**Kafuku and others v Nsanjo Multipurpose Agricultural Marketing Primary**

**Co-operative Society Ltd**

**Division:** Court of Appeal of Tanzania at Mwanza

**Date of Judgment:** 19 August 2003

**Case Number:** 17/00

**Before:** Ramadhani, Mroso and Munuo JJA

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**Summarised by:** A Mwanzia

*[1] Administrative law – Procedure for expulsion of member of co-operative society.*

*[2] Co-operative Society – Membership – Expulsion of members – Principles of natural justice –*

*Whether members lawfully expelled from co-operative society – Section 47(1) Co-operative Societies*

*Act, Rules 15(a), (e) and 16(c) Co-operative Societies Rules.*

**JUDGMENT**

**RAMADHANI, MROSO AND MUNUO JJA:** In civil case number 5 of 1998, the present seven appellants sued for:

(i) TShs 18 886 000-00 special damages for loss of tobacco profit;

( ii) TShs 1 326 939-00 membership contribution to the defendant co-operative society;

(iii) Interest;

(iv) Costs; and

( v) Any other relief deemed fit by the Court.

The defendant denied the claim. The High Court, before Mchome J dismissed the suit with costs giving rise to the present appeal. The appellants were, until 28 December, 1996, members of Nsanjo Multipurpose Primary Co-operative Society Limited. On the material date they were expelled from the respondent co-operative society by a resolution of an ordinary general meeting for holding illegal meetings with intent to breakup the respondent society. Dissatisfied with the termination of their membership, the appellants sued the defendant society for special damages, interest on the principal sum and costs of the suit. Although the appellants did not seek restoration of their membership, they did complain that they were condemned unheard which is contrary to the rules of natural justice. Mr *Mtaki*, learned advocate, represented the appellants. The respondent was represented by Mr *Kayaga*, learned advocate. Counsel for the appellants filed three grounds of appeal namely:

1. That in view of the testimony of the respondent’s witness, one Mashaka Masudi Mpongwe (DW2) that she did not know the grounds for the expulsion of the appellants from the respondent co-operative

Society, the Learned Judge erred in law in holding that the appellants were lawfully expelled.

2. That on the evidence on record, the Learned Judge erred in holding that the appellants had failed to prove their case on the balance of probabilities. On ground one of the appeal, counsel for the appellants contended that DW2 Mashaka Masudi Mpongwe, supported the applicants case that they were condemned unheard and that the Learned Judge ought not to have dismissed the suit. He pointed out that DW2 attended the general meeting in question but she did not know why the appellants were expelled which implied that the appellants were not accorded a hearing before being expelled from the society. In that regard, Mr *Mtaki* maintained, the learned trial Judge should have held that the termination of the appellants’ membership from the respondent co-operative society was unlawful. Counsel for the appellants also faulted rule 16 of the co-operative society’s rules, government notice number 408 of 1991 which deals with the termination of membership without prescribing the procedure of expelling members. Rule 16 of *Gazette* notice number 408 of 1991 provides: “16 Save as is provided by paragraph (2), a member may be suspended or expelled:

( *a*) …

( *b*) …

( *c*) F or any action which may be held by the committee and or *a general meeting to be dishonest* or

contrary to the stated objects of the co-operation.” (emphasis mine)

Submitting on ground two of the appeal, Mr *Mtaki* contended that the appellants were not given a hearing

before being dismissed from the respondent society so the termination was illegal and in contravention of

the principles of natural justice which rendered the expulsion a nullity. We note however, that Mr *Mtaki*

sought no order for restoration of membership in the respondent society. As for ground three of the appeal, counsel for the appellants contended that the latter established their case on the balance of probabilities so the Learned trial Judge erred in dismissing the suit. He faulted the trial Judge for not considering Exhibit P8 which supports the appellants claim. Mr *Mtaki* prayed that the appeal be allowed with costs. Mr *Kayaga*, learned advocate, supported the decision of the High Court and urged the Court to uphold the same. He expressed doubt on the credibility of DW2 who did not focus on the meeting, counsel for the respondent contended, which is why her testimony should not be accorded any weight. Counsel for the respondent stressed that the appellants were lawfully expelled because they convened an illegal meeting in an attempt to break the respondent society. The illegal meeting, he stated, enlisted 170 people out of whom only 50 were genuine members, the rest were fake members and they constituted the majority. He further argued that the provisions of rule 16 of government notice number 408 of 1991 was fully complied with so the termination of the appellants was lawful. He also observed that under section 47(1) of the co-operative Societies Act number 15 of 1991, every member of the society is bound by the provisions of Act number 15 of 1991 and the by-laws enacted thereunder. It is the contention of Mr *Kayaga* that the appellants were expelled under the regulations of the respondent society, namely regulation 11(*e*) and 21(i)(ii) of the respondent’s 1993 regulations, a copy of which was annexed to the respondent’s list of authorities. Counsel for the respondent insisted that the appellants were availed an opportunity to defend themselves at the general meeting which expelled them so no principles of natural justice were contravened. Responding to ground three of the appeal, Mr *Kayaga* contended that the evidence adduced by the appellants failed to prove the claim on the balance of probabilities which was why the trial Judge correctly dismissed the suit with costs. Counsel observed that under section 71(*a*) of the Co-operative Societies Act number 15 of 1991, only members could get loans from the society. Section 71(1) of Act number 15 of 1991 provides: “71(1) A registered society shall not make a loan to any person other than a member.” Contending that the appellants failed to prove the TShs 18 886 000-00 special damages they claimed, Mr *Kayaga* submitted that having been expelled from the respondent society, the appellants no longer qualified for loans for farm inputs. With regard to the refund of contributions by the appellants to the *Jichangie Mwenyewe* fund, counsel for the respondent stated, the *Jichangie Mwenyewe* contributions of the appellants totalled only TShs 619 911-00 as shown in members register, Exhibit D11. Under the circumstances the respondent’s counsel prayed that the appeal be dismissed with costs. It appears to us that there are two issues for determination in this appeal, namely:

(*a*) Whether the appellants were lawfully expelled from Nsanjo Multipurpose Co-operative Society

limited: and

(*b*) Whether the appellants were given an opportunity to defend themselves before being expelled from

Nsanjo Multipurpose Cooperative Society limited.

We are satisfied that the evidence on record supports the trial Judge’s decision that the expulsion of the appellant form the respondent society was lawful. One, the testimony of DW1 Michael Chacha, the respondents secretary at the material time, established that the appellants were expelled consequent to their convening an illegal meeting wherein they enlisted 170 people out of whom genuine members numbered 50 only. We think the appellants lined up fake members with intent to damage the activities of the respondent society because the fake members were the majority and were thence capable of passing a resolution which could have ruined the business of the respondent. We also agree with the respondent’s counsel that the expulsion of the appellants was lawfully executed under the provisions of rules 15 and 16 of the Co-operative Societies Rules, government notice number 408 of 20 September 1991 which states: “15. Membership shall be terminated:

( *a*) In accordance with the by-laws;

( *b*) Upon the member’s death;

( *c*) Upon the member’s ceasing to hold a share or shares and any contributions as required by the by-laws of the society;

( *d*) Upon the member ceasing to be a resident of the area of operation of the society;

( *e*) By expulsion;

( *f*) For failure to participate in the economic activities of the society as required by the by-laws;

( *g*) Upon a member becoming of unsound mind; and

( *h*) By withdrawal.”

It appears to us that the expulsion of the appellants fell under rules 15(*e*) and 16(*c*) of the Co-operative

Societies Rules of 1991. Rule 16(*c*) provides, *inter alia*:

“16(*c*) For any action which may be held by the committee and a general meeting to be dishonest or contrary

to the stated objects of the co-operation.”

Convening an illegal meeting in which more than double the number of attendants were fake members

manifested the appellants intention to wreck the respondent society. Thence we agree with the Learned trial Judge’s decision that the general meeting of the respondent society rightly dismissed the appellants on the 28 December 2001. As Mr *Kayaga*, learned advocate pointed out, the appellants had to abide by the provisions of their society’s by-laws as stipulated under the provisions of section 47(1) of the Co-operative Societies Act number 15 of 1991 which states: “47(1) Every by-law of a registered society shall upon registration be binding upon the society and the members thereof to the same extent as if the by-law was signed by each member of the society and contained as a covenant by each such member to observe the provisions of the by-laws.” By convening an illegal meeting the appellants therefore contravened the provisions of section 47(1) of the Co-operative Societies Act of 1991 and rule 15(*a*) of the Co-operative Societies Rules, government notice number 408 of 1991. We wish to observe that the requirement of the respondent’s members to comply with their societies by-laws is also provided for in by-law 14(*a*) of the respondent society’s by-laws which were duly registered with the Registrar of Co-operative Societies, development division on the 2 August 1993. The material by-laws were appended to the list of authorities filed by the respondent’s counsel. By-law 14(*a*) of the Nsanjo Multipurpose Primary Co-operative Society states in Kiswahili: “14. Haki na wajibu wa wanachama: ( a) K ila mwanachama atawajibika kuzigatia masharti ya chama kuwa ni mkataba wake na chama. Pia chama kitawajibika kuzingatia masharti haya kuwa mkataba kati yake na wanachama kulingana na kifungu 47 cha sheria na 15 ya 1991.” Hence, like the Learned trial Judge, we are of the settled view that the expulsion of the appellants from the respondent society was lawful because the appellants failed to comply with the provisions of section 47(1) of the Co-operative Societies Act of 1991, rules 15(*a*)(*e*) and 16(*c*) of the Co-operative Societies Rules, government notice number 408 of 1991 and by-laws 14(*a*) of the respondent’s 1993 by-laws. The second issue is whether the appellants were expelled without being accorded an opportunity to defend themselves. On this issue, the learned trial Judge had this to say: The plaintiffs say the general meeting was just shouting and jeering at them and ordered them to quit the society. But the defence witness allege there were hearings and the plaintiffs stated their cases. The minutes of the meeting, tendered in court as D2, states there were 3 cases of disciplinary action. One of them was the plaintiffs’ group which he called an illegal meeting to sabotage the society. From the evidence and the minutes of the meeting. I am not convinced even on the balance of probabilities that the plaintiffs were condemned unheard. The authority of the ordinary general meeting to expel members from membership has not been disputed by the plaintiffs. I am not convinced that their expulsion was unlawful. We have no difficulty holding that the decision of the trial Judge is fully supported by the admission by PW1 Nuru Saidi Kafuku who stated: When it came to the agenda of dismissing us I did not contribute. I was confused. It is other members not the plaintiffs who contributed. We were all confused. Those who had no confusion contributed. Those who debated decided that we be dismissed. I have not told this Court that the issue of our dismissal was not debated upon. From the above evidence of PW1, we find no basis for interfering with the finding of the trial Judge that the appellants were given a hearing before they were expelled from the society, which is to say, no principles of natural justice were compromised or breached by the respondent society. For the reasons stated above, we dismiss the appeal with costs.

For the appellants:

*Mr Mtaki*

For the respondent:

*Mr Kayaga*