

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MC- 17 OF 2014**

**KAATO GROWERS COOPERATIVE SOCIETY LTD:.....APPLICANT  
VERSUS  
WAKIMWAYI DAN:..... RESPONDENT**

**BEFORE: HON. JUSTICE HENRY I. KAWESA**

**RULING**

The facts are as per the pleadings in the Notice of Motion and accompanying affidavits. Briefly the applicant instituted these proceedings against the respondent for declaratory orders to be made following a completed arbitration.

The award in issue arose out of an ADR presided over by the District Commercial Officer of Manafwa District. The same ADR was on an advise of the Grade 1 Court of Bubolo.

Arising from the award the respondent was dissatisfied and lodged an appeal to the Board of the Uganda Cooperative Alliance under Section 1(c) and 73(9) of the cooperative Act. This appeal is only in letter but has never been heard.

This application now seeks to move this court to invoke the Act and recognize the award.

Respondent argues that there is still a pending appeal not yet determined by the Board and hence this application is premature.

I take notice of all submissions made. The references to the law applicable and the cases is all correct and not in issue. I also note that by way of a Preliminary Objection, this Court pronounced itself on the fact that before the Cooperatives Board hears the appeal before it, this Court cannot be moved to hear a matter arising there from.

Following this ruling and the contents as revealed by the annexes on the pleadings referred to by respondent as “A” “B” “C” and “D”, it is clear beyond doubt that the Cooperative Alliance Board has not yet heard the appeal. In annex “D” the letter shows that one party (applicant) has

frustrated the appeal by failing to turn up. Annex “C” shows that the Registrar of Cooperatives has written to the Board directing them to have the appeal determined.

I note that appellant/ applicant in rejoinder refers to these correspondences as a ploy to delay the process. The Applicants however did not indicate why inspite of being summoned as claimed under annex “D”, they did not attend the proceedings.

Given the above scenario, I make reference to the law governing this matter as contained in Section 73(1) (a) of the Cooperative Society Act which allows a dissatisfied party of an arbitrators award to appeal to the Board.

If there is dissatisfaction with the decision of the Board, then the dissatisfied party appeals to the High Court.

It is therefore clear in this matter that the respondent upon receiving the award wrote to the Board and appealed.

The Board has written ( Annex “D”) showing it has received the appeal and has scheduled it several times but applicant opted out of the proceedings by not attending

Anex ‘C’ shows that appellant is still pursuing the appeal.

This scenario shows that the applicant by bringing this application is trying to place himself outside the jurisdiction of the “Board” which is mandated to hear the appeal in accordance with the Cooperatives Act. It is moreover ironic that while the applicant seems not to be comfortable with the procedure requiring an appeal to go to the Board on appeal before coming to the High Court, he is comfortable to use the same Act to try move the High Court to regularize his award. This is an abuse of the process of law. If the parties put themselves under Arbitration under the Cooperatives Act, then the provisions thereof should be followed to the letter. There can be no short cuts. All cases quoted by both Counsel support my view above. I quote the following to support the said position.

***Bsynton V Richardsons ( 1924) WN 262.***

*“Every person must use his own discretion in the choice of his Judges....”*

***RASHID MOLEDINA V HOIMA GINNERS LTD 1967 EA 645***

*“ parties are bound by clauses in their contract that arbitration shall be the forum for resolving their disputes.”*

This case arose out of such an arbitration. The procedure is that the award is appealable first to the Board before it is appealed to the High Court. This Court cannot regularize an award which is pending determination of an appeal by the arbitrator.

I am therefore in agreement with the respondent that this application is premature and unsustainable in law. The applicant is advised to immediately appear before the Board and let the Board determine the appeal before it. This application is dismissed in whole, with costs to the respondent. I so order.

**Henry I. Kawesa**  
**JUDGE**  
**03.02.2017**