

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**  
**MISCELLANEOUS APPLICATION NO.046 OF 2017**  
**(Arising from Rukungiri Misc.Cause No.035/2016)**

**THE BOARD OF GOVERNORS**

**KAGUNGA SEED SECONDARY SCHOOL**

**APPLICANT**

**VERSUS**

**NYAKIBALE SACCO**

**RESPONDENT**

**BEFORE HON.JUSTICE MOSES KAZIBWE KAWUMI**

**RULING**

The Applicant filed a Notice of Motion under Section 98 of the Civil Procedure Act, Section 34 of the Arbitration and Conciliation Act and Order 52 of the Civil Procedure Rules. The Order sought is the setting aside of an Arbitral award made by the Respondent's Arbitration Tribunal on the 20<sup>th</sup> September 2016 and filed at the Chief Magistrate's Court at Rukungiri. The dispute between the parties is a claim for Uganda Shillings 25,598,504/= alleged to be the unpaid Principal and accrued Interest on two loans granted to the Applicant by the Respondent.

The Application is supported by an Affidavit sworn by the Applicant's Head teacher in which the composition of the Arbitral Tribunal and the proceedings that led to the Award are contested. The Applicant contends that she is not bound by the Cooperative Societies Act under which the proceedings were conducted since she is not a member of the Respondent SACCO.

The Respondent through an Affidavit sworn by her Manager contends that the Application was filed out of time without leave. The Respondent further contends that the only recourse the Applicant had was to lodge an Appeal against the Award to the Uganda Cooperative Societies Alliance but the time for such a step had since expired and the Award was due for execution.

The Respondent noted in the Affidavit that the impugned Arbitrators were elected by members at an Annual General Meeting and were also mentioned and acceded to by the Applicant's execution of the two loan agreements from which the dispute arises.

At the hearing of the application I required Counsel to address me as to whether the Applicant was a registered member of the Respondent and to explain the nexus between her and the loan agreements from which the dispute arises. Counsel for the Respondent argued that the Applicant was a shareholder with Accounts in the names of Kagunga Parents Canteen and Kagunga Staff Welfare. Proof of the number of shares held and/or a Share Certificate were

not attached to the Affidavit in Reply as evidence of the Applicant's membership to the Respondent SACCO.

Counsel for the Applicant on the other hand argued that the loans were taken by entities different from the School which could therefore not be held liable to pay the outstanding amount in the Arbitral Award. A letter by the Applicant's Head teacher to the Respondent stated that the Board refused to pay the amount in the arbitral award. The reasons advanced were that the loan was not included in the hand over report by the former school administrators and the allegedly borrowed funds could not be traced in the school books of accounts as received and applied to her activities.

On the 13<sup>th</sup> August 2014 a loan of Shillings 10,000,000/= was advanced to Kagunga Parents Canteen by the Respondent at 2% interest per month for a period of 12 months. The borrower was represented by a one Bamukunda Patrick and Berimbira Diana Nahabwe. Repayment of the loan was guaranteed by both Bamukunda Patrick and Berimbira Diana in a form executed between them and the Respondent on the same date.

On the 6<sup>th</sup> October 2014 a loan of Shillings 10,000,000/= was advanced to Kagunga Staff Welfare by the Respondent at 2% interest per month for a period of 12 months. The borrower was represented by a one Bamukunda Patrick and Kalekyezi George who also guaranteed repayment in a form executed between them and the Respondent on the same date.

The borrowers in the two loan agreements were not the Applicant and Court was not shown any evidence linking them to the Applicant. The guarantors were not members of the Applicant's Board of Governors authorized to bind her to the loans taken in the Agreements. The loan agreements do not indicate the Applicant as the entity operating the accounts of the two borrowers so as to create the necessary nexus between her and the loans taken. I thus fail to find the necessary linkage between the Applicant and the loans taken so as to make her liable for the Arbitral award.

The Applicant is a government aided school governed by the Education Act (CAP.127) of the Laws of Uganda which spells out all issues relating to the management of schools. Section 8 of the Act provides for the creation of Boards of Governors for schools.

**Section 8(2) provides;-**

*“A Board of Governors under Section 8(1) shall by the name of the school or group of schools for which it is established, be a body corporate having perpetual succession and a common seal, and may, in its corporate name, sue and be sued, and may purchase, sell, lease or otherwise acquire or dispose of, hold and manage movable and immovable property, and may enter into such contracts as may be necessary or expedient.” (emphasis mine)*

The import of the above provision is that the Applicant is mandated to and can only do business in its corporate name and this includes entering contractual undertakings like loan agreements. Even if it were to be argued that the Applicant is a member of the Respondent SACCO, any binding transaction to be engaged in by her would be backed by a duly executed resolution of her Board. The Respondent did not furnish Court with evidence of

such authorization by the former Board which would render the Applicant liable for the inherited liability.

Counsel for the Respondent cited **Miscellaneous Application No.087/2016 Tumusiime Prosper V Rubanda Kyiizi SACCO** to argue that Court did not have jurisdiction to inquire into the conduct of Arbitral proceedings. The Application was by way of Revision under Section 83 of the Civil Procedure Act. The Chief Magistrate to whom an award was sent for registration confirmed it and commenced execution proceedings. The Applicant filed for revision claiming Court had not inquired into the choice of Arbitrators and non service of summons which had led to ex-parte Arbitration proceedings.

The conclusion in that case was that the Chief Magistrate's mandate stopped at registering and seeing to the execution of the Arbitral award but not to act as an Appellate Court to inquire into how the Arbitration was conducted.

The Application for Revision limited the High Court to inquiring into how the Magistrate exercised the jurisdiction vested in him or if he had exercised jurisdiction not vested in him. Court however proceeded to review the Arbitration process which was without fault contrary to the contention by the Applicant. The cited case to deny this Court jurisdiction in this Application arose from a different set of facts from the present case. It was cited incorrectly by Counsel.

A glaring illegality is brought out in the fact that the Applicant was not a party to the loan arrangement with the Respondent yet her assets are liable to execution. A Court can not sanction what is illegal and once an illegality is brought to the attention of Court, it overrides all other questions as raised by Counsel for the Respondent.

The Respondent however has the option to recover the outstanding amount from the guarantors of the loans. The relevant clause in the guarantor's forms that were attached to the loan Applications provides:-

*“ We the undersigned agree to repay from our own sources, the total amount of the loan owed by the applicant to Nyakibale Development Cooperative Savings Credit Society Ltd if the applicant fails to repay the loan granted to him/her by the same bank by the time it is due.”*

For the reasons outlined herein above, I set aside the Arbitral award dated 3<sup>rd</sup> October 2016 and stay any execution that may have been commenced by the Respondent. The Respondent will pay costs of this Application to the Applicant.

Moses Kazibwe Kawumi

Judge

2<sup>nd</sup> October 2017.