

A since the appellant is also to blame for instituting civil case No. 46 of 1986 in a wrong forum, he is not entitled to recover the full costs of this case. However, bearing in mind the appellant's strenuous efforts to appeal against the preliminary ruling of the court below, efforts which would
 B have undoubtedly saved costs if not resisted by the respondents, we think it is just that the appellant be entitled to be paid by the respondent $\frac{3}{4}$ of the costs of the case both in this court and the court below.

C The appeal is hereby allowed with costs on the terms stated above. We order accordingly.

D **CONRAD BEREGE v. REGISTRAR OF COOPERATIVE SOCIETIES AND THE ATTORNEY GENERAL**

E HIGH COURT OF TANZANIA
 AT DAR ES SALAAM
 (Lugakingira, J.)

F MISCELLANEOUS CIVIL CAUSE No. 35 OF 1990

G *Civil Practice and Procedure – Proceedings against a corporate body – Court action against the decision of a meeting of an organ of a cooperative union – Whether proceedings may be instituted against that particular organ*

H *Civil Practice and Procedure – Non-joinder of parties – Whether an essential party not joined to an action may be joined at the stage of formulating the judgment – Order I rule 10(2) of the Civil Procedure Code 1966*

I *Administrative Law – Jurisdiction of an administrative body – Requirement of quorum – Special General Meeting of Cooperative Union transacting business and making decision without having the prescribed quorum – Whether the meeting had jurisdiction to make valid decisions*

A *Natural Justice – Right to be heard – Committee served with notice of intention to dissolve it fails to deliver its defence to the Registrar as directed – Whether that failure amounts to forfeiture of the Committee's right to be heard – Section 106 of the Cooperative Societies Act 1982*

B *Administrative Law – Prerogative Remedies – Certiorari – Whether certiorari is available automatically upon proof of grounds for judicial review – Factors to be considered by court in deciding to grant certiorari or not*

C *Administrative Law – Prerogative Remedies – Certiorari – Practical effect of certiorari – Order of certiorari sought by a party no longer capable of benefiting from it – Whether the court may grant certiorari*

D *Administrative Law – Prerogative Remedies – Certiorari – Practical effect of certiorari – Order of certiorari protecting abstract legality without any tangible benefits – Order of certiorari likely to lead to prolonged dispute and endless litigation – Whether the order will serve public interest and the court should grant it*

F The applicant was the chairman of the Managing Committee of the Morogoro Region Cooperative Union (1984) Ltd (hereinafter "the Union.") In October 1989 the 1st respondent suspended the committee and appointed a caretaker committee in its place. This decision was *ultra vires* and was quashed by the High Court in March 1990, following a successful application by the applicant, who then resumed office along with his committee. Almost immediately, however, the 1st respondent served them with a notice to dissolve the committee, and required them to show cause why they should not be dissolved by submitting their defence in writing to him, the 1st respondent, within 7 days; the notice contained a list of allegations against the committee.

H The committee did not submit their defence to the 1st respondent within the 7 days given but instead wrote a letter indicating that they would submit their defence at the special general meeting of the Union summoned by the 1st respondent specifically to consider the accusations against them. The applicant and his committee turned up at the special general meeting and their written defence was delivered to the chairperson of the meeting. Their written

A defence was, however, not considered because the special general meeting was advised by the 1st respondent that since the defence had not been delivered to him, it would be contrary to law and procedure for it to be delivered at the meeting. A suggestion to allow the committee to defend themselves orally at the meeting was rejected. The meeting then voted to dissolve the committee, and instituted a new caretaker committee.

The applicant then brought this application for certiorari, on the grounds of want of jurisdiction and breach of natural justice. Among matters that transpired at the commencement of the hearing there were arguments regarding whether the Registrar of Cooperative Societies and the Attorney General, the 1st and 2nd respondents respectively, were properly joined as the respondents, and whether the special general meeting of the Union was not the one that should have been cited as the respondent.

Held:

- E (i) The role of the 1st respondent at the special general meeting that dissolved the applicant's committee was so pervasive and critical that it was decisive in the deliberations and decisions of that meeting; there was, therefore, justification to join him, and the Attorney General along with him, as respondents;
- F (ii) The special general meeting was, just like the managing committee, an organ of the Union, a body corporate with power to institute and defend legal proceedings; the decision of that meeting was the decision of the Union and it is the Union, therefore, that should have been joined as a party to the proceedings;
- G (iii) As the law, order I rule 10(2) of the Civil Procedure Code 1966, allows the court at any stage of the proceedings to add as a party a person who ought to have been joined but was not joined, it is open to the court to add the Union as the 3rd respondent at the stage of formulating the judgment;
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- (iv) As the special general meeting of the Union did not realize the quorum prescribed by the Union by-laws, the said meeting had no jurisdiction to transact business and its decision to dissolve the applicant's committee was void; A
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- (v) As there was no provision under any law requiring the appellant's committee to deliver its defence or objections to the 1st respondent, there was nothing improper for the committee to deliver its defence to the special general meeting itself; C
- (vi) In the circumstances of this case, in which the relationship between the appellant's committee and the 1st respondent was clearly hostile and confrontational, and the committee informed the 1st respondent of their intention to present their defence not to him but to the special general meeting, and they actually delivered it to the meeting's chairperson, and also presented themselves at the said meeting ready to defend themselves, there can be no justification to say that they had no intention to defend themselves simply because they did not deliver their written defence to the 1st respondent; therefore, the proceedings of the special general meeting were also void for breach of natural justice; D
- E
- F
- (vii) Although a decision made without jurisdiction or in breach of natural justice is void, it does not always follow that certiorari shall issue to quash it; in deciding whether to issue certiorari or not, the court will consider a number of factors including the conduct of the applicant, the possibility of implementing the decision, whether any useful purpose will be served by it, and even the practical consequences of the order; G
- H
- (viii) The applicant, while the case was pending in court, lost the qualification for him to continue holding office as chairman of the Union's managing committee; if certiorari is granted he cannot resume office as chairman due to lack of qualification, and there will be a vacuum in the Union's management; I

- A (ix) An order of certiorari would not be in the public interest in this case as it would only prolong the dispute that already has adversely affected the functioning of the Union and its 422 member societies and, on the other hand, it will not give any tangible benefits to the applicant.

B

Application for certiorari refused

Cases referred to:

- C (1) *Jetindra Tagore v. Bejoy Chand Mahatap* (1905) 32 Cal. 483
 (2) *The Duke of Bucclouch* [1972] P. 201
 D (3) *R. v. Nicholson* [1899] 2 Q.B. 455

Mr. Mchora and Mr Semgalawe, for the Applicant
Mr. Werema and Mr Salula, for the Respondents

E

RULING

(Delivered 10 January 1991)

- F **Lugakingira, J.:** This was an application for certiorari brought by Clement Conrad Berege (hereafter **the applicant.**) The applicant was chairman of the Managing Committee of the Morogoro Region Cooperative Union (1984) Ltd., but this committee was dissolved on 12 April, 1990 by a decision of the Union's Special General Meeting summoned by the Registrar of Cooperative Societies, the first respondent to this application. The Attorney General was joined as second respondent in his capacity as Legal Advisor to the Government and its departments. In summary, the applicant, who was represented by Mr. Mchora and Mr. Semgalawe, contended that the Special General Meeting acted without jurisdiction and/or wrongly exercised jurisdiction, and that the procedure followed violated the rules of natural justice. He sought to have the decision

quashed. The respondents, represented by Mr. Werema and Mr. Salula, resisted the application. At the commencement of the hearing they also raised a preliminary objection centering on joinder which I promised to dispose of in the course of this ruling. I desire to do so at this stage.

In arguing the objection Mr. Salula contended that neither of the respondents was connected with the decision to dissolve the applicant's committee, it having been made by the Special General Meeting.

He submitted, therefore, that the Special General Meeting, rather than the present respondents, should have been joined in the application. He argued further that the order of certiorari, if granted, could not be effected against the respondents since they were not a party to the decision complained of. I understood him to mean that the order could not be enforced against the Special General Meeting since it was not a party to the application. In reply Mr. Mchora argued that the Special General Meeting was contrived, summoned and controlled by the first respondent so much so that it was his meeting. He seemed to suggest but without saying so, that the decision of the meeting was the decision of the first respondent. In general, he submitted that the two respondents were the legal custodians of the affairs of the Union and the most effective parties, even if there could be others who could have been joined.

I found all these arguments very much entertaining; but I intend to keep my response brief. First of all, as stated in the applicant's chamber summons and later confirmed by evidence, the decision to dissolve the applicant's committee was indeed made by the Special General Meeting although, initially, the first respondent proceeded under powers vested in him by s.106 of the Cooperative Societies Act, 1982. But it must be said in fairness to the applicant's side, and I will subsequently show, that the role of the first respondent at the meeting was so pervasive and critical as to be decisive in the deliberations and decisions of the meeting. In the peculiar

A circumstances of this case, therefore, I think there was justification for joining the first respondent. It would not have been enough merely to have him as a witness; there are certain matters to which his personal accountability demand his being joined. Once this position is taken, the joinder of the Attorney-General cannot be seriously questioned and I need say nothing on the matter. On the other hand, however, I find it difficult to agree that the Special General Meeting, although responsible for the contentious decision, was the body properly to be joined either alone or jointly with others. The Special General Meeting is an organ of the Union in the same way as the Managing Committee or the individual officers of the Union. Upon registration a union becomes a body corporate with power to institute and defend suits and other legal proceeding and, by the nature of things, those suits and legal proceedings can only be such as are prompted by the actions and omissions of the Union organs and individual officers. In my view therefore where the decision of a union's special general meeting is in question, the proper party to join in action is the union itself rather than the meeting.

In the instant case I have already said that the first respondent was properly joined considering the role he played. But I have also said that of the decision to dissolve the applicant's committee was in fact that of the Special General Meeting. It follows in my view that Mr. Salula was correct in insisting that there was a non-joinder. But it also follows from what has gone by that the party to join is not the Special General Meeting but the Morogoro Region Cooperative Union (1984) Ltd. It is not too late at this stage to remedy the situation although there was no application for joinder offered by either side.

H In accordance with the provisions of 0.1, r.10(2) of the Civil Procedure Code, 1966, the Court may, at any stage of the proceedings, either upon or without the application of either party, order that the name of any person who ought to have been joined, be added. In the Indian case of *Jetindra Tagore v. Bejoy Chand Mahatap* (1), it was held that the expression at any stage of the

proceedings meant at any time during the pendency of the suit and that there was a pending litigation until the Court signed the final decree. Similarly, in construing a similar English rule, Fry, L.J. said in *The Duke of Bucclouch* (2) at 212:

I base my decision upon the words 'at any stage of the proceedings.' It has been argued that the rules do not apply after final judgment. They apply, in my opinion, as long as anything remains to be done in the case.

In that case judgment was already passed and there remained only the assessment of damages. The Court upheld the addition of the right plaintiffs. I have no doubt that the law in this country reflects the same position. In the matter before me a decision on the application has not even been reached but is in the course of formulation. It is therefore available to add the name of the party responsible for the contentious decision and I accordingly add the Morogoro Region Cooperative Union (1984) Ltd. As the third respondent to the application. I am particularly encouraged to do so because the evidence adduced for the defence was substantially in defence of the Union's Special General Meeting. To that extent, therefore, Mr. Salula's objection succeeds in part.

I now turn to consider the substance of the application. It was stated at the beginning that the action alleges want of jurisdiction or abuse of it, and failure of natural justice. That is just a summary. To appreciate the dimensions of the dispute it is necessary to recount the events at some length.

On 23 October, 1989 the applicant's same committee was suspended by the first respondent purporting to act under s. 106 of the Cooperative Societies Act, who also appointed a care-taker committee. For the purpose of this ruling it is sufficient to set out the provisions of sub-section (1), and it states:

A 106. (1) if the Registrar is of the opinion that the committee of any registered society is not performing its duties properly he may, after giving an opportunity to the committee to state its objections, if any, to its dissolution, and after considering such objections at a general meeting of the society summoned by the same or subsequent order –

B (a) direct the society, within such time as may be specified in the order, to elect a new committee in accordance with the by laws of the society, or

C (b) appoint a fit and proper person or two or more of such persons to assume all the functions of the committee and to manage and administer the affairs of the society and may from time to time remove or replace any person so appointed:

D Provided that in the exercise of his powers under this paragraph he shall consult the Secretary General.

E It turned out that the first respondent acted *ultra vires* the provisions cited for he had power to dissolve, but not to suspend, a committee. It also turned out that he appointed the caretaker committee without consultation with the Secretary General of what is called the "apex organization," indeed there was no such organisation. Accordingly, the present applicant applied to this Court for certiorari to quash the decision of the first respondent and the application was allowed and the order granted on 17 March, 1990 in Miscellaneous Civil Application No. 174 of 1989.

F Two days later, on 19, March, the first respondent served or sought to serve a number of documents upon the applicant and his committee, but I need specifically refer to two only: a letter Ref No. SMU/C/ C.90 of 19 March (part of Exh. P8) in which he informed them that following the Court's decision they could resume their duties; and a letter of even reference and date (Exh. P2) in which he informed

them that he intended to dissolve their committee pursuant to s.106 and required them to show cause within seven days why their committee should not be dissolved. The letter also set out in five pages a litany of allegations against them. It was common ground that they resisted service upon them of Exh. P.2 until 30 March after the intervention of the Attorney-General and their advocate Mr. Mchora. Meanwhile, on 28 March, the first respondent summoned a special general meeting of the Union to be held on 12 April, the business of which was, per Exh. P5, to consider the accusations against the applicant's committee and their defence thereto. On 30 March the applicant wrote to the Assistant Registrar of Cooperative Societies at Morogoro praying for the postponement of the meeting to a later date to enable his committee to meet and discuss the issues before them, and on 2 April he wrote to the Registrar indicating that his committee would deliver a joint defence at the meeting. Although the former Registrar, Mr. Flavian Tuniga denied receiving any of these communications, he conceded to hearing of their existence from members of his staff. The special General Meeting took place as planned on 12 April. The applicant and his committee were all in attendance and a copy of their written defence was duly delivered to the chairperson. What transpired from the very start to the finish of the meeting are the matters giving rise to the present application and I prefer to bring them out in direct juxtaposition to the grounds of complaint.

G As already stated one of the grounds of complaint was that the Special General Meeting acted without jurisdiction. In arguing this issue, however, Mr. Mchora appears to have inclined more, if not exclusively, to the view that the meeting had no power to dissolve the applicant's committee since, in Mr. Mchora's understanding, this was a meeting summoned under s. 106 of the Cooperative Societies Act. It will now be recalled that under s. 106(1) the power to dissolve a committee is actually vested in the registrar. I think, however, that **H** Mr. Mchora's impressions of the provision appear to be narrow for **I**

A the Registrar is not obliged to dissolve a committee if he summons a meeting under s. 106, but he may do so after considering the committee's objections, if any, at such a meeting. This provision should hence not be read in isolation but should be read in conjunction with rule 24(4) of the Cooperative Societies Rules, 1982, which provides, *inter alia*, that the Registrar may direct what matters shall be discussed at a meeting summoned by him; further, that such meeting shall have all the powers and be subject to the same rules as a meeting called in accordance with the by-laws of the society.

C I can find no legal justification, and none was cited to me, for the proposition that the Registrar cannot proceed as provided by rule 24(3) where he summons a meeting under s. 106. But, what is more, D the Registrar did not in this case summon the meeting pursuant to s. 106. This provision was cited by him only in connection with the allegations (Exh. P2) served on the applicant's committee. As regards summoning of the meeting as such (Exh. P5), the Registrar actually E cited rule 24(3) and the by laws of the Union. I am of the view that the fact of serving written allegations upon the committee under s. 106 did not preclude the Registrar from summoning the meeting pursuant to rule 24(3). On the other hand, this rule does not provide F for the manner in which the Registrar may direct what matters to be discussed at the meeting. I think that the notice of the meeting in which was also set out the agenda to be discussed was sufficient and effective direction for the purpose of the rule. I am therefore unable G to agree with Mr. Mchora that, from this point of view, the meeting usurped jurisdiction.

I think, however, that the issue of jurisdiction may be considered from a different standpoint – the attendance at the meeting. In that regard a different picture emerges. A tribunal may have jurisdiction to dispose of the subject matter but this jurisdiction may be conditioned upon the existence of a state of things, e.g. the realization of a quorum. Where the tribunal embarks upon its business without such a quorum, I its decisions would be void. In this case, rule 23 of the Union by laws

provides for the presence at a general or special general meeting of the delegates or their substitutes of at least two thirds of the affiliated societies in order for any business to be transacted. Before the meeting under consideration was officially opened Mr. Tuniga spoke on the required quorum and I will, for ease of reference, quote from the minute (Exh. P29).

Akiendelea alisema ili Mkutano Mkuu maalum uwe halali ni lazima kuwepo na mahudhurio yasiyopungua theluthi mbili (?) kutoka kwa Wajumbe au wawakilishi wa vyama wanachama wa Chama Kikuu kama ilivyo kifungu 23 cha masharti ya MRCU (1984) Ltd. Idadi ya wanachama wa Chama Kikuu ni 422. Ili mkutano uwe halali Tunahitaji idadi ya wanachama 281. Mrajisi aliwatangazia wajumbe kwamba idadi ya mahudhurio imefikia wajumbe 345 kwa hali hiyo Mkutano ni halali kuanza.

It is at once clear from the last sentence that the Registrar misdirected the meeting when, instead of referring to *wanachama* (members) he referred to *wajumbe* (delegates). Indeed the number of delegates actually attending was variably put at 349 or 352. Each member society is required to be represented by two delegates, but in this case some societies sent three or more delegates. When one counts the number of societies represented, rather than the delegates attending, one comes up with a figure of 183. But the by law stipulates two-thirds of the society membership in the Union, that is 281 societies, as the quorum. It follows that there was no quorum at the meeting and no jurisdiction to transact any business. From that stand point I agree with Mr. Mchora that the meeting acted without jurisdiction and its decisions were *ipso facto* void. A related argument was that there was wrong exercise of jurisdiction and this referred to the way the caretaker committee was appointed. Having found that the meeting had no jurisdiction at all, I do not have to go into that matter. I will move on to the issue of natural justice.

A The rules of natural justice require, *inter alia*, that a person should not be condemned unheard. We have already seen that the applicant and his committee failed to deliver their objections to the Registrar and undertook to deliver them at the meeting. However, the meeting
 B voted to reject the committee the right of defence and this came about this way. After the opening of the meeting the Registrar read out the charges against the committee and claimed that they had committed a
 C refusing (initially) to accept his letters. At this juncture the chairperson, Mrs. Mtoro Katele, asked the applicant to explain why they had not delivered their defence to the Registrar. The applicant gave five reasons including the fact that the time given them (seven days) was too short
 D considering that they had been out of office for five months and the charges leveled against them required research in the Union's records. He explained that the defence was now ready and they were ready to deliver the same. The chairperson then turned to the Registrar to
 E appraise the meeting on the legal position. The Registrar replied that since the defence had not been delivered to him it would be contrary to law, procedure and the by-laws of the Union for the defence to be delivered at the meeting. The chairperson, apparently unsatisfied, still
 F wanted to know whether the committee could nevertheless defend themselves (probably orally) at the meeting. The Registrar replied that he had no objection but it was essential to get the opinion of the delegates to the meeting. A debate hence ensued whether the
 G committee should be permitted to defend themselves or not. The matter was put to the vote and the majority voted not to entertain any defence. I was given to understand that this decision was taken as a "punishment" for the committee's "breach" of the law. Having thus
 H refused them a defence the meeting proceeded to vote the committee out of office and to institute a caretaker committee by acclamation.

I In accordance with the rules of natural justice the defendant should, first, be notified of the charges against him. This was done in the instant case. Next, he should be given a fair opportunity to answer

these charges. That is the centre of argument in this case. It was submitted by Mr. Werema that the applicant was bound to submit his defence to the Registrar and that his failure to do so was a flagrant disobedience of a lawful directive. Further on he argued that the failure to submit the defence to the Registrar actually meant that there was no intention to defend. I think that these arguments may be disposed of quickly. First of all, there is no provision anywhere, either in the Cooperative Societies Act, the Cooperative Societies Rules, or the by-laws of the Morogoro Union which obliges the committee to deliver its defence or objections to the Registrar. This requirement may, of course, be implied and might make administrative sense, but it is not a requirement of law. What s.106 expressly provides for is for the Registrar to give an opportunity to the committee to state its objections and to consider these objections, if any, at a general meeting. That being the position, I see nothing improper for the committee to deliver its objections to the meeting. Besides, it does not appear to me to be a breach of any kind for the committee not to deliver any defence, be it to the Registrar or to the meeting. The wording s.106(1) leaves no doubt that it is entirely discretionary to furnish a defence or to furnish none; indeed, none can be forced to defend themselves. I therefore find strange the proposition that failure to deliver a defence can amount to a flagrant disobedience or that it could have criminal connotations as understood at the meeting.

Finally, I think that in the circumstances of this case it cannot be properly said that the committee's conduct amounted to an intention not to reply to the charges. It is apparent that following Misc. Civil Application No. 114 of 1989, which was decided in the registrar's disfavour, a hostile atmosphere came to characterize the relationship between the Registrar's office and the committee. To that end, the committee would not be permitted back into office after the High Court's ruling unless they at the same time accepted the letter announcing the intention to dissolve them again. The situation was thus confrontational and provided fertile ground for a degree of

A irrationality. Nevertheless, when the committee finally accepted the letter, which they did at the same time as they were permitted into office, they immediately informed the Registrar of their intention to present their defence at the meeting. Finally, they did in fact deliver a
 B written defence to the chairperson through the Registrar on the meeting day and they did present themselves at the meeting ready to defend. I cannot in the circumstances see justification for the notion that the committee had no intention to defend themselves and for the decision
 C by the meeting to bar their defence. In the final analysis the proceedings of the meeting were not merely void for want of jurisdiction but also for violating a fundamental rule of natural justice. It is perhaps not irrelevant to add that according to Mrs. Mtoro Katele the meeting
 D would have entertained the committee's defence had the registrar directed so.

It now remains to consider one fundamental question, and that is whether certiorari should issue in the light of the above conclusions.
 E The remedy of certiorari is discretionary, in other words, it does not accrue automatically upon successful challenge to the decision of an inferior tribunal. Although a decision made without jurisdiction or in violation of the rules of natural justice is void, it does not always
 F follow that a party adversely affected thereby will be able to have it set aside. In deciding whether certiorari should issue the Court will invariably take into account a number of factors, e.g. the conduct of
 G the applicant in relation to the proceeding, the possibility of implementing the decision, whether any useful purpose would be served, and even the practical consequences of the decision in the light of the peculiar circumstances of each case. In the case before
 H me I understood from the trend of evidence for the respondents and the submissions by Mr. Werema that the applicant's qualification for the grant of certiorari was doubted and there was a remote but discernible reference to the practical consequences of certiorari in
 I the circumstances of this case. I will consider these matters in turn.

The first issue touches on the applicant's position and or status in

the Morogoro Region Cooperative Union (1984) Ltd. The Chairman
 A of the Managing Committee and the other members of the committee are, by virtue of rule 30 of the Union's by-laws, elected from amongst the delegates to the general meeting. The applicant was a member of
 B two primary societies, the Morogoro Region Civil Servants Saving and Credit Cooperative Society Ltd, and the Ujamaa Cooperative Society Ltd. He became a member of the latter society beginning
 C March 1988. It is not known when he acquired membership in the former society. In his evidence the applicant stated that he was appointed into the Managing Committee by virtue of being a delegate of the Ujamaa Cooperative Society Ltd, and that this appointment
 D took place in April 1988. His is not merely amusing; it is additionally confusing. According to the documents tendered as Exh. P.12, the applicant became a member of Ujamaa Cooperative Society Ltd in
 E March 1988 but he was elected a delegate of the society two years later, on 19 April 1990 according to the minutes. However the covering letter of congratulations actually gives 14 April, 1990 as the date of his appointment. Now, if he was appointed a delegate on 19 or 14 April he could not have been in the committee that was dissolved
 F on 12 April, 1990. I must be frank, indeed, that I doubt the genuineness of the "minutes" comprised in Exh. P.12.

One thing I am bound to accept, in the absence of evidence to the contrary, is that the applicant became a member of Ujamaa Cooperative Society Ltd since 1988 and remains such a member.
 G How then did he find his way into the Managing Committee which he actually headed even before 1988? The irresistible answer is that he was a delegate of the Savings and Credit Society of which he was also chairman. Membership to that society is open to civil servants
 H only and the applicant was an accountant in the office of the Regional Development Director. It may be asked why the applicant preferred to claim that he was a delegate of Ujamaa Cooperative Society when he ought to have been a delegate of the Savings and Credit Society.
 I The answer is that he was dismissed from the civil service from 19

A October, 1990 and the dismissal automatically terminated his membership in the Savings and Credit Society. According to rule 131(1)(g) and (h) of the Cooperative Societies Rules, a member of a committee ceases to hold office if he ceases to be a member of the society or if he ceases to be a member of the primary society which he represents in the secondary society. Hence following the applicant's dismissal from the civil service not only did he cease to be member and chairman of the Savings and Credit Society, but he also ceased to be a member of the Managing Committee of the Morogoro Region Cooperative Union (1984) Ltd.

D From the foregoing analysis the question that arises is whether the applicant has anything to gain from the grant of certiorari. If the order is granted it will not enable him to resume office as chairman and member of the Managing Committee because he has, since 19 October, 1990, been disqualified to hold that office. He can of course later find his way back through the Ujamaa Cooperative Society, but that is for the unknown future and has nothing to do with the stark realities of the present. In short, the applicant's interest in the application is presently no more than that of any other ordinary member of a primary society in Morogoro Region. But a court is in practice unlikely to allow an application for certiorari unless it has been made by someone whom it regards as a person aggrieved, and persons aggrieved have been defined as those who have a peculiar grievance of their own beyond some grievance suffered by them in common with the rest of the public. See *R. v. Nicholson* (3). I concede that at the time the applicant filed the application he had a grievance of his own beyond the grievance, if any, suffered by the thousands other Morogoro cooperators. Presently, however, he has no such grievance and is thus disabled from moving the court to exercise its discretion in his favour.

I Secondly, there are the practical consequences to consider if the prayer for certiorari were granted in this case. This issue has two sides to it. The first is interconnected with what has just been discussed

A and may be stated briefly. If certiorari is granted it would result in an awkward situation, a vacuum in the Union's management, for the applicant is no longer to resume his office. Considerable difficulties would thus be created in addition to the inevitable exercise to normalize the position. Secondly, to grant certiorari in this case would only B assuage the conscience and pride of a single person, the applicant, perhaps also his fifteen colleagues, at the expense of the thousands of cooperators in Morogoro Region. I believe I am correct in saying C that the cobbler on the pavements of Morogoro, the tailor in the winds and dusts of Gairo, and the peasant in the valleys of Kilombero – all those and others who account for the 422 primary societies in the region – have absolutely nothing to gain from the dramas and orders in these proceedings. On the contrary, I dare say that they stand to D lose and have already lost greatly thereby.

E It was impressed upon me that the decision to dissolve the applicant's committee was taken because it had mismanaged the Union's affairs. In this application I am not called upon to say whether that is true or untrue. But what is undisputed is that following the ouster of the applicant's committee in October 1989, its reinstatement F on 30 March, 1990, its ouster again on 12 April, and its re-instatement again by this Court's interim order of 19 May, have adversely affected the functioning of the Union and disrupted economic activity in the region. If certiorari is granted a new exercise to dislodge the committee appears inevitable, and there is no guarantee that still another G application might not result. In organized human society the rights of the community take precedence over the rights of the individual member, and this is the more so where the rights of the individual H derive from abstract legality bereft of tangible benefits. There should also be an end to litigation. It is the duty of the Court to ensure that disputes are brought to finality but not to permit the risk for endless litigation. It is hence apparent that certiorari would in the circumstances I of this case be against the broader interests of the public.

For all I have endeavored to state, and despite holding that the

- A decision of the Special General Meeting was void, I refuse to grant certiorari. It follows that the interim order made on 19 May 1990 is discharged and the caretaker committee led by Mr. Onasia Kisanga are authorised forthwith and peacefully to assume the duties of the Managing Committee until one is instituted according to the Union's by-laws.

C

**BENSON KIBASO NYANKONDA @ OLEMBE PATROBA
APIYO v. REPUBLIC**

D

COURT OF APPEAL OF TANZANIA
AT MWANZA

E

(Makame, Ramadhani, JJ.A., and Mapigano, Ag.J.)

CRIMINAL APPEAL No. 159 OF 1990

F

(From the decision of the High Court of Tanzania
at Mwanza, Sekule, J., dated 26th October 1990,
in Criminal Sessions Case No. 28 of 1990)

G

Evidence – Identification Parade – Identification of accused person by way of identification parade – Value of identification parade proceedings where the identifying witness is not called to testify in court – Sections 164(c) and 166 of the Evidence Act 1967

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The appellant was convicted of murder. The conviction depended largely on the evidence of PW.8 who identified the appellant at an identification parade conducted more than twenty months after the witness had seen him for the first (and only) time. The witness said he had seen the appellant in the company of

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two other men, one of whom was a relative of the witness. It was at night but

they had sat for quite a while in conversation around a table in the gleam of a lantern and a meal was served to them. Another witness who had been present at the conversation was also called to the identification parade but died before he could testify in court. The main contention at the hearing of the appeal concerned the propriety of the identification parade.

Held:

- (i) Identification parade proceedings are merely investigatory and extra-judicial in nature; their outcome has no independent probative value but can only corroborate the evidence given in court by the identifying witness;
- (ii) If a witness at an identification parade is not called to testify in court there is nothing to corroborate or contradict, and no occasion for introducing the parade proceedings into evidence; therefore, in relation to the witness who died before he could testify in court, the identification proceedings were inadmissible.

Appeal dismissed

Mr. *Nasimire*, for the Appellant
Mr. *Mapunda*, State Attorney, for the Respondent

JUDGMENT OF THE COURT

(Dated 14 June 1991)

Mapigano, Ag. J.A.: Benson Kibaso Nyankonda, also known as OLEMBE PATROBA APIYO, has appealed from the judgment of the High Court at Mwanza, dated 26/10/90, in which the learned judge, Sekule, J., convicted him of the murder of ARNOLD SWAI and condemned him to death. On his behalf, Mr. Nasimire, learned advocate, filed two grounds of appeal but dropped one in the course of his address before us. The ground argued pertained exclusively to the proceedings