

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)  
MISCELLANEOUS APPLICATION NO. 06 OF 2021  
(ARISING FROM H.C.C.S 246 OF 2018)**

- 1. GEORGE WILLIAM KATATUMBA (Administrator of the estate of the Late Joseph B. Katatumba)**
- 2. EVARISTO BASIIME MERE (One of the Administrators of the estate of the Late Luka Mere)**
- 3. ROBERT RWANJAGARA & XAVIOR MAGEZI (Administrators of the estate of the Late Joseph Rwanjagara)**
- 4. RICHARD ASIIMWE (Administrator of the estate of the Late Mathias Gareeba)**
- 5. KISHAIJA TADEO KATUTSI (Member)**
- 6. MARY KINYAMWIRU (Administratrix of the estate of the Late John Nyamwiru)**
- 7. TEREZA NAMULI TIBAYUNGWA (Administratrix of the estate of the Late Francis X.K. Tibayungwa)**
- 8. BEGUMANYA JOHN (Beneficiary of the estate of the Late F.K Begumanya)**
- 9. KAMATSIKO MARY (One of the Administrators of the Estate of the Late Aloysius Timbyetaho) ::::::::::::::::::::::::::::::::::: APPLICANTS**

**VERSUS**

- 1. ABARIHAMWE LIVESTOCK COOPERATIVE SOCIETY LTD**
- 2. ATTORNEY GENERAL**
- 3. RWAMABONDO RANCHING SOCIETY LTD ::::::::::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON. JUSTICE BONIFACE WAMALA**

**RULING**

**Introduction**

[1] This application was brought by Notice of Motion (according to the Amended Notice of Motion filed on 21<sup>st</sup> May 2021) under Section 6 of the Arbitration and Conciliation Act Cap 4, Section 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13 and Order 52 rules 1 & 3 of the Civil Procedure Rules for orders that;

- a) The payment of UGX 8,034,762,500/= decreed by the High Court on 21/03/2019 in H.C.C.S No. 246 of 2018 or any part thereof that is still unpaid to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent, he halted until

completion of arbitration proceedings between the Applicants and the 1<sup>st</sup> Respondent.

b) In the alternative but without prejudice to the foregoing, the said amount of UGX 8,034, 762,500/= be paid on an Escrow Account and thereafter not be accessed or dealt with by any party until the completion of arbitration proceedings between the Applicants and the 1<sup>st</sup> Respondent.

c) Where the said amount of UGX 8,034,764,500/= or any part thereof has already been paid out by the 2<sup>nd</sup> Respondent, such money should not be withdrawn from the account on which it was credited or otherwise dealt with until completion of the arbitration proceedings between the Applicants and the 1<sup>st</sup> Respondent.

d) Costs of the application be provided for.

### **Background Facts**

[2] Pursuant to Bye-laws dated 11<sup>th</sup> July 1968, a Cooperative Society by names “Abarihamwe Livestock Cooperative Society Ltd” was formed. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 9<sup>th</sup> Applicants claim to be administrators/administratrices of the estates of the named founder members of the said society. The 5<sup>th</sup> Applicant is said to be a living member of the society. The 8<sup>th</sup> Applicant is said to be a beneficiary of the estate of one of the founding members. By H.C.C.S No. 246 of 2018 filed on 15/08/2018, the above named Cooperative Society together with another called Rwamabondo Ranching Society Ltd (the 3<sup>rd</sup> Respondent herein) sought compensation against the Attorney General (the 2<sup>nd</sup> Respondent herein) for their property that had been taken over by the Government of Uganda. By a decree dated 21/03/2019, the 1<sup>st</sup> Respondent (then 1<sup>st</sup> Plaintiff) was awarded a sum of UGX 8,034,762,500/= while the 3<sup>rd</sup> Respondent (then 2<sup>nd</sup> Plaintiff) was awarded a sum of UGX 7,587,205,500/= plus damages, interest and costs. By a consent order endorsed by the court on 12/07/2019, the parties agreed that the sums due and owing be paid in an agreed manner through the judgment creditors’ lawyers of M/S Kwesigabo, Bamwine & Walubiri Advocates.

[3] While payments were being effected, the Applicants notified the 1<sup>st</sup> Respondent of their interest in the 1<sup>st</sup> Respondent Society and in the monies that were being received. It is stated by the Applicants that they were ignored by the Executive Committee members of the 1<sup>st</sup> Respondent. The Applicants took measures to commence arbitration proceedings to have the dispute resolved but the 1<sup>st</sup> Respondent refused to cooperate. The Applicants therefore brought this application to seek interim measures of protection pending the disposal of the arbitration proceedings.

### **The Grounds of the Application**

[4] The grounds of the application are summarised in the Notice of Motion which is supported by an affidavit sworn by George William Katatumba, the 1<sup>st</sup> Applicant. Briefly, the grounds are that pursuant to Section 38(1) of the Cooperative Societies Act, the Applicants are entitled to a share of the decretal sum payable to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent in line with the orders in **HCCS No. 246 of 2018: Abarihamwe Livestock Cooperative Society Ltd & Another vs Attorney General**. A dispute has arisen between the Applicants and the Executive Committee of the 1<sup>st</sup> Respondent revolving around the said compensation awarded by the Court to the 1<sup>st</sup> Respondent. In order to resolve the said dispute, the Applicants have set in motion an arbitration process between themselves and the 1<sup>st</sup> Respondent as set out in the Cooperative Societies Act Cap 112. If the said compensation continues to be paid to the 1<sup>st</sup> Respondent before completion of the arbitration process, the arbitration proceedings will be rendered nugatory and the Applicants will completely lose out on the said compensation. It is in the interest of justice that the application is granted.

### **Grounds of Opposition of the Application**

[5] The Respondents opposed the application through affidavits deposed by James Byabashaija, for the 1<sup>st</sup> Respondent; Oburu Jimmy Odoi, for the 2<sup>nd</sup> Respondent; and Nuwagaba Herbert, for the 3<sup>rd</sup> Respondent.

[6] For the 1<sup>st</sup> Respondent, it was stated that the 1<sup>st</sup> Respondent intended to raise preliminary objections to the application to the effect that the affidavit in support of the application is incompetent and that the Applicants' claim is time barred. Without prejudice to the foregoing, it was stated for the 1<sup>st</sup> Respondent that neither the deceased individuals nor their alleged representatives were or are members of the 1<sup>st</sup> Respondent and, as such, their claim of entitlement was found strange by the 1<sup>st</sup> Respondent. The Applicants have also produced no evidence to show that any of them was nominated to take over any of the deceased member's interest upon death of any of the members. The deponent further stated that the Applicant being non-members to the society cannot force the 1<sup>st</sup> Respondent to enter arbitration.

[7] For the 2<sup>nd</sup> Respondent, it was stated that pursuant to the decree in HCCS No. 246 of 2018, the 2<sup>nd</sup> Respondent is enjoined by law to satisfy the decree that was made against Government of Uganda in accordance with the terms agreed upon by the parties vide HCMA No. 727 of 2019 which gave rise to the consent order endorsed on 12<sup>th</sup> July 2019. The said consent order had not been varied, set aside or stayed by any other order of the Court. The deponent stated that part payment of more than 80% of the decretal sum has already been made by the 2<sup>nd</sup> Respondent to the 1<sup>st</sup> Respondent. The application has thus been overtaken by events and it is in the interest of justice that the orders sought are not granted.

[8] For the 3<sup>rd</sup> Respondent, it was stated that the 3<sup>rd</sup> Respondent was a 2<sup>nd</sup> Plaintiff/ Decree Holder in HCCS No. 246 of 2018, in which decree the amount of money due to each plaintiff/ decree holder was distinct, separate and specific. Both Plaintiffs/ decree holders were represented by one firm of advocates, M/s Kwesigabo, Bamwine and Walubiri Advocates, who have been receiving the money from the 2<sup>nd</sup> Respondent in instalments and disbursing it to them in shares or percentages as they are entitled to under the decree and a substantial amount of money has already been paid. As such, the decree has

been substantially executed. While the members of the 1<sup>st</sup> Plaintiff/ decree holder have developed a misunderstanding in sharing their portion of the money, the members of the 2<sup>nd</sup> plaintiff/ decree holder do not have any disagreement and wish to have their money paid to them as per the arrangement already in place. It is in the interest of justice that the Court does not halt payment of the decretal sum by the 2<sup>nd</sup> Respondent but instead order the Applicants' portion of the money to be retained by the advocates till their disagreement with the 1<sup>st</sup> Respondent is sorted out.

[9] The Applicants deponed to five affidavits in rejoinder whose contents I have studied and taken into consideration.

### **Representation and Hearing**

[10] When the case came up for hearing, the Applicants were represented by Mr. Tumusiime Ronald and Mr. Habwomugisha Innocent; Mr. Gad Wilson represented the 1<sup>st</sup> Respondent; Mr. Geoffrey Madete (Senior State Attorney) represented the 2<sup>nd</sup> Respondent; while Mr. Maxim Mutabingwa represented the 3<sup>rd</sup> Respondent. It was agreed that the hearing would proceed by way of written submissions. The submissions were duly filed by Counsel and the same have been adopted and considered by the Court.

### **Issues for Determination by the Court**

[11] The matter before the Court is not meant to determine the Applicant's entitlement or not to any payment under the decree in HCCS No. 246 of 2018. Rather, it about whether any arbitrable dispute exists between the Applicants and the 1<sup>st</sup> Respondent; and if so, whether the Applicants are entitled to the measures sought for in this application. It is also important to note that whatever findings and orders that are to be made by this Court should not affect the rights of the 3<sup>rd</sup> Respondent who was the 2<sup>nd</sup> plaintiff/ decree holder in HCCS No. 246 of 2018. The Applicants made it categorically clear that they have no claim on the monies belonging to the 3<sup>rd</sup> Respondent. The Court will

therefore bear this in mind while making any findings and eventual orders. As such, the issues for determination by the Court in the present matter are:

**(a) Whether a legal dispute exists between the Applicants and the 1<sup>st</sup> Respondent?**

**(b) If so, whether the dispute is subject to arbitration?**

**(c) Whether the Applicants are entitled to the reliefs claimed?**

### **Preliminary Objections**

[12] Counsel for the 1<sup>st</sup> Respondent raised three preliminary points of objection, namely that;

**(i) The affidavit of George William Katatumba is untenable at law as it is purportedly sworn on behalf of other Applicants.**

**(ii) The affidavit of George William Katatumba does not disclose source of information.**

**(iii) The claim by the Applicants is barred by time both at law and equity.**

**1<sup>st</sup> Preliminary Objection: The affidavit of George William Katatumba is untenable at law as it is purportedly sworn on behalf of other Applicants.**

[13] It was submitted by Counsel for the 1<sup>st</sup> Respondent that there is only one affidavit in support of an application by 8 Applicants. There is no evidence that the deponent (George William Katatumba) has been expressly permitted to represent or swear the affidavit on behalf of the other applicants. Yet in several paragraphs, the deponent purports to depose to facts concerning the other applicants. Counsel submitted that such deposition without authority renders the affidavit defective and the application incompetent. Counsel relied on a number of cases, namely; ***Kaheru Yasin & Anor vs Zinorumuri David MA No. 82 of 2017; Taremwa Kamishari & Ors vs Atoorney General MA No. 38 of 2012; Kaingana vs Dabo Boubon (1986) HCB 59.***

[14] In response, Counsel for the Applicants stated that it was clear in paragraph 1 of the affidavit in support that the deponent made the affidavit in his own capacity as the 1<sup>st</sup> Applicant. Counsel submitted that the 1<sup>st</sup> Respondent's Counsel was therefore labouring under a mistaken belief that the affidavit was made on behalf of the other applicants. Counsel submitted that the reference to the other applicants in the affidavit was because they were part of the subject matter in issue and the same was within the deponent's knowledge as provided for under Order 19 rule 3(1) of the CPR. Counsel concluded that making reference to the other applicants in the affidavit is not the same as the deponent making the affidavit on behalf of the other applicants. Counsel relied on the decisions in ***Charles Abola & Ors vs Treasury Officer of Accounts & Anor HCMA No. 173 of 2018 (Civil Division)*** and ***BankOne Ltd vs Simbamanyo Estates Ltd HCMA No. 645 of 2020 (Commercial Court)***.

[15] The affidavit of George William Katatumba, the 1<sup>st</sup> Applicant, is clear. In Paragraph 1, he clearly states the capacity in which he makes the affidavit. He states: “... *I am a male adult Ugandan of sound mind, the 1<sup>st</sup> Applicant herein, a legal representative of the late Joseph B. Katatumba, a founder member of the 1<sup>st</sup> Respondent Society, and depone this affidavit in that capacity*”. In light of such an averment, it is not open to anyone to impute any other capacity in which the deponent was swearing. The law on affidavit evidence is strict and cannot be subject to imputations where an averment is clear and specific. The allegation by the 1<sup>st</sup> Respondent's Counsel that the above deponent made the affidavit on behalf of the other applicants without authority is therefore erroneous and made out of context.

[16] The second angle to the argument by Counsel for the 1<sup>st</sup> Respondent was that in paragraphs 3, 4, 5, 10 and 11, the 1<sup>st</sup> Applicant purported to depone to facts concerning the other applicants and that such deposition made the current affidavit without authority and therefore defective. As submitted by

Counsel for the Applicants, this is a misconception on the part of the 1<sup>st</sup> Respondent's Counsel. Where more than one persons have a common cause of action or issue, there is no bar for one witness while speaking to his/her case to also speak to the other person's case. One needs neither authority nor to act in a representative capacity since evidence is based on personal knowledge and competence.

[17] I have had occasion to deal with the same matter in ***Charles Abola & Ors vs Treasury Officer of Accounts & Anor HCMA No. 173 of 2018 (Civil Division)***. In that case, the application was brought by 161 individuals, each in their respective capacity. One of the Applicants deponed to the affidavit in support. He did not claim that he was deposing on behalf of the others. He stated that he was deposing to the facts in his capacity as one of the Applicants. I did state that where such averments constitute evidence that is helpful to the case for the other applicants, it could not be expected or required by the court that each of the 161 applicants would depone to their own affidavits. Indeed, it is the duty of the court to control against excessive and/or superfluous evidence. There is also no legal basis for the proposition that before the particular deponent deposed to the facts in such circumstances, he had to first seek the authority of the others. The same circumstances exist in the present case and I still find that to be the correct position of the law. (Also see ***BankOne Ltd vs Simbamanyo Estates Ltd HCMA No. 645 of 2020 (Commercial Court, per Mubiru J.)***) I therefore agree that this objection by Counsel for the 1<sup>st</sup> Respondent is misconceived and is accordingly dismissed.

**2<sup>nd</sup> Preliminary Objection: The affidavit of George William Katatumba does not disclose source of information.**

[18] It was submitted by Counsel for the 1<sup>st</sup> Respondent that George William Katatumba who deponed to the affidavit in support was neither a member nor employee of the 1<sup>st</sup> Respondent and was not in any way privy to the business



dealings and or conduct of the 1<sup>st</sup> Respondent. He could therefore not attest to the facts in paragraphs 6, 7, and 8 of the affidavit in support without disclosing his source of information. In response, Counsel for the Applicants pointed out that the deponent had shown in the affidavit in support that the matters he deponed to were within his knowledge and those in paragraphs 4, 5, 6, 7 & 8 were facts within public knowledge and did not require a person to be a member or employee of the 1<sup>st</sup> Respondent to get to know them. Counsel prayed that this objection be found without merit.

[19] The averments in paragraphs 6, 7, 8 and 9 of the affidavit in support depose as to the ownership of Ranch No. 16 by the 1<sup>st</sup> Respondent; the division of the ranch into 16A and 16B; and the takeover of ranch No. 16B by the Government of Uganda subject to payment of compensation to the 1<sup>st</sup> Respondent. Paragraph 10 of the affidavit in support states that such is what led to the filing of HCCS No. 246 of 2018 that led to the decretal sum part of which is sought to be shared by the Applicants. This present application arises from HCCS No. 246 of 2018. The plaint in the said suit lays out the said background. The pleadings and proceedings in the said suit are public documents. I therefore believe the 1<sup>st</sup> Applicant's claim that such facts are within his knowledge being publicly available to him. Indeed, such facts being the basis of the Applicants' claims, I am unable to appreciate the argument that they are not within the 1<sup>st</sup> Applicant's knowledge. I therefore find that the alleged averments are not based on information the source of which the deponent ought to have disclosed. There is therefore no such omission and the 2<sup>nd</sup> objection also fails.

**3<sup>rd</sup> Preliminary Objection: The claim by the Applicants is barred by time both at law and equity.**

[20] This objection ought not be for determination by this Court as it touches the merits of the Applicants' claim. As I have stated in paragraph 11 herein

above, the present matter is not meant to determine the Applicant's entitlement or not to any payment under the decree in HCCS No. 246 of 2018. Such is supposed to be the domain of the arbitrator in case the Court finds that there is an arbitrable dispute in the circumstances. As such whether the claim for sharing part of the decretal sum is time bared or not is not for this Court to decide because it will depend on the evidence adduced by the parties on the merits of the dispute. As far as the present matter is concerned, and looking at the issues for determination by the Court, the issue of time bar does not arise as the present application was brought immediately the Applicants failed to get an intervention regarding the continued payment of the decretal sum to the 1<sup>st</sup> Respondent. This point of objection was therefore made out of context.

### **Resolution of the Issues by the Court**

#### **Issue 1: Whether a legal dispute exists between the Applicants and the 1<sup>st</sup> Respondent?**

[21] It is stated by the Applicants that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 9<sup>th</sup> Applicants are administrators/administratrices of the estates of named founder members of the 1<sup>st</sup> Respondent Society. The 5<sup>th</sup> Applicant is said to be a living member of the society. The 8<sup>th</sup> Applicant is said to be a beneficiary of the estate of one of the founding members. It is claimed by the Applicants that being legal representatives of deceased members, present member and a beneficiary to a deceased member, they are entitled to share into the proceeds of compensation made toward a property of the Society that was taken over by the Government. The Applicants are aware that money is being paid in that respect and none of them has received a share. On the other hand, the 1<sup>st</sup> Respondent is denying the Applicant's claims for several reasons which can only be evaluated by a proper forum. The above constitutes evidence of existence of a legal dispute between the Applicants and the 1<sup>st</sup> Respondent. The 1<sup>st</sup> issue is therefore answered in the affirmative.

## **Issue 2: If so, whether the dispute is subject to arbitration?**

[22] Section 73 of the Cooperative Societies Act Cap 112 provides for settlement of disputes that arise concerning the business of a cooperative society. Under *Section 73(1)(b) of the Act*, “*If any dispute touching the business of a registered society arises ... between a member, past member or person claiming through a member, past member or deceased member, and the society, its committee or any officer or past officer of the society ... the dispute shall be referred to an arbitrator or arbitrators for decision*”. On the present facts, the Applicants are claiming as a member (5<sup>th</sup> Applicant) and persons claiming through deceased members. They are thus well captured by the above provision. Where a disputes arises between such persons and the society or its committee or any officer(s) of the society, such dispute “shall be referred to an arbitrator or arbitrators for decision”.

[23] Having already found under issue one that a legal dispute exists between the Applicants and the 1<sup>st</sup> Respondent, the provision under Section 73(1)(b) above is therefore applicable to the present circumstances. Under Section 73(3) of the Act, the parties to a dispute may agree upon an arbitrator or arbitrators for purpose of deciding the dispute. Where there is failure of agreement upon an arbitrator or arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator to decide the dispute (Section 73(4) of the Act). If a party fails to appoint an arbitrator as required under sub-section (4) within thirty days of receipt of the request, the appointment shall be made, upon request of either party, by the general secretary of the Uganda Cooperative Alliance Ltd.

[24] It was shown by the Applicants that by letter dated 1<sup>st</sup> September 2020 (Annexure “M” to the affidavit in support of the application), the Applicants through their lawyers sent a proposal to the 1<sup>st</sup> Respondent through its

Chairperson for appointment of an arbitrator or arbitrators. In the letter, the Applicants set out the basis of their claims, proposed three names and required the 1<sup>st</sup> Respondent to, within thirty days, either choose any one of the proposed persons or make any alternative proposal. It is further shown by the Applicants that the said proposal was not responded to by the 1<sup>st</sup> Respondent. On 15<sup>th</sup> October 2020, the Applicants in person wrote to the General Secretary of the Uganda Cooperative Alliance Ltd requesting for appointment of an arbitrator pursuant to Section 73(5) of the Cooperative Societies Act (Annexure “N” to the affidavit in support). There was also no response to this request. It was submitted by Counsel for the Applicants that pursuant to Regulation 48 of the Cooperative Societies Regulations SI No. 112-1, the above actions by the Applicants amounted to institution of arbitral proceedings.

[25] *Regulation 48 of the Cooperative Societies Regulations SI No. 112-1* makes provision for lodging disputes in accordance with Section 73 of the Cooperative Societies Act. *Under sub-regulation (1), an “aggrieved party under section 73(3) of the Act shall write to the defendant clearly stating the nature of the dispute, proposing who to arbitrate”.* Under sub-regulation (2), the *“defendant shall respond by accepting the proposed arbitrator(s) or proposing who else to arbitrate”.* Thus, according to the Cooperative Societies Act and Regulations, once a claimant takes the aforementioned step, the arbitral proceedings are deemed lodged. The non-cooperation of the defendant cannot reverse that process. The claimant is then entitled to take the next available steps. It also ought to be noted that the law places an obligation upon the defendant who *“shall respond by accepting the proposed arbitrator(s) or proposing who else to arbitrate”.* There is no discretion on the part of the defendant to respond or not. He/she must respond. By rules of statutory interpretation, if the defendant does not respond, the claimant is entitled to take recourse to other available options under the law.

[26] It appears to me that sub-sections 3, 4 and 5 of Section 73 of the Cooperative Societies Act envisage agreement on the question of arbitration and only envisage disagreement on who to arbitrate. That is why under sub-section (4), it provides that where there is failure to agree upon an arbitrator, each party shall appoint one arbitrator and the two arbitrators shall appoint the third. The provision envisages that there is not disagreement as to whether to appoint an arbitrator or not; the disagreement is only as to who to arbitrate. Consequently, the intervention of the General Secretary under sub-section (5) thereof is in a situation where one of the parties has failed to appoint an arbitrator as required under sub-section (4). It is not in respect of where one of the parties has refused to cooperate even on the question as to whether there should be an arbitration in the first place.

[27] The case before me is the latter scenario. The 1<sup>st</sup> Respondent who is the defendant in the arbitral proceedings refused to cooperate on the question of whether there should be arbitration at all. According to the 1<sup>st</sup> Respondent, there is nothing to arbitrate. As such, the conduct of the 1<sup>st</sup> Respondent is not that of a defendant that has failed to agree on an arbitrator (within the meaning of sub-sections (4) and (5) of Section 73 of the Act) but of a defendant who disputes reference to arbitration. Under the law, reference to arbitration is pursuant either to an arbitration clause embedded in a contract or by operation of the law. In both cases, a party has no choice to opt out except, in the case of proceedings based on an arbitration clause, upon circumstances clearly laid out under Section 5 of the Arbitration and Conciliation Act Cap 4.

[28] In the present case, I have already stated that the provisions of Section 73 of the Cooperative Societies Act and Regulation 48 of the Cooperative Societies Regulations are clear and mandatory. Although the above cited provisions do not cater for what happens when a defendant refuses to cooperate on the question of arbitration, Section 73(8) of the Act provides that the *“provisions of*

*the Arbitration and Conciliation Act shall, to the extent that they are not inconsistent with this act, apply to an arbitration under this Act”.*

[29] Section 11 of the Arbitration and Conciliation Act provides for appointment of arbitrator(s). Under sub-section (4) thereof, where parties fail to agree on appointment of an arbitrator, a party interested in the appointment may apply to the Appointing Authority. Under S. 2(1)(a) of the Act, “appointing authority” means an institution, body or person appointed by the Minister to perform the functions of appointing arbitrators and conciliators. In the case of the Cooperative Societies Act, the appointing authority is still the Secretary General of the Uganda Cooperative Alliance. As such, the said authority was duty bound to act on the request of the Applicants submitted by letter dated 15<sup>th</sup> October 2020. The fact that the said authority did not act does not negative the fact that the Applicants had commenced arbitration proceedings in accordance with the law.

[30] In the circumstances, I have found that the dispute between the Applicants and the 1<sup>st</sup> Respondent is subject to arbitration and the Applicants have since commenced arbitral proceedings in accordance with the law. The 2<sup>nd</sup> issue is therefore answered in the affirmative.

### **Issue 3: Whether the Applicants are entitled to the reliefs claimed?**

[31] In view of the findings above, the Applicants are entitled to some of the reliefs sought. To begin with, this application was misunderstood by some of the respondents as seeking for a stay of execution of a decree of the court in an irregular and unusual manner. That is not correct. The application clearly cites Section 6 of the Arbitration and Conciliation Act as one of the enabling laws. Section 6 thereof provides for interim measures by the court. Under Section 6(1) of the Act, a *“party to an arbitration agreement may apply to the court, before or during arbitral proceedings, for an interim measure of protection, and*

*the court may grant that measure*". [Emphasis added]. This was the basis of the application. The Applicants have satisfied the Court that they are entitled to some interim measures of protection.

[32] As already stated herein above, any measures of protection granted will be restricted to as against the 1<sup>st</sup> Respondent; they shall not affect the rights of the 3<sup>rd</sup> Respondent under the decree in issue. Secondly, I have not found any reason to issue an order halting the outstanding payments from the 2<sup>nd</sup> Respondent. The 2<sup>nd</sup> Respondent ought to continue making payments in accordance with the decree and the consent order of 12<sup>th</sup> July 2019. Nevertheless, upon receipt of the money by the authorised law firm of M/s Kwesigabo, Bamwine and Walubiri Advocates, the law firm shall keep remitting the 3<sup>rd</sup> Respondent's entitlement out of any received sums and then keep a hold onto the sums due to the 1<sup>st</sup> Respondent until completion of the arbitration proceedings.

[33] I am aware that by an order issued by the Registrar of this Court on 22<sup>nd</sup> July 2021, pursuant to M.A No. 295 of 2021, it was ordered that once the monies in issue were paid to the account of the 1<sup>st</sup> Respondent's advocates, the money shall not be withdrawn until after a period of 60 days from the date of issue of the order or until the main application was disposed of. M.A No. 295 of 2021 arose from the current application and this is the main application that was referred to in that order. It follows, therefore, that the orders made in this application will take effect from the 22<sup>nd</sup> July 2021. Each party shall meet their own costs since these proceedings were necessary and the substance of the dispute is yet to be resolved.

[34] In all, therefore, this application is allowed with the following orders:

- (a) The Applicants are entitled to some interim measures of protection pending the completion of arbitration proceedings.

(b) The General Secretary of the Uganda Cooperative Alliance Ltd is ordered to appoint a suitable arbitrator or arbitrators to handle the dispute between the Applicants and the 1<sup>st</sup> Respondent. The appointment shall be made and communicated to the parties and the arbitrator(s) within thirty (30) days from the date of this Ruling.

(c) The 2<sup>nd</sup> Respondent shall continue making payments in accordance with the decree and the consent order of 12<sup>th</sup> July 2019 through M/s KBW (formerly Kwesigabo, Bamwine and Walubiri Advocates), and while the law firm shall continue remitting the 3<sup>rd</sup> Respondent's entitlement out of any received sums, the law firm is ordered to maintain a hold onto the sums that are due to the 1<sup>st</sup> Respondent until completion of the arbitration proceedings.

(d) The order in (c) above takes effect from the 22<sup>nd</sup> July 2021 when the order of the Registrar was issued.

(e) Each party shall bear their own costs of this application.

It is so ordered.

***Dated, signed and delivered by email this 16<sup>th</sup> day of December, 2022.***



**Boniface Wamala**

**JUDGE**