabuku and Santamore Estates since the plots are still registered in the name Kagaa Farmers Cooperative Society;
 - ix. A liquidator had been appointed by the Commissioners of Cooperative has refused to vacate office;
 - x. Office documents were taken from the Society office under unclear circumstances on 10th August 2020 under the guard of the Muranga Sub-County Commissioner and the area Chief;
 - xi. Efforts by the members to seek redress with not only the police but also the Department of Registration of Cooperatives in the ministry of Industrialization, Trade and Enterprise Development have been futile;
 - xii. The matter presented in the petition is not pending before any tribunal, court of law or independent body.
8. Therefore, the petitioners prayed that the National Assembly through the Departmental Committee on Lands;
 - i. Recommends that the issuance of title deeds be completed immediately so that members can wind up Kagaa Cooperative Society;

- ii. Recommends that the Police commence investigations into the case that was reported under OB No. 09/10/08/2020 regarding office documents that were stolen on 10th August 2020 from the Society's Office;
- iii. Recommends that the Commissioner of Cooperative withdraws the Liquidator with immediate effect; and
- iv. Makes any other recommendations it deems appropriate in the circumstances of the petition.

3.0 SUBMISSIONS

3.1 Submissions by the Petitioners

9. The Committee held a meeting with the Hon. Sabina Chenge, MP and representatives of the Petitioners on 17th March 2021. During the meeting they informed the Committee that:
10. The society was registered in 1965 with the objective of farming in coffee and cattle rearing. The society owns two farms in Muranga County manely Kabuku Estate measuring 500 acres and Santamore Estate measuring 200 acres. They also own a plantation in Kilifi measuring 4167 acres.
11. The three farms have been subdivided amongst the 2041 members of the society in equal portions.
12. The members of the society have not resettled in their farm in Kilifi following their eviction from the farm during the 1992 post-election clashes.
13. The society was currently under liquidation and all its assets and liabilities were under the management of a Liquidator appointed by the Commissioner of Cooperatives. The petitioners stated that they opposed the appointment of the liquidator.
14. Although the Petitioners had stated in the petition that the matters raised in the petition were not pending in a court of law, they acknowledged that they had indeed lodged a case in court objecting the liquidation process but lost the case and later appealed the same and an order of stay of execution had been granted pending the hearing and determination of the appeal.
15. The Petitioners also stated that the issuance of title deeds to individual members for land held by the society in Kilifi County had not been completed and the members were afraid of losing their share of the land through the liquidation of the society. They requested the Committee to intervene by recommending that the Ministry of Lands and Physical Planning fast tracks the issuance of the said title deeds to the members to ensure that they safeguard their share of the society land.
16. The Committee noted that the matters raised in the Petition were mainly on the liquidation of Kagaa Farmers Society and the main complaint raised by the petitioners was against the appointment of a Liquidator by the Commissioner of Cooperatives. The said matters do not fall within the mandate of the Committee.
17. However, the Committee acknowledged that the concerns raised by the Petitioners regarding delay in the completion of the issuance of title deeds to the petitioners to facilitate the winding up of the society falls within the mandate of the Committee.

Supplementary submissions by the petitioners

18. The Committee received a copy of a court ruling on the matters raised in the petition. The ruling is based on an application by the Petitioners in the High Court Civil Appeal

Number E165 of 2020 seeking a stay of execution of orders of the Cooperative Tribunal to prevent the take-over of Kaaga Farmers Cooperative Society by the Liquidator.

19. The ruling of the High Court dated 25th February, 2021 dismissed the application for the stay of execution of the orders of the Cooperative Tribunal as the appellant did not demonstrate that he would suffer substantial loss should the appeal succeed.
20. In the ruling, the High Court also did observe that the dispute relating to the liquidation of the Kaaga Farmers Cooperative Society had a long history spanning to about ten years and above.
21. The Court also observed that the matters on the liquidation of the Kaaga Farmers' Cooperative Society had also been previously heard and determined as evidenced by the decisions in Civil Appeal Number 327 of 2017 and the Judicial Review Application Number 68 of 2015.

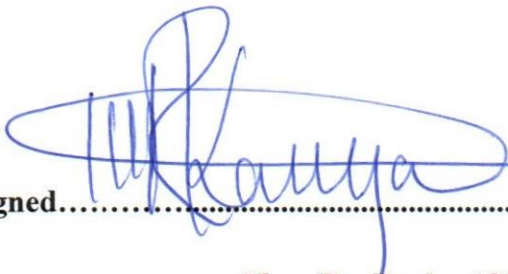
4.0 OBSERVATIONS

The Committee observed that:

1. The submissions made to the Committee by the Petitioners indicated that the matters raised in the Petition were pending before the High Court in Civil Appeal Number E165 of 2020 lodged by the Petitioners.
2. The Petitioners filed an application for stay of orders of the Cooperative Tribunal to among other things prevent the take-over of the Kaaga Farmers' Cooperative Society by the liquidator pending the hearing of the appeal by the High Court.
3. In a ruling of the High Court in Civil Appeal Number E165 of 2020 dated 25th February, 2021 on the application for the stay of orders of the Cooperative Tribunal, the High Court dismissed the application for stay of execution pending the hearing of the appeal.
4. In view of paragraph 3, the appeal is still pending before the High Court. Additionally, the Petitioners have not submitted any supplementary submissions to indicate or demonstrate that the pending appeal has been determined or withdrawn.
5. Standing Order 89(1) provides that no Member shall refer to any matter which is *sub judice* and a matter is *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.
6. Additionally, Standing Order 89(3) provides that civil proceedings shall be deemed to be active if they refer to civil appellate proceedings when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.
7. The Petition for consideration by the Committee contains and relates to matters that are contained in the Appeal Number E165 of 2020 at the High Court including the liquidation of the Kaaga Farmers' Cooperative Society which forms the crux of the Petition in relation to its assets and the land in question.
8. Consequently, the matters raised in the Petition fall under the *sub judice rule* in accordance with Standing Order 89 as they refer to active civil appellate proceedings and the consideration of the Petition is likely to prejudice the fair determination of the case.

5.0 COMMITTEE RECOMMENDATIONS

In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition are pending before the High Court in Civil Appeal Number E165 of 2020 and are therefore *sub judice* in terms of Standing Order 89, the Petitioners do exhaust the judicial process in addressing the prayers sought in the Petition.

Signed..........Date.....04/05/2021.....

Hon. Dr. Rachael Kaki Nyamai, CBS MP
Chairperson, Departmental Committee on Lands





KENYA NATIONAL ASSEMBLY
TWELFTH PARLIAMENT

DEPARTMENTAL COMMITTEE ON LANDS
ADOPTION LIST

**Report on a Petition by members of Kagaa Farmers Cooperative Society
regarding liquidation of the Society**

DATE: 14/04/2021

	NAMES	SIGNATURE
1.	Hon. Dr. Rachael Nyamai, CBS, MP - Chairperson	<i>Virtually</i>
2.	Hon. Khatib Mwashetani, MP V/Chairperson	<i>Virtually</i>
3.	Hon. Benjamin Washiali, CBS MP	
4.	Hon. Joshua Kutuny Serem, MP	
5.	Hon. Mishi Mboko, MP	<i>Virtually</i>
6.	Hon. Omar Mwinyi Shimbwa, MP	<i>Virtually</i>
7.	Hon. Ahmed Kolosh, MP	<i>Virtually</i>
8.	Hon. Ali Mbogo, MP	
9.	Hon. Babu Owino, MP	
10.	Hon. Caleb Kipkemei Kositany, MP	<i>Virtually</i>
11.	Hon. George Aladwa, MP	
12.	Hon. George Risa Sunkuyia, MP	<i>Virtually</i>
13.	Hon. John Muchiri Nyaga, MP	
14.	Hon. Josphat Gichunge Kabeabea, MP	
15.	Hon. Lilian Tomitom, MP	
16.	Hon. Owen Yaa Baya, MP	<i>Virtually</i>
17.	Hon. Patrick Munene Ntwiga MP	
18.	Hon. Samuel Kinuthia Gachobe, MP	<i>Virtually</i>
19.	Hon. Teddy Mwambire, MP	<i>Virtually</i>

**MINUTES OF THE 15TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
LANDS HELD VIRTUALLY ON WEDNESDAY, 14TH APRIL, 2021 AT 11.00 A.M**

PRESENT

1. Hon. Dr. Rachael Nyamai, CBS, M.P - **Chairperson**
2. Hon. Khatib Mwashetani, M. P - **Vice Chairperson**
3. Hon. Mishi Mboko, M.P
4. Hon. Omar Mwinyi Shimbwa, M.P
5. Hon. Ahmed Kolosh, MP
6. Hon. Caleb Kositany, M.P
7. Hon. George Risa Sunkuyia, M.P
8. Hon. Owen Yaa Baya, M.P
9. Hon. Samuel Kinuthia Gachobe, MP
10. Hon. Teddy Mwambire, M.P

APOLOGIES

1. Hon. Benjamin Washiali, CBS, MP
2. Hon. Joshua Kutuny, MP
3. Hon. Ali Mbogo, M.P
4. Hon. Babu Owino, MP
5. Hon. George Aladwa, M.P
6. Hon. John Muchiri Nyaga, MP
7. Hon. Josphat Kabeabea, MP
8. Hon. Lilian Tomitom, MP
9. Hon. Patrick Munene Ntwiga, MP

IN ATTENDANCE

THE NATIONAL ASSEMBLY SECRETARIAT

1. Mr. Leonard Machira - Senior Clerk Assistant
2. Mr. Ahmad Guliye - Second Clerk Assistant
3. Mr. Sidney Lugaga - Legal Counsel
4. Ms. Maureen Kweyu - Audio Officer
5. Ms. Peris Kaburi - Serjeant At Arms

MIN. NO. NA/DCS/LANDS/2021/049: PRELIMINARIES

The meeting was called to order at sixteen minutes past eleven o'clock with a word of prayer.

MIN. NO. NA/DCS/LANDS/2021/050: ADOPTION OF DRAFT REPORT ON A PETITION BY RESIDENTS OF KINYONA WARD REGARDING SAFEGUARDING OF PUBLIC INTEREST IN THE USE OF GITUAMBA LAND IN KINYONA WARD, MURANGA COUNTY

The Committee considered and unanimously adopted the report on a petition by residents of Kinyona ward regarding safeguarding of public interest in the use of GITUAMBA land in Kinyona Ward, Muranga County with the following observations and recommendations after it was proposed and seconded by Hon. Owen Baya, MP and Hon. Caleb Kositany, MP respectively;

Observations

1. The title documents submitted to the Committee in particular the Certificate of Lease Title No. LOC.2/KINYONA/786 discloses that the land is registered in the name of Kenya Tea Development Authority for a period of 99 Years.
2. In 1999 vide Gazette Notice No. 44, the then Minister of Agriculture gazetted the privatization of the Kenya Tea Development Authority into a limited liability company being the Kenya Tea Development Agency Limited.
3. The Kenya Tea Development Agency Limited latter assumed all rights, duties, assets and liabilities of the former, including the said parcel of land.
4. The National Land Commission submitted that the title documents, the parcel of land LOC.2/KINYONA/786 should use the land as stipulated in the user conditions.
5. The ground report submitted by the National Land Commission revealed that part of the land was put for tea farming and the rest was under eucalyptus trees and approximately one acre was under farming.
6. The Ministry of Lands submitted that the land in question is currently owned by Kenya Tea Development Agency Holdings Limited. Its assets are owned by shareholders of the company. The Ministry also stated that Trust lands were vested in County Councils and eventually to County Governments with the advent of the Constitution, 2010. The County Government of Murang'a in this case is the Lessor and a change of user can only be approved or varied with the County Government's approval. The Ministry has not received any application for change of user for the land.
7. In light of paragraph 6 above, the LOC.2/KINYONA/786 is still under public use and it is only the status of the Kenya Tea Development Authority that was changed into a private entity being the Kenya Tea Development Agency Limited.
8. Concerning prayer 2 relating to the status of land, the Committee found that the land in question is registered as title number Loc. 2/Kinyona in MAP .18/786. The said land measures 26.32 Ha and was first registered in the name of the Special Crops Development

Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 *for a tea nursery and factory.*

9. The County Government of Murang'a in this case is the Lessor and a change of user can only be approved or varied with the County Government's approval and the Ministry of Lands and Physical Planning is yet to receive any application for change of user for the land.
10. Concerning prayer 3 relating to the revocation of the lease held by KTDA, the Committee found that the revocation process requires to be sanctioned by a court of law given that the mandate of the Commission to review grants and disposition under section 14 of the National Land Commission Act, 2012 lapsed.
11. Concerning prayer 4 on the negative environmental effects arising of the Eucalyptus plantation to the residents of Kinyona, the Committee found that Kenya Tea Development Agency Holdings Limited had a responsibility to ensure peaceful coexistence with the residents of Kinyona Ward and need to consider remedying any negative effects arising from the plantation. The Committee also observed that the Petitioners may also consider seeking redress through the National Environment Management Authority.

Recommendations

The Committee recommended that;

1. Pursuant to prayer 2, the land under title number Loc. 2/Kinyona in MAP .18/786 measuring 26.32 Ha and was first registered in the name of the Special Crops Development Authority on 12th July 1962 on a leasehold tenure of 99 years from 7th July 1962 should be used for the original purpose assigned that is for *a tea nursery and factory.*
2. Any change of user of the land in question, title number Loc. 2/Kinyona in MAP 18/786 should only be approved or varied with the approval of the County Government of Muranga and the participation of the residents of Kinyona Ward.
3. Pursuant to prayer 3, the Petitioners may seek redress from the Environment and Land Court to revoke the title number Loc. 2/Kinyona in MAP .18/786 from the subsisting registered proprietor.
4. Pursuant to prayer 4, that Kenya Tea Development Agency Holding Limited should ensure peaceful coexistence with the residents of Kinyona Ward and should consider remedying any negative effects arising from the eucalyptus plantation on the land in question LR. Loc. 2/Kinyona.
5. Pursuant to prayer 4, that the Petitioners may also consider seeking redress through the National Environment Management Authority.

MIN. NO. NA/DCS/LANDS/2021/051: ADOPTION OF A REPORT ON A PETITION BY MEMBERS OF KAGAA FARMERS COOPERATIVE SOCIETY REGARDING LIQUIDATION OF THE SOCIETY

The Committee unanimously adopted the report on the Petition by members of Kagaa Farmers Cooperative Society regarding the liquidation of the Society with the following observations and recommendation having been proposed and seconded by Hon. Teddy Mwambire, MP and Hon. Khatib Mwashetani, MP respectively.

Observations

1. The submissions made to the Committee by the Petitioners indicated that the matters raised in the Petition were pending before the High Court in Civil Appeal Number E165 of 2020 lodged by the Petitioners.
2. The Petitioners filed an application for stay of orders of the Cooperative Tribunal to among other things prevent the take-over of the Kaaga Farmers' Cooperative Society by the liquidator pending the hearing of the appeal by the High Court.
3. In a ruling of the High Court in Civil Appeal Number E165 of 2020 dated 25th February, 2021, on the application for the stay of orders of the Cooperative Tribunal, the High Court dismissed the application for stay of execution pending the hearing of the appeal.
4. In view of paragraph 3, the appeal is still pending before the High Court. Additionally, the Petitioners have not submitted any supplementary submissions to indicate or demonstrate that the pending appeal has been determined or withdrawn.
5. Standing Order 89(1) provides that no Member shall refer to any particular matter which is *sub judice* and a matter is considered to be *sub judice* when it refers to active civil proceedings and the discussion of such matter is likely to prejudice its fair determination.
6. Additionally, Standing Order 89(3) provides that civil proceedings shall be deemed to be active if they refer to civil appellate proceedings when they are commenced by application for leave to appeal or by notice of appeal until the proceedings are ended by judgment or discontinuance.
7. The Petition for consideration by the Committee contains and relates to matters that are contained in the Appeal Number E165 of 2020 at the High Court including the liquidation of the Kaaga Farmers' Cooperative Society which forms the crux of the Petition in particular in relation to its assets and the land in question.
8. Consequently, the matters raised in the Petition fall under the *sub judice rule* in accordance with Standing Order 89 as they refer to active civil appellate proceedings and the

consideration of the Petition is likely to prejudice the fair determination of the case.

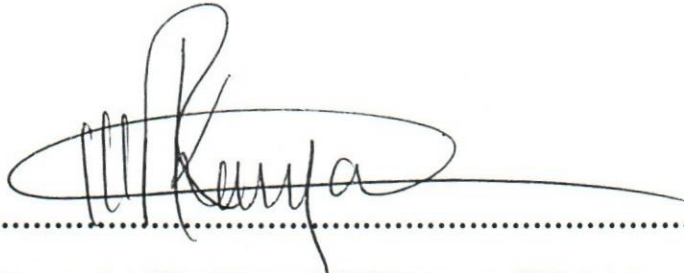
Recommendation

The Committee made the following recommendation;

In response to the prayers by the Petitioners, the Committee recommends that since the matters raised in the Petition are pending before the High Court in Civil Appeal Number E165 of 2020 and are therefore *sub judice* in terms of Standing Order 89, the Petitioners do exhaust the judicial process in addressing the prayers sought in the Petition.

MIN. NO. NA/DCS/LANDS/2021/052: ADJOURNMENT

There being no other business to discuss, the meeting was adjourned at twenty – eight minutes to twelve noon. The next meeting will be held on Tuesday, 20th April 2021 at 10.00 a.m.

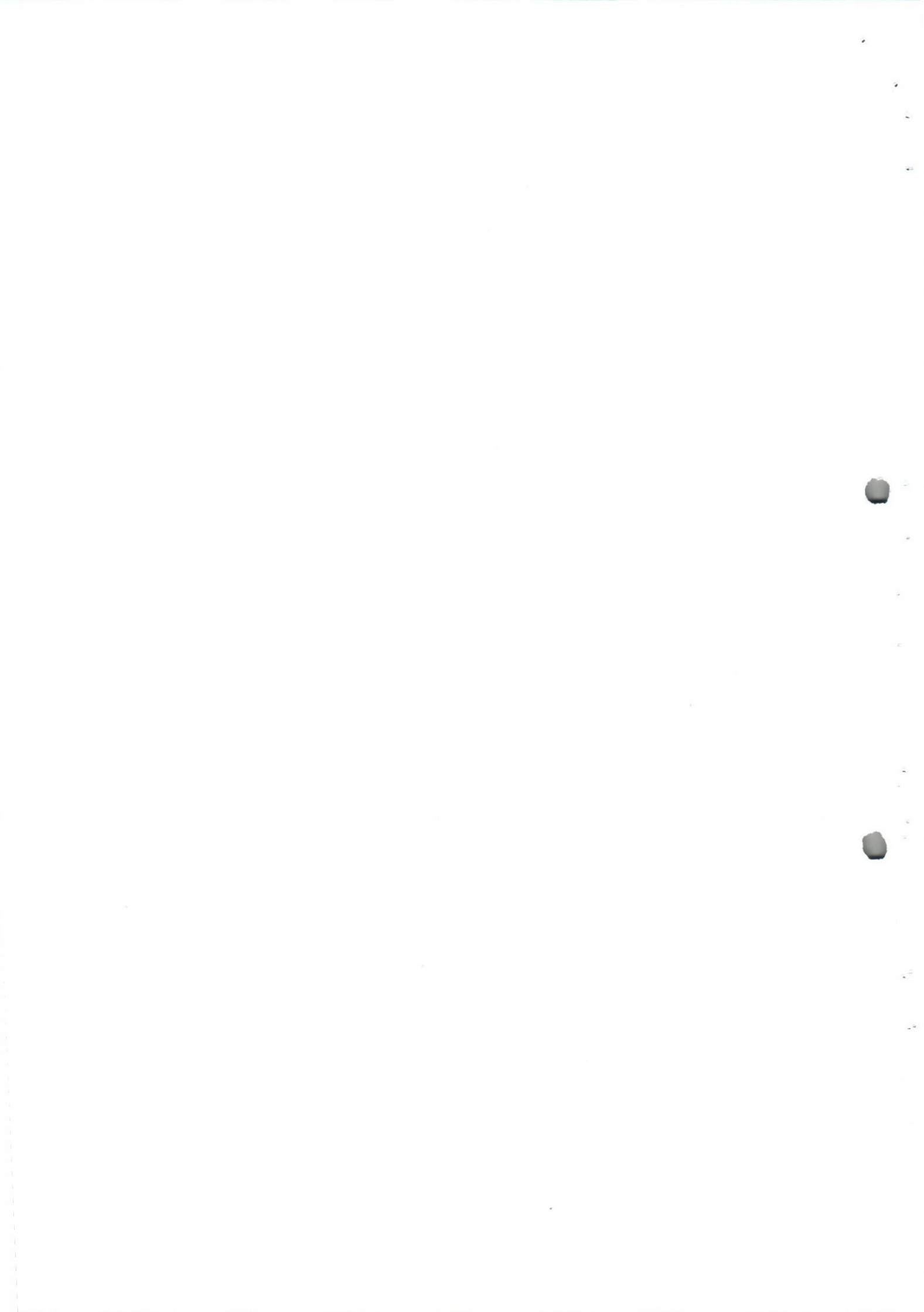


Signature

HON. DR. RACHAEL KAKI NYAMAI, CBS, M.P.
(Chairperson)

27/04/2021

Date.....



REPUBLIC OF KENYA



Approved
RAT
SNA
2/12/2020

Hon. Speaker
This is ok. Yonny
affirmed.
1/12/2020

THE NATIONAL ASSEMBLY (FOURTH SESSION)

PUBLIC PETITION

(No. 47 of 2020)

BY MEMBERS OF KAGAA FARMERS CO-OPERATIVE SOCIETY
REGARDING LIQUIDATION OF THE SOCIETY

I, the **UNDERSIGNED**, on behalf of Members, Kagaa Farmers Co-operative Society;

DRAW the attention of the House to the following:

1. **THAT**, Kagaa Farmers Co-Operative Society was registered in 1964 as number 1203;
2. **THAT**, the objective of the Society was to farm coffee and rear cattle;
3. **THAT**, the Society owns two farms in Murang'a County namely, Kabuku Estate measuring 500 acres and Santamore Estate measuring 2000 acres as well as one plantation measuring 4167 acres in Kilifi county;
4. **THAT**, the three land parcels had been subdivided in equal portions amongst the 2041 members of the Society most of whom had already settled on the said pieces of land;
5. **THAT**, some members of the Kagaa Cooperative have settled in the Kilifi plantation farm after being issued with title deeds;
6. **THAT**, members of the Society who had settled at the Kilifi plantation farm were chased away from their land during the 1992 tribal clashes despite having titles deeds to the said land and up to date, they have never resettled;
7. **THAT**, the liquidator came to wind up the Society without informing members of the intention;
8. **THAT**, in the prevailing circumstances members of the society risk losing their pieces of land in Kabuku and Santamore Estates since the plots are still registered in the name 'Kagaa Farmers Co-operative Society.'

PUBLIC PETITION

BY MEMBERS OF KAGAA FARMERS CO-OPERATIVE SOCIETY REGARDING LIQUIDATION OF THE SOCIETY


9. **THAT**, the liquidator who was appointed by the Commissioner of Co-operatives has refused to vacate office;
10. **THAT**, office documents were taken from the Society office under unclear circumstances on 10th August, 2020 under the guard of Murang'a Sub-County Commissioner and the area Chief;
11. **THAT**, efforts by the members to seek redress with not only the Police but also the Department of Registration of Co-operatives in the Ministry of Industrialization, Trade and Enterprise Development have been futile;
12. **THAT**, the matter presented in this Petition is not pending before any tribunal, court of law or Independent body;

THEREFORE, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands: -

- (i) Intervenes to have the process of issuance of title deeds to Members completed immediately so that the Kagua Co-operative Society can be wound up;
- (ii) Recommends that the Police commence investigations into the case that was reported under OB NO. 09/10/08/2020 regarding office documents that were stolen on 10th August, 2020 from the Society's Office;
- (iii) Recommends that the Commissioner of Co-operatives withdraws the liquidator with immediate effect; and
- (iv) Makes any other recommendations it deems appropriate in the circumstances of the Petition.

And your PETITIONERS will ever pray.

PRESENTED BY:


HON. SABINA CHEGE, MP
MEMBER FOR MURANG'A COUNTY

DATE:



REPUBLIC OF KENYA
PARLIAMENT

Hon. Maitu Sabina Wanjiru Chege, MP.

Murang'a County
Chairperson - Parliamentary Health Committee
Member - Global TB Caucus

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Mobile: +254 722 624 684
Email: sbnchege@yahoo.com

18th Nov 2020.

The Clerk

Kenya National Assembly

P.O Box 41842-00100

Nairobi, Kenya

Dear Sir,

RE: PETITION DRAFT.

I, the **UNDERSIGNED** Member for Murang'a County on behalf of the residents of Kagaa area, in Mitubiri road Kabati draw attention to the house regarding the following:

- (i) **THAT**, Kagaa farmers' cooperative was registered in 1965 vide number is 1203. The purpose of this was to farm coffee and rear cattle.
- (ii) **THAT**, it has two farms in Murang'a County namely, Kabuku Estate measuring 500 acres and Santamore Estate measuring 2000 acres, and Kilifi plantations measuring 4167 acres.
- (iii) **THAT**, the three land parcels had been subdivided amongst the 2041 members of Kagaa cooperative society in equal portions.
- (iv) **THAT**, some members of the Kagaa cooperative have settled in, Kilifi plantation farm after being issued with title deeds
- (v) **THAT**, the members of Kagaa cooperative society who had at Kilifi plantation farm were chased away from their land during the 1992 tribal clashes, and up to date, they have never resettled.
- (vi) **THAT**, the liquidator came to wind up Kagaa cooperative society without calling members to inform them, of that intention.

(vii) **THAT**, under the conditions of being chased away members of Kagaa Cooperative society stand to lose heavily.

(viii) **THAT**, the liquidator who was appointed by the Commissioner of Cooperatives has refused to vacate the office.

AND FURTHER noting that two persons cannot have a case in a tribunal court and the same court decides to wind up the society and other various issues in respect of which this petition is made are not before any constitutional or legal body.

Therefore, as a matter of urgency,,,,


(i) I recommend that the issuance of the title deeds be completed immediately so that members can wind up Kagaa Cooperative society.

(ii) The commissioner of the cooperative should withdraw the liquidator with immediate effect.

(iii) The case that was taken to court and no action took place should be followed, and that the follow up on the office documents that were stolen on 10th August, 2020 under the guard of Murang'a Sub-county Commissioner and the area Chief should commence.

THEREFORE, your humble petitioners **PRAY** that the National Assembly, through the Departmental Committee on Lands intervenes in this matter to bring it to an end.

Faithfully,


Hon. Maitu Sabina Wanjiru Chege,
Murang'a County Woman M.P.

323,000
Dec

KAGAA FARMERS CO-OPERATIVE SOCIETY LTD.

P.O. Box 520 - 01000 Thika
Tel: 0729 161 567

500 Meters off Mitubiri Road
From Kabati Flyover

Our Ref: C/S 1203

Your Ref:

Date...22/10/2020.....

TO:
WOMEN REP.
MURANG'A COUNTY

Dear HON. SABINA WANJIRU CHEGE,

RE: LIQUIDATION IN KAGAA FARMERS CO-OPERATIVE SOCIETY
A BRIEF POSITION OF THE SOCIETY

Kagaa Farmers Co-operative was registered in 1964 No. 1203. *Katg*

The purpose was to farm Coffee and cattle rearing.

It has a total of Two thousand one hundred and forty one members (2041)

It has two farms in Makuyu namely:-

- (i) Kabuku Estate measuring about 500 acres .
- (ii) Santamor Estate measuring over 2000 Acres
- (iii) Kilifi Plantations measuring 4167 Acres in Kilifi county.

All the land parcels have been subdivided over amongst the 2041 numbers in equal portions . Kabuku Estate and Santamor Estate have not received their title deeds due to court wrangles.

All members have settled on their plots. Kilifi plantations farm has also been sub divided and members issued with their title deeds unfortunately members of the society were chased away from their land during 1992 chaos to date. Under these conditions mentioned the members are worried because the liquidator has come to wind up the society without calling members to inform them of the intentions.

It is a common knowledge and commercial practice that the members are informed though a called meeting that they contribute. This is conditional principle which guides the co-operative movement.

Two persons cannot have a case in a tribunal court and the same court decides to wind up the society. Having done that an appeal was put in the High Court and an order of stay of execution order was granted on 10/08/2020 and they refused to honour the order to date.

During these times the liquidator has refused to vacate the office, they have sold the properties of the society hurriedly. Members stand to lose heavily because the plots they occupy are under Kagaa Farmers Co-op. Society's name.

Your honour, if this situation is not checked in time, ugly incidents may take place. Help your members get out of these mess.

It appears the liquidator has full support from the administration.

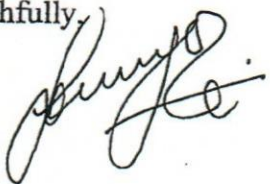
NOTE they broke the office under the guard of Murang'a Sub County Commissioner and the area Chief and took all the office documents on 10th August, 2020.

The matter was reported at **KABATI POLICE STATION** and an **OB NO. 09 / 10 / 08/2020** issued. The matter rested at that and no action was taken to date.

Now that the matter are widely spread the department of Co-operative in the industrialization is involved since the Commissioner of Co-operative is the one who ordered the liquidation to take place. His office (Commissioner) has refused several requests to recall the team and has refused to head. If he do agree the requests, we would (society) finish the issuing of titles and the members would call them (Liquidators) to close the society's affairs for good.

Kindly do the needful.

Yours faithfully,



JOE KARANJA NJOROGE
CHAIRMAN – KAGAA FARMERS CO-OP. SOCIETY LTD

CC
Office File

Agrieved Members Kagga Farmers Co-op. Society Ltd.

Membership

20-10-2022

1	Francis Kabeca Cachego	2069	K.
2	Joseph Ngungi Mutune	939	M.
3	Charles Wanyike Ngungi	65	C. Ngungi
4	Carlo Naitira Mathom	2106	C.
5	Wilson Ngugi Kangara	1568	W.
6	John Cutan Mburu		J.
7	Maria Wanjiku Kabeca	821	M.
8	Chege Kamweru	1116	Chege
9	Herman Cichira	1527	H.
	Titus Mureithi Mureithia	192	T.M.
11	Mwangi Nyorika	1860	M.
12	Milka Nyambura Kazungu	257	M.K.
13	Jacqueline Wanza Mutune	346	J.
14	Nickson Wainaina Mwiruri	536	N.
15	Sospeter Ngarinye Mungai	2098	S.
16	Evan Chege Cutan	2111	E.
17	Cacharu Macharia	1237	C.
18	Cutan Ndirugu	570	C.
19	Margret W. Mwiruri	199	M.
	Peter Kiringa Wanyike	1384	P.
21	Peter Kaman Wawery	33	P.
22	Erastus Kiringa Cutan		E.
23	ELIAS WAMUHI THENYA	721	E.
24	STEPHEN KIBE NGURU-KIS		S.
25	NELVIS NYORON, KIBE-544		N.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. E165 OF 2020

JOE KARANJA APPELLANT

VERSUS

DANIEL GITHIORA GATUHA RESPONDENT

BONAVENTURE FONDO NZOVU (Acting as Liquidator of

Kagaa Farmers' Co-Operative

Society Ltd) THE LIQUIDATOR

RULING

On 10th August 2020, the appellant herein filed an application by way of Notice of Motion under Order 42 Rule 6 of the Civil Procedure Rules and Sections 1A and 3A of the Civil Procedure Act, for orders that there be a stay of execution of the order and ruling of the Co-operative Tribunal dated 30th July, 2020 pending the hearing and determination of the application and the appeal.

There was also a prayer that one Bonaventure Fondo Nzovu be prevented from taking over as the liquidator of Kagaa Farmers Co-operative Society Limited.

The application is supported by grounds set out on the face of the application and the supporting affidavit sworn by the appellant. Following service of the application, the liquidator Mr. Bonventure Fondo Nzovu filed a Notice of Preliminary Objection under Order 42 Rule 13 (2) and Order 51 Rule 14 (1) (a) of the Civil Procedure Rules stating that, this court does not have jurisdiction to hear the intended appeal which is a gross abuse of the legal process, and whose sole intent is to embarrass the court.

That notice has set out the provisions of law relied upon by the liquidator which include, inter alia that, the order allegedly being appealed does not exist; that the intended appeal is *res judicata* as it had already been dealt with fully and finally in Civil Appeal No. 327 of 2017 and Judicial Review Application No. 68 of 2015; the appellant did not seek the leave of the court before instituting the appeal; the decree or order to be appealed has not been attached; the ruling quoted in the memorandum of appeal does not exist and finally that, the appellant has not provided security for costs. Both parties have filed submissions which I have considered.

The dispute in this matter has a long history spanning ten years and above. Several of the issues that have been raised in the appellant's affidavit have been addressed in the decisions of High Court cited above. Section 7 of the Civil Procedure Act provides as follows,

"7. Res judicata No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. "

Going by the record before me, the complaint by the appellant is not the first time to find its way before the Co-operative Tribunal. Indeed the two decisions of the High Court by C. Kariuki J in Civil Appeal No. 327 of 2017 and the other by Odunga J in JR Application No. 68 of 2015 had their genesis in the Co-operative Tribunal. In fact in both decisions the issue of liquidation stands out prominently.

Once the issue of jurisdiction has been raised by any party and the court is persuaded that it has no jurisdiction, then it shall not go beyond that point.

In the celebrated decision of Nyarangi JA in the case of Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989]

Eklr the learned Judge had this to say,

"I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

In the earlier decision of the East African Court of Appeal in the case of Mukisa Biscuit Manufacturing Co. Ltd Vs West End Distributors Ltd [1969] EA 696 as per Sir Charles Newbold, stated,

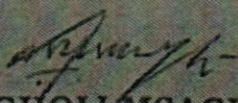
"A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit e.g. an objection to the jurisdiction of the court, or a plea in limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer to the dispute to arbitration. Therefore where a preliminary point of law is raised either on the basis of disputed facts which would require extrinsic evidence to be led by parties at a full trial, or where even if allowed, it cannot dispose of the whole suit then it cannot be disposed of as such."

The liquidator has taken the first opportunity to raise the issue of jurisdiction as required in the above cited cases. The record confirms that the issues raised in the intended appeal have been sufficiently addressed in the previous cases and that revisiting the same would offend the doctrine of *res judicata* as provided in Section 7 of the Civil Procedure Act aforesaid.

I am not persuaded that the orders sought by the appellant are merited. In any case, the appellant has not provided any proof of substantial loss that may be visited upon him in the event the appeal succeeds. That is the cornerstone of any application for stay of execution.

Having said so, the order that commends itself is that the application should be and is hereby dismissed with costs to the respondents. It follows that the orders of stay given on 10th August, 2020 are also vacated in their entirety.

Dated and delivered at Nairobi this 25th day of February, 2021.


A.MBOGHOLI MSAGHA

JUDGE

