

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISCELLANEOUS CAUSE NO.049 OF 2022**

**MENGO TEACHERS CO-OPERATIVE SAVINGS AND  
CREDIT SOCIETY LTD----- APPLICANT**

**VERSUS**

- 1. THE REGISTRAR OF CO-OPERATIVES**
- 2. THE DPC OLD KAMPALA POLICE STATION**
- 3. THE RESIDENT DISTRICT COMMISSIONER, KAMPALA LUBAGA DIVISION**
- 4. DR NAMUGUMYA ESTHER**
- 5. SSENOGA CHARLES----- RESPONDENTS**
- 6. KIBANGA CHRISTOPHER**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

The Applicant filed an application for Judicial Review under Article 42, 44, 28 & 50 of the Constitution and Section 36 of the Judicature Act , Rules 3,4,5,6,7 & 8 of the Judicature (Judicial Review) Rules, 2009 seeking orders that;

- a) An Order for extension of time within which to file an application for judicial review of the respondents' decisions, actions, omissions and failure to implement the valid resolutions and returns arising from the Special General meeting held on 4<sup>th</sup> September 2021.
- b) A declaration that the countenance holding of the special General meeting held and convened by the 1<sup>st</sup> respondent on 4<sup>th</sup> September 2021 is tainted with illegality, irrationality and procedural impropriety.

- c) A declaration that failure by the 2<sup>nd</sup> & 3<sup>rd</sup> respondents to implement the 1<sup>st</sup> respondent's returns on resolutions of the special General meeting is illegal, irrational and tainted with procedural impropriety and contrary to law and natural justice.
- d) Injunction doth issue restraining the 4<sup>th</sup> ,5<sup>th</sup> , and 6<sup>th</sup> respondent from conducting any business of the applicant and masquerading as office bearers of the applicant and any business conducted be declared null and void.
- e) An Order of Prohibition doth issue prohibiting the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents from interfering in matters concerning the applicant which are outside their mandate as stipulated under the law and further prohibiting the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents from making orders, decisions or directions affecting the normal running of the applicant and denying elected officers of the applicant from accessing their offices and the same be opened.
- f) An Order of Mandamus compelling the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> to put in effect the applicant's resolutions of the special general meeting of 4<sup>th</sup> September 2021 of installing, protecting and having offices open for the new elected and returned office bearers.
- g) General damages and punitive damages be paid by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents.
- h) Costs of this application.
- i) Any other relief deemed fit by this court

The grounds in support of this application were stated in the supporting affidavit of the applicant but generally and briefly state that;

- a) That despite the resolutions of 4<sup>th</sup> September 2021 of the special General meeting convened, manned, concluded and or returned by the

Registrar of Co-operatives Societies, the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have continued to deny the new elected and returned office bearers access to offices, conduct, occupy the applicant's offices which act is illegal, ultra vires and contrary to law and natural justice.

- b) That the minute of the special general meeting were taken by the 1<sup>st</sup> respondent who until 24<sup>th</sup> day of January had not issued and signed the same.
- c) The applicant was not availed with the duly signed minutes of special general meeting held on 4<sup>th</sup> day of September 2021 until 24<sup>th</sup> January 2022.
- d) That the 1<sup>st</sup> respondent has always been promised to finalize the matter internally until it has failed and given up despite the subsistence, continuance and existence of the illegalities in the operations of the applicant.
- e) That the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have refused to leave office or surrender the office in spite of the demands and requests after they were removed from office and their term of office had expired in 2020.
- f) The impugned omissions, actions have caused the applicant untold suffering, inconvenience and great loss.

The 1<sup>st</sup> respondents filed an affidavit in reply through Mpakibi Waiswa Robert (Registrar of Cooperatives) filed an affidavit and substantially agreed with what the applicant had contended in the affidavit in reply.

1. The applicant was registered in 1965 with the Registrar of Co-operatives and continues to operate as such.

2. The society offices were closed on 21<sup>st</sup> April, 2021 by 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents and they decided to take decisions without the consent of the board.
3. Before the office of the Registrar of Cooperatives could guide or take any action on the claims the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents complained to the office of the President about the office of the Registrar Co-operatives.
4. The office of the Registrar of Co-operatives received a letter dated 24<sup>th</sup> April, 2021 from the office of the President signed by Maj. Kakooza Mutale wherein he stated that there was mismanagement of the society resulting in some members blocking the Society's Bank Accounts.
5. The office of the Registrar of Cooperatives convened a meeting of the Board and supervisory committees and a management staff at the Ministry offices in a bid to hear the complainants of the members and to forge a way forward.
6. The former acting chairperson Dr. Namugumya Esther, former Vice chairperson Mr Kibanga Christopher and Former Secretary Mr. Ssenonga declined to attend the meeting held at the Registrar's office.
7. It was resolved that the members ought to be given one more chance to be heard and a special meeting be convened to discuss and decide some of the contentious issues including whether the auditors that had been appointed (Gold Rock and Partners) was approved by members at the previous AGM of the society.
8. A special general meeting scheduled for 10<sup>th</sup> August, 2021, by the Registrar was communicated on 3<sup>rd</sup> August, 2021. Dr. Namugumya Esther was present during the meeting as well as her lawful Attorney Kisakye Allan who introduced himself as a representative from the office of the Presidential Advisor.

9. Dr. Namugumya admitted to hiring Goldrock CPA audit firm in February 2021 but admitted that it was irregular since it was not done with approval of the applicant.
10. The Registrar discussed the way forward under minute 04, that a special general meeting be called on the 4<sup>th</sup> September, 2021 with the help of the treasurer and manager, a notice was to be run in Bukedde and Radio announcements.
11. It was decided that during the special general meeting, the parties elect new committee members as the term of office of the Chairperson and Secretary Board expired on 31<sup>st</sup> December, 2020 and 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents were merely acting in that role, resolve the bank accounts issue and discuss a way forward.
12. A Special General Meeting was indeed held on 4<sup>th</sup> September, 2021 wherein the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents did not attend and elections were held and a new chairperson, vice chairperson and secretary were elected into office.

The 2<sup>nd</sup> respondent-(SP Rutambika Tyson) in his reply stated that the 4<sup>th</sup> respondent reported went to his office seeking his intervention to stop new office bearers from accessing the office premises. The 4<sup>th</sup> respondent further made complaints of threatening violence, intimidation as well as trespass. They deployed for 5 days and afterwards they withdrew the security since this was a civil dispute.

The 3<sup>rd</sup> respondent-Burora Herbert Anderson as the Deputy Resident City Commissioner deposed in reply that a one Esther Namugumya wrote to District Internal Security Officer seeking for security to enforcement at METCO premises. She contended that there was threatened violence, intimidation as well as trespassing by the disobedient employees and anti-audit executive members of the applicant. The matter was forwarded to the DPC, old Kampala for further management.

### **Major issues**

1. *Whether there is justification for extension of time within which to file this application?*
2. *Whether the countenance stay in office by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents is illegal?*
3. *Whether the applicant is entitled to the remedies sought?*

The applicant was represented by *Mr Kakeeto Dennis* whereas the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents were represented by *Ms Namakula Elizabeth*. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents were self-represented

#### ***Whether there is justification for extension of time?***

The applicant's counsel contended that they failed to file this application in a pre-requisite time because the minutes of the special general meeting were taken by the 1<sup>st</sup> respondent who until 24<sup>th</sup> January had not issued and signed them. Secondly, the 1<sup>st</sup> respondent as a statutory regulatory body had always promised to finalize the matter or the impasse internally until it has failed and given up despite the subsistence, countenance and existence of the illegalities in the operations of the applicant.

That the factors for judicial review have been cumulative/amassing one after the other in nature and the factors that led to not filing of the application for judicial review for enforcement of the resolution of special general meeting within which to do so where beyond the applicants control.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have refused to surrender the office to the new office bearers duly elected and returned in an election held on 4<sup>th</sup> September 2021.

Counsel contended that illegality is a continuous mischief which subsists from the time occurrence to discovery and until the question of illegality is determined by court.

The 1<sup>st</sup> 2<sup>nd</sup> and 3<sup>rd</sup> respondent's counsel submitted that the reason advanced by the applicant for the delayed filing of the application was a scapegoat and in his view this application is an afterthought.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents' (lawful attorney) contended that the applicant has not furnished good reasons or demonstrated a good reason why court should extend the time to file for judicial review.

### ***Analysis***

The applicant has set out good and cogent reasons for the failure to file an application for judicial review within the period of 3 months. It is inconceivable that the respondents who have failed in their duty to uphold the rule of law to remove the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents are now arguing time limit.

It is equally baffling that the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents who were voted out of office after their term expired in December 2020 are now 'chest thumping' time limit in order to perpetuate their illegalities without challenge.

This court is satisfied that there is good reason to extend the time and to determine the application on merit in order to stop illegalities by the respondents.

### ***Whether the countenance stay in office by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents is illegal?***

The applicant's counsel submitted that despite the resolution of the 4<sup>th</sup> September 2021 special general meeting convened, manned and or returned by the Registrar of Cooperative Societies, the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have continued to deny the newly elected and returned office bearers access to offices, conduct, occupy the applicant's offices.

The 1<sup>st</sup> respondent has always promised to finalize the matters internally until it has failed and given up despite the subsistence, continuance and existence of illegalities in the operations of the applicant and the 2<sup>nd</sup> and 3<sup>rd</sup> respondents failed to implement the returns of the 1<sup>st</sup> respondent on the resolutions of the special general meeting which acts are illegal, irrational and contrary to natural justice.

The resolution of the meeting held on 12<sup>th</sup> August 2021 was that the special general meeting be called, manned and conducted by the 1<sup>st</sup> respondent to resolve the impasse. This was indeed effected and elections were held and conducted by the 1<sup>st</sup> respondent who in turn conducted elections since the term of office had expired in December 2020.

The 4<sup>th</sup> respondent contends that the new office bearers were not democratically elected and that the current chairperson is attempting to avoid criminal liability of the applicant's funds and frustrate the audit of his term as a treasurer. He is trying to conceal his accountability for missing society assets like land titles presented as loan securities, mobile money and bank funds.

The 1<sup>st</sup>, 2<sup>nd</sup> & 3<sup>rd</sup> respondent's counsel submitted that they enabled the meeting that was called to resolve the impasse and it was successfully conducted and new office bearers were elected.

### ***Analysis***

The task for this court in evaluating the actions of the respondents as being tainted with illegality is essentially one of construing the effect and impact of the decision-maker on the public body. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents had a duty to organise an election at the end of their term of office in 2020 but rather in abdication of their duties which among others included peaceful hand over of office.

It is always necessary to identify the all-important dividing line between actions or decisions that have been reached lawfully and those that have not. There are two questions; (i) was the decision or action taken within the powers granted? And (ii) if it was, was the manner in which it was reached lawful?

***Section 30 of the Co-operative Society Act*** provides that;

*“The bye-laws of a registered society shall, when registered bind the society and its members to the same extent as if they were signed by each member, and contain obligations on the part of each member, his or her heirs, executors, administrators and assignees to observe all the provisions of the byelaws.*



**Rule 94 of the registered bye-laws** of the applicant provides that;-

*“any dispute arising out of these bye-laws or concerning the business of the society which cannot be settled by the Committee or the General Meeting, shall be referred to the Registrar as provided in section 73 of the Act.*

The office of the Registrar (Robert Bariyo Barigye) acknowledged receipt of complaints regarding governance challenges faced by the society and invited the board members for a meeting on 12<sup>th</sup> August 2021.

The meeting among others resolved that the Registrar should call a special general meeting on 4<sup>th</sup> September 2021 with permission from the Resident City Commissioner due to Covid-19.

The meeting that was convened under the stewardship of the Registrar Co-operatives but the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents refused to attend. The meeting went ahead and decided to substantively fill the positions of Chairperson, Vice-Chairperson and Secretary.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have refused to hand over office and have resorted to using all manner of tricks to refuse to surrender the instruments of power and necessary documents for the applicant. The actions of the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents are bordering on criminality and should be stopped forthwith.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents have been dragged in this conflict because the baseless and hopeless complaints lodged by the 4<sup>th</sup> respondent of threatening violence, intimidation and criminal trespass. The dispute should have been avoided if the 2<sup>nd</sup> and 3<sup>rd</sup> respondents had not taken sides in matter under the influence of 4<sup>th</sup> respondent in order to cling onto the office property and premises.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have gone an extra mile to ‘hire services’ of the Presidential Advisor-Kakooza Mutale in order to thwart the new leadership taking charge of the organisation. This is a public body which is wholly regulated by its byelaws and the same should always be upheld.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents may have a genuine concern on how the funds were managed by the former treasurer but this should never be a reason to refuse to vacate office once voted out. The term of office end in December 2020 and the secretary never made any effort to call for the Annual/Special General Meeting in order to fill the positions. Instead, they tried to find fault with one of the members-treasurer for financial mismanagement or on accountability issues. In my view two wrongs do not make one right. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have no basis for refusing to hand over office to new office bearers and the same issues of accountability can always be pursued in an appropriate manner.

The act of refusing to hand over office to new office bearers is unlawful and illegal. They have in effect staged a '*leadership coup de tat*' by refusing the properly constituted and appointed committee to take charge, and thus exceeding their authority granted under their constitution by going beyond their powers earlier conferred in their expired term of office. It is axiomatic that office bearers must be properly qualified and properly constituted in order to manage the affairs of the applicant.

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents refused to take part in the 4<sup>th</sup> September 2021 Special General Meeting and this may have been in anticipation of what would have happened of electing them out of office. The unanimity of the decision to change the leadership should not be defeated by the trio who wish to cause leadership confusion in the applicant. This was a decision of the majority and it must be upheld in the best interests of the membership of the applicant.

This court is satisfied that the applicant and its new leadership is unfairly being denied an opportunity to serve the membership due to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents refusal to hand over office without any lawful justification and this violates the rights of the applicants members as enshrined in their constitution. Public bodies may have their own internal mechanisms of handling matters without necessarily following the hearing as envisaged in courts. In the case of ***Kenya Revenue Authority vs Menginya Salim Murgani Civil Appeal No. 108 of 2009***. The Court of Appeal delivered itself as follows;

*“There is ample authority that the decision making bodies other than courts and bodies whose procedures are laid down by statute are masters of their own procedures. Provided that they achieve the degree of fairness appropriate to their task it is for them to decide how they will proceed”.*

The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents have not set out any special circumstances that would absolve them from handing over office save for the allegations against one member-Treasure who is alleged to have mismanaged the funds of the applicant. Which issue shall be addressed using the internal mechanisms of the applicant? The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents cannot use that reason to cling onto power and office forever or indefinitely as they have attempted to do.

The continued stay in office of the applicant is illegal and unlawful.

***Whether the applicant is entitled to the remedies sought in the application.***

The ever-widening scope given to judicial review by the courts has caused a shift in the traditional understanding of what the prerogative writs were designed for. For example, whereas *certiorari* was designed to quash a decision founded on excess of power, the courts may now refuse a remedy if to grant one would be detrimental to good administration, thus recognising greater or wider discretion than before or would affect innocent third parties.

The grant of judicial review remedies remains discretionary and it does not automatically follow that if there are grounds of review to question any decision or action or omission, then the court should issue any remedies available.

The court may not grant any such remedies even where the applicant may have a strong case on the merits, so the courts would weigh various factors to determine whether they should lie in any particular case. See ***R vs Aston University Senate ex p Roffey [1969] 2 QB 558, R vs Secretary of State for Health ex p Furneaux [1994] 2 All ER 652***

This court is satisfied and grants the following orders;

- 1. A declaratory Order issues to the effect that the countenance holding of office by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents after the special General meeting held and convened by the 1<sup>st</sup> respondent on 4<sup>th</sup> September 2021 is illegal and unlawful.***
- 2. An injunction does issue restraining the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents from conducting any business of the applicant and masquerading as office bearers of the applicant and any business conducted by them after 4<sup>th</sup> September 2021 is declared null and void.***
- 3. An Order of Mandamus issues compelling the 1<sup>st</sup> respondent to put in effect the applicants resolutions of the special general meeting of 4<sup>th</sup> September 2021 of installing, protecting and having offices open for the new elected and returned office bearers with immediate effect and not later than 7 days.***
- 4. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents are condemned to pay a sum of 50,000,000/= (fifty million) EACH as general & punitive damages to the applicant for the illegal and unlawful actions of refusing to hand over office and making hopeless complaints to Police and Resident City Commissioner in total abuse of power in order to frustrate the general will of the members who peacefully wished to change leadership.***

The applicant is awarded costs of this application.

I so Order.

**SSEKAANA MUSA**

**JUDGE**

**14<sup>th</sup> April 2023**