

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 0233 OF 2022

1. SEREMBA JOSEPH SALONGO

[Administrator of the estate of the late Yohana Kiwanuka]

2. MUWULYA VINCENT LUKYAMUZI :::::::::::::::::::::::::::APPLICANTS

[Administrator of the estate of the late Peter Kaweesi]

VERSUS

SSEMBABULE BALUNZI COOPERATIVE

SOCIETY LTD:::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for review of the decision of Registrar of Cooperative societies brought under Section 98 of the Civil Procedure Act Cap 71, Sections 14 and 33 of the Judicature Act, Order 52 Rules 1 and 3 of the Civil Procedure Rules as amended for the following orders:

- 1. A declaration doth issue that the preliminary decision of the Board of the Uganda Cooperative Alliance Limited delivered on the 31st of August 2022 and communicated to the applicants on the 16th day of September 2022 was irregular and illegal and that the same be set aside.*
- 2. A declaration doth issue that the Board of the Uganda Cooperative Alliance Limited acted illegally and without jurisdiction when it entertained the respondent's purported appeal from the decision of the arbitrator dated 17th March 2022.*

3. *A declaration that the arbitral award issued by the arbitrator dated the 17th day of March 2022 is binding on the parties and that the same be upheld.*
4. *An order that the respondent pays the costs of this application to the applicants.*

The background to the application is set out in the grounds in support and also the affidavit of the 1st applicant and the same is summarized as follows;

1. The applicants are administrators of the estates of Yohana Kiwanuka and Peter Kaweesi who at the time of their demise were shareholders in the respondent society.
2. The applicants lodged a complaint with the Registrar of Cooperative Societies seeking among others an order for the respondent to compensate the applicants the shares of their late fathers at the current market value, a declaration that both Masaka Curia and Bannakaroli Brothers illegally joined the respondent without the written permission of the Registrar and a further prayer for an award of one square mile and four hundred acres out of land comprised in LRV 3865, Folio 19, Ranch 1A, Plot 5 at Kabula.
3. The respondent made her response to the Registrar and both parties were summoned to a meeting where the parties consented to the appointment of the Registrar as an arbitrator in the matter.
4. Arbitration proceedings were conducted and an award was issued. Following the award, the respondent initiated mediation proceedings and the parties executed a memorandum of understanding wherein the respondent undertook to pay the monetary sums in the award

after receipt of the compensation from government and to allocate the applicants a portion of four hundred acres in lieu of the 935 acres under the award. The respondents also signed transfer and mutation forms which they duly handed over to the applicants in order to enable the latter be registered as proprietors of the same.

5. The applicants however then received a letter from the Board of Uganda Cooperative Alliance notifying them that the Board had considered the respondent's appeal and found that there was no arbitral award.
6. The applicants contended that the respondent did not prefer any appeal to the Board of Uganda Cooperative Alliance Ltd, did not serve the same upon the applicants, and therefore the purported preliminary decision of the Board dated 31st August 2022 lacked any foundational basis.

The respondent opposed this application through an affidavit sworn by Rev. Fr. Nsaale Deusdedit, the secretary of the respondent who stated and contended that;

1. They had never appointed the Registrar as an arbitrator as alleged by the applicants and that the process of appointing him as an arbitrator was tainted with illegality and contrary to the spirit of cooperativism.
2. He also stated that the memorandum of understanding signed was rejected by the applicants as well as the line ministry since the two signatories had acted without authority and the same was never registered with the Registrar therefore irrelevant to the award.

3. The respondent did not know the process of appealing being laymen aggrieved by the award. That they sought assistance from the Minister of the cooperatives who referred them to the Board where they lodged their complaint.
4. The respondent also contended that filing this application in Kampala was unreasonable since the respondent's head office was in Masaka, operations in Masaka, the subject matter of the award was in Masaka and the applicants also resided in Masaka. The respondent stated that it was in the interest of justice that the application be dismissed with costs.

The applicants filed an affidavit in rejoinder where the 1st applicant stated that he was aware that the respondent did not dispute the fact that both parties including the respondent's representatives consented to the appointment of the Registrar as an arbitrator. He also contended that the respondent had not appealed to the Board against the decision/award within the period stipulated under the law. The applicants also contended that the decision of the Board of Directors of Uganda Cooperative Alliance was made in Kampala and this application was rightfully filed in this court.

The parties filed written submissions that were duly considered by this court in this ruling.

The following issues were framed for determination by this court:

1. *Whether this application is competently before the court.*
2. *Whether the decision of Uganda Cooperative Alliance dated 31st August 2022 was irregularly or illegally made.*
3. *What remedies are available to the parties?*

The applicant was represented by Sam Ssekyewa & Charles Matovu for the applicants while the respondent was represented by Kakeeto Dennis holding brief for the respondent.

I shall not delve into **issue 1** since the respondent does not dispute it in their affidavit in reply nor in their submissions in reply.

Determination

Whether the decision of Uganda Cooperative Alliance dated 31st August 2022 was irregularly or illegally made.

The applicants contended that the decision of the Board of the Uganda Cooperative Alliance was illegal and irregular. The decision in part stated that there was no arbitration award arising from arbitration proceedings under Section 73 of the Cooperatives Societies Act Cap 112 and the decision of the Registrar is not a decision of an arbitrator appointed by the parties and thus cannot bind the parties as an arbitration award. The Board also declined to consider the merits of the appeal and advised the parties to restart the arbitration process as envisaged under the Act.

The applicant contended that there was no evidence on record showing that the respondents ever preferred an appeal against the award. The respondent on the other hand stated and submitted that she was referred to the Board by the Minister responsible for cooperatives where they put their complaint.

Analysis

According to the Board's decision, the respondent's appeal was filed on 21st June 2022 whereas the arbitral award was delivered on the 17th of March 2022. **Section 73(9) of the Cooperative Societies Act** provides that any party aggrieved by an award made under this section may appeal from it

to the board within two months from the date of the award. The respondent was therefore out of time within which to file an appeal.

This court agrees with the applicants' counsel that the issue of time limit is not a mere technicality that could have been ignored by the Board (see *Uganda Revenue Authority vs Uganda Consolidated Properties Ltd Civil Appeal No. 31 of 2000*). The appeal and its outcome were therefore invalid and illegal on the premise that the time to appeal set by law had lapsed.

Furthermore, the respondent did not produce proof of the appeal before this court. The respondent also failed to prove to the court that the applicants were served with a copy of said appeal if any. It is quite irregular that there is no trace of the appeal on the record of the court.

The applicants' contended that they were never served with a copy of the said appeal and therefore never filed a response thereto which resulted in them being condemned unheard which is against the principles of fair hearing and natural justice.

The Board's decision shows that at the board meeting held on the 31st of August 2022, the appeal by the respondents and the response by the applicants' lawyers were reviewed however there is no record of the same on the file. The respondent does not contest the applicants' contention that they were never served with the appeal or that they were never heard.

At the heart of the principles relating to a fair hearing is a constitutional right to just and fair treatment and **Art 42 of the Constitution of the Republic of Uganda 1995**, provides that,

"Right to just and fair treatment in administrative decisions.

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a

court of law in respect of any administrative decision taken against him or her."

The respondent does show whether it ever preferred an appeal and if so whether the same was made within the time prescribed. The respondent seems to be challenging the arbitral award for illegality and yet they are also committing similar illegalities of filing an appeal out of the prescribed time under the law and condemning the applicant's unheard.

The respondent being aware of the award tried to negotiate about satisfaction of the award and a memorandum of understanding was duly executed by the respondent secretary –Rev Fr. Deusdedit Nsale. They also signed transfer and mutation forms in satisfaction of the award to the applicants to enable them get registered as proprietors.

The Board cannot try to correct the alleged illegality by also doing similar or worse illegality when it entertained an appeal after the time had expired for appeal. The appeal was supposed to be preferred within 2 months. The Board also decided to hear the alleged appeal without any hearing of the applicants which is a graver sin.

In addition the applicant contend that the Board condemned them unheard when they entertained the said appeal out of time and also failed to accord them an opportunity of being heard. The right to be heard or natural justice is a great 'humanizing principle' intended to invest law with fairness and to secure justice or put it negatively to, to prevent miscarriage of justice.

The soul of natural justice is 'fair play in action' which is why it has received worldwide recognition in the democratic world under the rules of fair hearing.

The effect of a decision made in disregard to the principles of Natural Justice is provided in the case of *Ridge v. Baldwin* [1963] 2 W.L.R. 935,

[1964] AC 40, HL where Lord Reid found that a decision given without regard to the principles of natural justice is void.

Fairness in action is now an established test to judge the validity of the actions of the decision-makers of the state or the State instrumentality. Fairness is a complimentary to the principles of natural justice which all public bodies are bound to observe. It is fundamental principle of good administration that there should never be unilateral justice which is actually unilateral injustice when the other party is not heard.

The Board in this case breached the applicants' fundamental right to be heard and the right to be treated justly and fairly which resulted in the decision being rendered void.

On that premise, the application is granted.

The following orders are hereby granted;

- 1. The preliminary decision of the Board of the Uganda Cooperative Alliance Limited delivered on the 31st of August 2022 and communicated to the applicants on the 16th day of September 2022 was irregular and illegal and the same is set aside.*
- 2. The arbitral award issued by the arbitrator dated the 17th day of March 2022 is binding on the parties and the same is upheld.*
- 3. Each party shall bear its own costs.*

I so order

SSEKAANA MUSA

JUDGE

7th July 2023