



## THE PARADOX OF DISPUTE SETTLEMENT PROCEDURE FOR CO-OPERATIVE SOCIETIES IN TANZANIA: A CALL FOR A REFORM

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### Abstract

*Dispute settlement procedure is an important aspect in the development of co-operative societies. It is as important as part of legal infrastructure that requires not only a good law but also a good institutional setup. Although the Tanzania co-operative law provides for both alternative dispute resolution and court procedure, the qualification imposed on co-operative societies to access courts of law is a bottleneck towards justice delivery and access to justice. It is an irrefutable submission of this study that obstacles in accessing justice through a court of law, has negatively impacted the theory of equality before the law against co-operative societies. A call for reform is made in this study to enable co-operative societies to seek justice through both alternative dispute resolution and court procedure.*

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### I. Introduction

Co-operative societies are important instruments for the economic empowerment of Tanzanian farmers, livestock keepers, traders, manufacturers, miners and other categories of individuals who would otherwise be unable to compete individually in the market (The United Republic of Tanzania, 2004). These are economic activities that can lead to industrial development. Members of co-operative societies stand to benefit as well as communities engaged in co-operative entities. This type of development can only be accelerated in presence of good infrastructures that include legal infrastructure particularly inclusive dispute settlement procedures amongst others.

Dispute settlement procedure denotes access to justice which is an important feature of the doctrine of rule of law and the theory of equality before the law. Borrowing knowledge of the United Nations 2030 Agenda for Sustainable Development Goals (SDGs), SDG 16 provides for peace, justice and strong institutions (United Nations, 2015). SDG 16 is designed to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels (ibid). In addition, it has targeted to not only promote the rule of law and ensure equal access to justice but also to develop effective, accountable and transparent institutions (ibid).

The voluntary national review of 2019 indicated that Tanzania integrated and implemented SDGs through its National Five-Year Development Plan 2016/17 – 2020/21 (The United Republic of Tanzania, 2019a). It is further reported that Tanzania is doing reasonably well in implementing eight SDGs including SDG 16 (The United Republic of Tanzania, 2019b). To the contrary, Section 121 of the Co-operative Societies Act, No. 6 of 2013 provides that, no court of law shall have any jurisdiction concerning any matter that is connected with the dissolution of co-operative societies. Also, Regulation 83 of the Co-operative Societies Regulation G.N. No. 272 of 2015; and Regulation 130 of the Savings and Credit Co-operative Societies Regulation, G.N. No. 115 of 2016 provide that co-operative societies are to channel their disputes originating from the co-operative business to alternative dispute resolution placing the minister for co-operatives as an organ with a final decision. Matters of general nature, however, such as the enforcement of Registrar of Societies orders, and also the prosecution of offences are referred to courts of law. For example, Section 94 (2) of the Co-operative Societies Act, No. 6 of 2013, provides that, Registrar of Societies may lodge a certified copy of the certificate in a Resident Magistrates' Court or District Magistrates' Court as the case may be, and upon

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so lodged that certificate shall be deemed to be a decree passed by such court. The decree will be executed for the payment by the person named in the certificate to the Registrar of Societies. Furthermore, Section 126 – Section 130 of the Co-operative Societies Act, No. 6 of 2013, provides that, courts of law have jurisdiction to adjudicate offences provided for under part XIV of the Co-operative Societies Act. This qualification is the paradox to be avoided as it limits co-operative societies to access justice through a court procedure in matters arising from the co-operative business. Using SDG 16 as a point of reference, the argument put forward in this study is that limiting access to justice against co-operative societies is detrimental to sustainable development. Co-operative societies are entities that require a supportive environment to develop sustainably for the benefit of their members and communities involved (Henry, 2002; Munkner, 2014). Building sustainable co-operative societies is also a vision of the Government of Tanzania as it is stipulated in the Co-operative Development Policy (The United Republic of Tanzania, 2002). This study, therefore, examines the current dispute settlement procedure for co-operative societies in Tanzania, in an attempt to identify and recommend an effective procedure for solving matters arising out of the business of co-operative societies.

## **2. Conceptual and Theoretical Framework**

This part examines concepts of co-operative societies and dispute settlement procedures. It also examines the theory of equality before the law that guided this study.

### **2.1 Co-operative Societies**

Co-operative societies are defined based on various sources. United Nations Guidelines defines co-operative societies as; *a form of organisation of associations and enterprises whereby citizens themselves rely on self-help and their responsibility to meet goals that include not only economic but social and environmental objectives, such as overcoming poverty, securing productive employment and encouraging social integration (UN Guidelines, 2001)*. International Co-operative Alliance (ICA) defines co-operative societies as; *People-centred enterprises are owned, controlled and run by and for their members to realise their common economic, social, and cultural needs and aspirations. Co-operative societies bring people together in a democratic and equal way. Whether the members are the customers, employees, users or residents, co-operative societies are democratically managed by the 'one member, one vote' rule. Members share equal voting rights regardless of the amount of capital they put into the enterprise (ICA, 1995)*.

International Labour Organisation (ILO) defines a co-operative society as an autonomous association of individuals who voluntarily came together to form a union for their common economic, social and cultural needs through jointly owned and democratically controlled enterprises (ILO Recommendation No. 193). Literature defines co-operative societies as the essential union of persons that aims at providing service to members on sound economical lines that can avoid loss (Katende, 1976; Urio, 2019).

Tanzania law under Section 2 of the Co-operative Societies Act, No. 6 of 2013, defines co-operative societies as societies registered under the Co-operative Societies Act. That includes primary societies, secondary societies, apex, and the federation. The foregoing definitions have a well-stipulated concept of co-operative societies. Therefore, co-operative societies can generally be understood to mean economic entities that are formed by individuals, associations, or groups of associations for common good. The formation of co-operative societies is expected to lead to the economic welfare of communities. That being the case, Section 27 of the Co-operative Societies Act, No. 6 of 2013 permits the formation of co-operative societies in multiple sectors such as in agriculture; finance; consumer protection; industries; livestock; fisheries; forestry; producers; mining; and any other sector as it is shown in Table I

**Table 1: Types of Co-operatives in Tanzania**

| S/N | Types of Co-operatives                           | Total Number |
|-----|--|--------------|
| 1   | Agricultural and Marketing Co-operatives (AMCOS) | 3403         |
| 2   | Union Co-operatives                              | 42           |
| 3   | Beekeepers Co-operatives                         | 57           |
| 4   | Co-operative Banks                               | 2            |
| 5   | Consumer Co-operatives                           | 113          |
| 6   | Fisheries Co-operatives                          | 86           |
| 7   | Housing Co-operatives                            | 27           |
| 8   | Industrial Co-operatives                         | 120          |
| 9   | Irrigation Co-operatives                         | 80           |
| 10  | Project Co-operatives                            | 33           |
| 11  | Livestock Co-operatives                          | 214          |
| 12  | Mining Co-operatives                             | 202          |
| 13  | Mixture Co-operatives                            | 53           |
| 14  | Other Co-operatives                              | 314          |
| 15  | Service Co-operatives                            | 179          |
| 16  | Transport Co-operatives                          | 30           |
| 17  | Federation Co-operatives                         | 2            |
| 18  | SACCOS   | 5640         |

Source: The United Republic of Tanzania (2017)

## 2.2 Dispute Settlement Procedure

Ordinarily, the dispute settlement procedure is categorised into two, namely; alternative dispute resolution, and litigation or court procedure (Mashamba, 2015). Alternative dispute resolution is an amicable dispute procedure that takes effect outside the court of law in different forms such as mediation, negotiation, reconciliation, and arbitration (ibid). Litigation or court procedure involves settling conflict between adverse parties in a court of law (Sakar and Manohar, 2010). Some scholars, however, categorise dispute settlement procedures into three namely; alternative dispute resolution, litigation, and arbitration (Eyongndi, 2020). Nonetheless, alternative dispute resolution (arbitration included) is arguably preferred due to various reasons including that it is less expensive; a certain level of confidentiality is guaranteed; it can be finalised at speed, and it is settled amicably (ibid). Co-operative law in Tanzania, with some qualifications, provides for both categories (alternative dispute resolution, and litigation or court procedure) as dispute settlement procedure for co-operative societies as per Section 126 – Section 130 of the Co-operative Societies Act, No. 6 of 2013; Section 53 (1) and (3) of the Microfinance Act, No. 10 of 2018; Regulation 83 of the Co-operative Societies Regulation, G.N. No. 272 of 2015; and Regulation 130 (1) of the Savings and Credit Co-operative Societies Regulations, G.N. No. 115 of 2016. Such a qualification as it is examined in the findings is what motivated this study since dispute settlement procedure is an important aspect for the development of co-operative societies.

## 2.3 Theory of Equality before the Law

The theory of equality before the law requires equal treatment of all persons before the law. It demands equal subjection of all persons to the ordinary law of the land administered by the ordinary courts of law or other state agencies. This theory is relevant to this study as the latter ventured on examining the current dispute settlement procedure for co-operative societies in Tanzania. As it is submitted in item 2.2 of this study that the law establishes qualification in access to dispute settlement procedure, the guidance of this theory is important in determining whether or not such qualification is merited. The importance is saluted given the fact that dispute settlement procedure is crucial for the development of co-operative societies for the benefit of all of their members and communities involved. Article 13 of the Constitution of the United Republic of Tanzania, 1977 incorporates this theory as it provides that all persons are equal before the law. And that, rights, duties, and interests of persons and communities shall be protected and determined by courts of law or other state agencies established by or under the law. The Constitution further provides under Article 107A (1) that, courts of law shall be organs with finality in the dispensation of justice in Tanzania. Thus, the theory of equality before the law is an important point of reference in the examination of dispute settlement procedures for co-operative societies in Tanzania.

### 3.0 Methodology

This is a qualitative doctrinal legal study. Data presented were collected through documentary review. The Author reviewed: legislation, cases, international instruments, and government policies as primary sources of data. Also, the author reviewed publications as secondary sources of data. The study applied an exploratory research design in collecting both primary and secondary data. Data collected were analysed qualitatively in thematic-content-analysis sense and followed traditions of legal reasoning. The study is guided by the theory of equality before the law.

### 4.0 Findings

This part presents and discusses findings resulting from examination of the current dispute settlement procedure for co-operative societies in Tanzania. In doing so, this part discusses co-operative societies' matters that are resolved through alternative dispute resolution; co-operative societies' matters that are resolved through court procedure (process); and an approach the judiciary of Tanzania has taken in handling cases originating from co-operative societies.

#### 4.1 Co-operative Matters for an Alternative Dispute Resolution

The law, as per Regulation 83 of the Co-operative Societies Regulations, G.N. No. 272 of 2015; Regulation 130 (1) of the Savings and Credit Co-operative Societies Regulations, G.N. No. 115 of 2016; and Regulation 77 of the Microfinance (Savings and Credit Co-operative Societies) Regulations, G.N. No. 675 of 2019, provides for alternative dispute resolution for co-operative cases. The law under Section 121 of the Co-operative Societies Act, No. 6 of 2013, categorically states that matters connected with dissolution of co-operative societies cannot be referred to a court of law. Instead, dissolution of co-operative societies is dealt with through alternative dispute resolution. Further, the law under Regulation 83 of the Co-operative Societies Regulations, G.N. No. 272 of 2015; and Regulation 130 (1) of the Savings and Credit Co-operative Societies Regulations, G.N. No. 115 of 2016 states that, any disputes concerning the business of a co-operative society between members of the society or persons claiming through them, or between members or persons so claiming and the board or any officer, or between co-operative societies, shall be dealt with amicably. Through this procedure, cases are referred to negotiation or reconciliation. If no solution is obtained, cases are referred to the Registrar of Societies for arbitration. If no solution is obtained, cases are referred to the Minister responsible for co-operative societies whose decision is final. Although alternative dispute resolution has advantages to parties involved in dispute that makes it more preferred than a court procedure (Urrio, 2003; Henry, 2012; Mukama, 2019), exclusion of courts of law should not be supported. *Rationale* of alternative dispute resolution for disputes concerning the business of co-operative societies is well put forward in the case of *Daudi Gerald Kilinda v. Chama cha Msingi Kalemela*, Civil Application No. 5 of 2019, High Court of Tanzania at Tabora (Unreported). In this case the court demonstrated that;

*The rationale behind the requirement for the business of co-operative societies to be settled through the machinery provided by the Co-operative Societies Act and not through ordinary courts is to encourage harmony and peace within co-operative societies and ultimately let the business thrive. This long-standing requirement is meant to avoid paralysing business of co-operative societies through prolonged and protracted litigation that will end up dividing co-operative societies and their members...in this view by the principle that dispute relating to co-operative societies should be left to those who are competent to resolve them that is the machinery provided under the law governing co-operative societies and as much as possible through amicable settlement.*

Certainly, alternative dispute resolution is beneficial in disposing matters amicably. However, this institutional setup for dispute settlement that excludes a court of law despite the fact that courts of law, are institutions that are given finality power in dispensation of justice, is highly opposed. Because, it is not only contradicting Article 107A (1) of the Constitution of the United Republic of Tanzania, 1977 but also interferes with the doctrine of rule of law that demands equality before the law that, all persons (natural or legal) to have an access to justice and to be treated equally as principles of legality require. It is, therefore, not surprising to assert that the *status quo* is the paradox of the current dispute settlement procedure for co-operative societies in Tanzania.

## 4.2 Co-operative Matters for Court Process

Despite limiting co-operative societies' access to courts of law, the law lays down circumstances under which matters originating from co-operative societies may find its way to courts of law. However, these circumstances lead to matters that are procedural, or enforcement, or general in nature. The circumstances are as follows;

First, as a result of inquiry, inspection, or surcharge, the Registrar of Societies may by a certificate make an award apportioning the costs, or such part of the costs as may think right between co-operative societies, members or creditors that demanded an inquiry or inspection and the officers or former officers of the co-operative society pursuant to Section 94 (1) and Section 95 (3) and (4) of the Co-operative Societies Act, No. 6 of 2013. The Registrar of Societies may lodge a certified copy of the certificate in a Resident Magistrates' Court or District Magistrates' Court as the case may be, and upon so lodged that certificate shall be deemed to be a decree passed by such court. The decree will be executed for the payment by the person named in the certificate to the Registrar of Societies pursuant to Section 94 (2) of the Co-operative Societies Act, No. 6 of 2013.

Second, a competent court would be called upon to entertain matters brought to by the liquidator of a co-operative society pursuant to Section 104 (1) (a) of the Co-operative Societies Act, No. 6 of 2013. The law does not stipulate further what kind of matters can be brought to court of law by the liquidator. This is also a contradiction especially because the law under Section 121 of the Co-operative Societies Act, No. 6 of 2013 provides that matters connected to dissolution of co-operatives societies cannot be brought to court. Further, when the Registrar of Societies have ordered payment of money or delivery of property as a result of assessing damages, such money or property can be recovered on production of such order to the District Magistrates' Court or Resident Magistrates' Court as the case may be, having jurisdiction over the person from whom the money or property is claimable in the same manner as if such order was the decree of that court as per Section 109 (3) of the Co-operative Societies Act, No. 6 of 2013. Third, any Resident Magistrates' Court may order an arrest of the promoter of a co-operative society. The court may do so on application of the Registrar of Societies or liquidator and on proof of probable cause that the promoter is about to abscond as per Section 110 (1) of the Co-operative Societies Act, No. 6 of 2013.

Fourth, the competent court may also be called upon to entertain matters where any movable property of a co-operative society is taken in execution and, before the sale thereof or the completion of the execution by receipt of recovery of the full amount of the levy, notice is served in execution upon the court which issued the execution that the registration of the co-operative society has been cancelled. The court thereafter shall require the bailiff to deliver the movable property including any money seized or received in part satisfaction of the execution to the liquidator and the bailiff shall forth-with comply with such requirement as per Section 119 (1) and (2) of the Co-operative Societies Act, No. 6 of 2013. Fifth, courts of law have jurisdiction to adjudicate offences provided for under part XIV of the Co-operative Societies Act. This part, provides for offences that are punishable by fines, or imprisonment, or both. For example, Section 126 (1) of the Co-operative Act, No. 6 of 2013 provides that, a co-operative society or an officer or a member who will fully make a false return or furnish false information, commits an offence and upon conviction is subjected to punishment. The punishment is provided for in the following manner: (i) if it is a co-operative society, is liable to pay a fine of not less than TZS 5,000,000/=; (ii) but if a convicted offender is an individual, punishment is imprisonment of not less than two years, or fine of not less than TZS 5,000,000/=, or both. Furthermore, Section 126 (2) of the Co-operative Society Act, No. 6 of 2013 provides that, in addition to fine or to both fine and imprisonment, the court of law may further order compensation payable by the offender or confiscation of offender's property to compensate for any loss occasioned.

Sixth, the High Court of Tanzania may be called upon to entertain an appeal from an aggrieved co-operative society against an order of compounding of offences given by the Bank of Tanzania or the Tanzania Co-operative Development Commission as the case may be as per Section 53 (1) and (3) of the Microfinance Act, No. 10 of 2018. It is important to note, therefore, that co-operative cases that do not fit circumstances described at this part have a distinct way of dispute resolution (alternative dispute resolution) to which the Minister responsible for co-operative societies has the final decision. Only fifth and sixth presented circumstances to court procedure are befitting substantive justice, the rest are befitting procedural justice. That is to say a large part of substantive justice for co-operative societies is excluded to alternative dispute resolution only. For development of co-operative societies that are sustainable for members, communities, and economic growth of Tanzania, dispute settlement procedure needs to be inclusive.

Inclusivity in this aspect is important as it places justice delivery to both administrative officers (Co-operative Officers, Registrar of Societies, and Minister for Co-operative Societies) and legal trained personnel (judiciary) to solve disputes. Although administrative functions can be seen to be far different from judicial functions yet the duty to deliver justice is one of the fundamentals of good administration. While it is true that certain matters such as criminal matters of grave nature cannot be referred to an alternative dispute resolution and therefore a court procedure is the only one preferred, co-operative cases (not of criminal nature) should not be matters of either alternative dispute resolution or court procedure. But matters that can be dealt with in a well-established dispute settlement procedure that embraces both alternative dispute resolution and court procedure. In the case of *M. P. Industries v. Union of India* AIR [1966] SC 671, the court stated that;

*There is an essential distinction between a court of law and an administrative tribunal. A judge is trained to look at things objectively, but an executive officer generally looks at things from the standpoint of policy and expediency. The habit of an executive officer so formed cannot be expected to change from function to function or from act to act. So, it is essential that some restrictions shall be imposed on the tribunal in the matter of passing orders affecting the rights of parties.*

Although the court in this case was not dealing with co-operative matters, what is adduced is relevant in examination of the current dispute settlement procedure for co-operative societies in Tanzania. Thus, inclusive procedure is advocated in this study so that co-operative societies can access alternative dispute resolution but if fails them; they should be able to access a court of law by way of appeal or further appeal. It is important at this point to acknowledge that; Tanzania courts of law have made an attempt to create an inclusive dispute settlement procedure for co-operative societies as discussed in item 4.3.1 of this study.

### **4.3 Judicial Approach in Matters Originating from Co-operative Societies**

Submission in item 4.1 of this study has revealed that the law imposes qualification that limits co-operative societies to access courts of law. Operative terms in such qualification are (i) any disputes concerning the business of a co-operative society, and (ii) parties to a case must be (a) between members of the co-operative society or persons claiming through them, or (b) between members or persons so claiming and the board or any officer of the co-operative society, or (c) between co-operative societies. Definition of dispute concerning the business of a co-operative society is not availed by the law. Thus, it is left to be a matter of interpretation. Nonetheless, an important component in this qualification is that parties to any dispute concerning business of a co-operative society must be connected with the co-operative society involved in a case. This sub-part therefore presents and discusses an approach taken by the judiciary of Tanzania in handling matters originating from co-operative societies.

#### **4.3.1 Matters concerning the business of co-operative societies**

As it is submitted in item 4.3 of this study, the law does not define disputes concerning the business of a co-operative society. Instead, what amounts to dispute concerning the business of a co-operative society is left to interpretation. Several judicial decisions have shown that matters originating from co-operative societies, if lodged to courts of law, can be struck out for want of jurisdiction. That could be the case if the judiciary is of the opinion that the dispute brought before it concerns the business of a co-operative society to which it should refer to an alternative dispute resolution. Reference can be made to the case of *Sabas Mzee Massawe v. Anael M. Pallangyo*, Civil Case No. 16 of 2001, and High Court of Tanzania at Arusha (Unreported). In this case, the court struck out the case filed by the liquidator against the chairperson of the board of a co-operative society for want of jurisdiction. This was also a reality in the case of *Kibongoto Wanri Co-operative Society Ltd and Others v. Koboko Rural Co-operative Society Ltd*, Misc. Civil Application No. 137 of 2002, and High Court of Tanzania at Moshi (Unreported). In this case, the court demonstrated that it has no jurisdiction to hear co-operative matters of the case to which property of a co-operative society is a subject matter of the case. However, the court of law took a different approach in the case of *Evatha Michael Masha v. Shalom SACCOS*, Civil Appeal No. 40 of 2016, and High Court of Tanzania at Arusha (Unreported). In this case, the court made an attempt to create an inclusive dispute settlement procedure for co-operative societies. That matters concerning the business of co-operative society can still be referred to a court of law if settlement through alternative dispute resolution proved failure. In that perspective, the court demonstrated that, internal mechanism for dispute settlement relating to the business of co-operative societies has to be exhausted first. It is only the Registrar who can refer the matter to court. This case establishes a paradigm that jurisdiction of courts of law is only ousted when alternative dispute resolution is not exhausted. This trend was also advanced in the case of *Daudi Gerald Kilinda v. Chama cha Msingi Kalemela*, Civil Application No. 5 of 2019, High Court of Tanzania at Tabora (Unreported).

This was an appeal case originating from Urambo Primary Court and first appeal from Urambo District Court. At the primary court, the case was entertained and decided in favour of the appellant who is a member of the respondent. Aggrieved, the respondent appealed the decision to Urambo District Court. In the district court, the previous decision was quashed. Reason adduced was that, the appellant ought to have referred the dispute to the office of Registrar of Societies before opting for litigation. In quashing the primary court's decision, the district court stated that the matter was filed prematurely and, therefore, it ordered the same to be referred to the Registrar of Societies to be settled amicably. The appellant was aggrieved hence this appeal before the High Court of Tanzania at Tabora. In the high court the appellant argued that the district court erred in law and in fact for interfering with the finding of facts of the trial court which acted in a right principle. The High Court of Tanzania upheld the decision of Urambo District Court stating that:

*It is conspicuously clear that the procedure for settlement of disputes in matters that involves the business of a co-operative society is the exclusive jurisdiction of the Registrar of Co-operative Societies and therefore ordinary courts of law are enjoined not to entertain matters of this nature unless parties have exhausted the available remedies provided under the Co-operative Societies Act.[this court] is fully subscribe to the position taken by the first appellate court that the trial court erred in law and fact by entertaining a dispute which had to be referred to the registrar as required by law...the appeal is devoid of merit; therefore, it is dismissed in its entirety.*

This approach sets out a precedent that the current dispute settlement procedure for co-operative societies is inclusive. That, courts of law can litigate any dispute concerning the business of a co-operative society if they had first referred the dispute to alternative dispute resolution and failed. The approach was also taken in the case of *Arusha Soko Kuu SACCOS Ltd and Magwembe 2011 Co. Ltd v. Wilbard Urio*, Civil Appeal No. 6 of 2019, High Court of Tanzania at Arusha (Unreported). This was an appeal case against decision of Arusha Resident Magistrates' Court at Arusha to which the decision was in favour of the respondent. Before, the respondent approached the resident magistrates' court, he reported the dispute to the Registrar of Co-operative Societies at Arusha to which the appellants were ordered to surrender back the goods taken from respondent's shop and confiscated shares for the purpose of covering for loan for which the respondent guaranteed whose borrower is now a deceased. The appellants did not comply with the order of the Registrar and hence the respondent instituted the case before Arusha Resident Magistrates' Court at Arusha. The appellants, aggrieved with the decision of the trial court, appealed to the High Court. One of the grounds of appeal was that the trial court had no requisite jurisdiction to decide over the case. The High Court dismissed this ground basing on the fact that, the respondent exhausted remedies availed to him by referring the case to the Registrar of Societies but parties showed no co-operation to reconcile. The High Court then continued to hear the appeal on merit. Unquestionably, this development gives an advanced and commendable position towards embracing inclusive dispute settlement procedure for co-operative societies in Tanzania. Regrettably however, it has not removed the paradox lingering on the same for two reasons which are; (i) it has not removed the Minister's power as an organ with final decision on dispute concerning the business of a co-operative society from statutory books; and (ii) the doctrine of precedent and *stare decisis* does not impose an obligation to the High Court to be bound by its own decision. That explains differences in decisions of the High Court cited herein pertaining to the jurisdiction of the court on matters concerning the business of a co-operative society.

#### **4.3.2 Matters none of the business of co-operative societies**

It is also important to point out that, though a case may originate from co-operative societies, still the court of law can have jurisdiction over the case if the court is of the opinion that the case is none of the business of a co-operative society. For example, in the case *Gerald A. Nkya v. Obeid I. Munisi and Six Others*, Civil Case No. 29 of 1997, High Court of Tanzania at Moshi (Unreported), the plaintiff sued for defamation alleged to have been committed by the defendants. Both plaintiff and defendants were members of a co-operative society. The court's jurisdiction was questioned as the defendants argued that the court has no jurisdiction to adjudicate on matters concerning co-operative society. But the court established that defamation was not a dispute within the meaning of the Co-operative Societies Act. The court's jurisdiction will always be questioned because it is fundamental in dispensation of justice. It is so fundamental to the extent that lack of jurisdiction nullifies decisions that were made by an organ that had no jurisdiction to preside over the matter. In the case of *R v. Samuel Kiptiny Koskei* [1982] TLR 324, the court demonstrated the notion that the requirement of jurisdiction is fundamental and not merely technical. This is because

any case tried by the court which lacks jurisdiction to do so, the proceedings or judgement thereof will be declared null and void by higher courts.

#### **4.3.3 Matters registered as cases of a different branch of law**

The judiciary has also been able to entertain cases, though connected with co-operative societies, are registered as cases of a different branch of law. For example, the case of *Eco Bank Tanzania Ltd v. Gogogo Savings and Credit Co-operative Society and Others*, Commercial Case No. 134 of 2018, High Court Commercial Division at Dar es Salaam (Unreported) was registered as a commercial case of a contractual nature. The court in this case ruled in favour of the plaintiff and thus defendants were ordered to promptly pay TZS 252,404,774.8/= (outstanding credit facility) and TZS 10,000,000/= damages consequent to dishonesty when transacting in credit with the plaintiff. This was also the case in the case of *Godson S. Munuo v. Umoja Savings and Credit Co-operative Society Ltd*, Civil Appeal No. 6 of 2020, High Court of Tanzania at Moshi (Unreported). This was an appeal case brought from a district court of Siha. In a trial case, *Godson S. Munuo* (the defendant) was ordered to pay TZS 8,403,300/= for breach of contract to which appeal was preferred.

The appeal court found the appeal to have no merit and therefore dismissed. Another case that can better add to this scenario is the case of *Itika Ketta Mwakisambe v. Mara Co-operative Union (1984) Ltd*, [1993] TLR 206. The appellant was summarily dismissed from employment by the respondent. The case before the High Court was struck out for want of jurisdiction. Hence this appeal before the Court of Appeal. In the appeal case the appellant raised the issue of constitutionality of Section 28 of the Security of Employment Act as it violates his basic right under Article 30 of the Constitution. Thus, the appellant alleged violation of human rights for the first time. The Court of Appeal of Tanzania therefore, ordered the High Court of Tanzania to entertain a dispute between parties which was previously struck out for want of jurisdiction. It was sent back because the cause of action changed from summary dismissal to violation of human rights for which the High Court has a jurisdiction as the court of first instance.

### **5.0 Conclusion and Recommendations**

This part concludes and recommends an effective dispute settlement procedure for co-operative societies in Tanzania.

#### **5.1 Conclusion**

It is submitted in this study that the current dispute settlement procedure for co-operative societies in Tanzania is encroached with the paradox that has no place in the current movement of ensuring a good environment for development, prosperity, and sustainability of co-operative societies. Findings have shown that, though the court of law has attempted to create an inclusive dispute settlement procedure, the paradox has not been removed. Although the attempt is commendable, it should be reflected in statutory books to have a clear set of dispute settlement mechanisms for co-operative societies in Tanzania.

#### **5.2 Recommendations**

Based on the findings, this study recommends an amendment of the law to create an inclusive dispute settlement procedure. The law shall explicitly state that when an alternative dispute resolution does not bring a dispute concerning the business of a co-operative society to an end, court procedure can be sought at the option of parties. That being the case, not only the theory of equality before the law is positively impacted but also an inclusive dispute settlement procedure is established that can contribute to the efforts already made for sustainable development of co-operative societies in Tanzania. Co-operative societies which are sustainable have a great chance to: provide sufficient services to their members, invest in various economic activities that may lead to industrial development; and contribute to social and economic welfare of communities. The proposed dispute settlement procedure for disputes concerning the business of a co-operative society is as follows; In the first instance, a dispute to be settled by way of negotiation, reconciliation or mediation depends on the choice of parties in dispute. In the mediation process, the mediator shall be co-operative officers (conversant with co-operative law) in regional administration and local government jurisdictional areas where parties are located. In the second instance, a dispute is to be referred to the Registrar of Societies for arbitration should the first instance method fail to resolve the conflict. In the third instance, the dispute to be referred to a special tribunal established purposely to resolve disputes concerning the business of co-operative societies, by way of appeal, should the arbitration fail. In the fourth instance, a dispute to be referred to the High Court of Tanzania by way of appeal against the decision of a special tribunal, should the first appeal fail to resolve the conflict. The High Court of Tanzania shall be the last impartial body to resolve the dispute. No further appeal shall be allowed, unless on a question of law of which the aggrieved party will have an opportunity



to appeal against a decision of the High Court on point of law, to the Court of Appeal of Tanzania. The proposed design of dispute settlement procedure will enable co-operative societies to not only take full control in how to go about dispute settlement but also an opportunity to access the court of law. Time-slot may also be reduced to a few days compared to the current design whereby time spent for dispute settlement is many days and it affects co-operative societies in provision of their services to members. Thus, the Government of the United Republic of Tanzania through the Ministry of Justice and Constitutional Affairs, the Ministry of Agriculture, the Ministry of Finance and Planning (in case of financial co-operative societies), the National Assembly, and the Attorney General is recommended to ensure that, inclusive dispute settlement procedure is established. Good dispute settlement procedures influence good performance of co-operative societies that can benefit members and improve the welfare of communities through economic activities that may include industrial investments.

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