



Resolution of disputes in co-operative societies

Dr. ET Yebisi

Department of Private Law, Ekiti State University, Ado-Ekiti, Nigeria

Abstract

An indisputable fact of life is the potential existence of conflict or disputes in any human organization. Co-operative societies are not exempted. This paper did not dispute this fact, but focused on the mechanism for the rapid and economic settlement of disputes, when and if they arise in a co-operative society, by exploring the legal framework for resolution of these disputes, using extant laws in Nigeria as road map. The paper noted that arbitration is compulsory under Nigerian law and the Director of Co-operatives is made the dominant person in the resolution process. The paper acknowledged the advantages of arbitration over the court process, but suggested the encouragement of some symbiotic relationship between the court and arbitration. The paper also suggested that the extant law can be improved upon to accommodate traditional mediation process especially in largely rural communities and possibly a co-operative disputes tribunal to be manned by specialist personnel working on full-time basis.

Keywords: co-operative societies, dispute resolution, director of co-operatives, arbitration, mediation, award

1. Introduction

A co-operative society can be described as an association where persons voluntarily associate together as human beings on a basis of equality, for the promotion of their social and economic interests. The essence of co-operative is that each member shall work for all and all shall work for each in the attainment of their common need. It is thus not unnatural that, in doing his or her share of his or her bargain, each member desires some assurance that all will equally do theirs^[1]. To meet their aspiration, the members must agree to bind themselves by a formal contract. This formal contract is required by law to be contained in a bye-law which must be subscribed to by all members and duly registered with the government department responsible for co-operatives^[2]. The co-operative bye-law governs the legal relationship between the members and the society. They are vehicles for translating co-operative principles. It states the objectives and also defines the scope of the society's operations and its powers to deal with outsiders^[3]. In spite of the bye-law or any other agreement regarding how the society is to be managed so as to achieve its objectives, the society is primarily about human beings and its exists for the members. But like any human institution, it can not be without disputes and conflicts. The major source of conflict in the management of co-operative society is apathy in management and inadequate attention by members to the societies' activities, which leads to dishonesty, inefficiency in mobilization and utilization of credits and other resources. Thus, it is only natural that conflicts and disputes arise in co-operatives, as in any human organization. Disputes may arise between members or an individual and the society, the rank and file and the committee, between the society and another primary society, between the society and the employer in the case of workers or salary earners co-operative. What matters is that, a mechanism is available for the rapid and economic settlement of any dispute, when and if it arises.

How these disputes and how the conflicts are managed, impinges on governance and hence the emphasis on the procedures for resolution of disputes and management of conflicts.

The purport of this paper is therefore, to discuss the institutional framework for the resolution of disputes within co-operative societies. Although the topic has continental appeal, out of practical considerations, its discussion to a large extent is limited to the Nigerian situation, which is used as an illustration. Co-operative societies legislation is not the exclusive preserve of the Federal Government of Nigeria and indeed, most constituent state of the Federation of Nigeria have laws on co-operative societies, which are substantially identical with the federal law. The noted difference is with respect to the Act, which does not contain regulations as are required to be made sequel to the delegated authority conferred on the minister responsible for co-operatives by section 56 of the Nigerian Co-operative Societies Act, 2004^[4]. This lacuna, this study intends to fill by calling in aid, where necessary the Co-operative Societies Regulations, Cap 35, Laws of Oyo State, 2000 provisions of which are in pari material with those contained in states with enacted co-operative societies regulations, otherwise this study will concentrate basically on the Act. The legal and institutional framework provided in the Act for dispute resolution in co-operative societies is section 49(i) which provides that, any dispute touching the business of a co-operative society, between members or past members of the society or persons claiming through a member or past member or persons claiming and the committee, or any officer shall be referred to the Director of Co-operatives for settlement, who shall on receipt of a reference, settle the dispute or refer it to an arbitration for disposal. The discourse starts with the analysis and clarification of concepts which resonate throughout the work.

2. Analysis of Conceptual Terms

2.1 Co-operative Society

A voluntary association of individuals or two or more co-operative societies, united by a common bond, who have come together to pursue their social and economic goals in accordance with co-operative principles for their own benefit. Although not defined in the Act, co-operative principles are pillars that support the values of co-operation which originated from the statutes of the Rochdale Society of Equitable Pioneers which were revised over time and adopted at the 1995 International Co-operative Alliance Convention. They are namely: voluntary and open membership; democratic member control; member economic participation; autonomy and independence; education, training and information; co-operation among co-operatives; and concern for community. These principles are viewed as the mission statement of an ideal co-operative society which all co-operative societies must aspire to be^[5].

2.2 Arbitration

Arbitration in this context is a process by which certain disputes involving co-operative societies can be settled outside the courts^[6]. The High Court in Gujarat, India has expressed the purpose of provisions relating to arbitration in co-operative law as being:

to bring about speedy settlement of disputes, to lessen the cost of litigation as to secure dispensation of justice unhampered by technical rules of procedure so that co-operative societies do not get involved in long drawn out protracted litigation which could consume their time, energy and resources^[7].

Thus, the main advantage of arbitration over resort to the law court, include low cost, simplicity and relative speed and, hence, its encouragement by co-operatives.

2.3 Dispute touching the Business of a Co-operative Society

The type of dispute which may be referred to arbitration under the Act is defined by its subject matter and by the people who are in dispute. The subject matter description used under the Act, refer to disputes “touching the business” of a co-operative society, and accordingly, it is provided that, a claim by a registered society for any debt or demand due to it from a member or nominee, heir or estate of a deceased member, shall be deemed to be a dispute touching the business of the society^[8]. The Act is mute on disputes arising out of other relationships, such as the society and customer or society and employee relationships, even though these customers and employees may also be members. The law must include them.

2.4 Parties to Dispute

When any dispute which is subject to reference has arisen, any of the following parties, may make a reference of it to the Director of Co-operatives: the management committee; the society itself by resolution; any party to the dispute; or where, the dispute concerns an officer or past officer and the registered society by any member of the registered society^[9].

2.5 Director of Co-operatives Societies

The Director of co-operatives is the government official placed statutorily in charge of co-operative societies. Under the law, the occupant of the office is constituted the very foundation and fulcrum of co-operative activities. The registration or refusal to register a society is at his discretion, subject to appeal to the Minister in charge of co-operatives. The occupant also has full discretion subject to right of appeal to the Minister, to order the cancellation and dissolution of a society and to appoint a liquidator to wind it up.

3. Arbitration under the Act

3.1 Compulsory Arbitration

Arbitration is always voluntary in the limited sense that, the parties to a dispute can try to settle it themselves. The obligation to accept arbitration does not arise until it is asked for by one of the parties, or by all the disputants. However, section 49 (3) of the Act is an example of a provision, which gives the Director exclusive right to arrange arbitration and deny the parties the right to go to court instead of asking for arbitration. In that sense, arbitration is made compulsory under the law. Much as we agree that in most cases, co-operative societies and their members are likely to benefit from using arbitration rather than the courts, the citizen’s right to seek redress in court, is an important part of justice and it is wrong to take this right away from him. Thus, members or any other claimant should be allowed to take a dispute to court if the arbitration process works injustice. Ideally, the Act should be amended so that the Directors can give the parties discretion by asking them, which of three possible types of arbitration they prefer:

1. Decide the dispute himself;
2. Refer it for disposal to an arbitrator or arbitrators; or
3. Require the parties concerned to refer the dispute to a court.

3.2 Appointment of Arbitrator(s)

Although not provided for under the Act, where the Director decides that the dispute should be disposed by persons other than him, he may appoint an arbitrator, or refer it to three arbitrators of whom one shall be nominated by each of the parties and the third shall be nominated by the Director and would act as chairman^[10]. When any party to a dispute fails to nominate a suitable arbitrator within a period specified by the Director, the third party shall be nominated by the Director^[11]. The regulation precludes the nomination of legal practitioners by either side as arbitrator^[12], because it is inherent in the purpose of co-operative arbitration that the role of courts and lawyers should be limited^[13]. In the words of Calvert:

The object of securing quick decisions based on equity would obviously be defeated if each party were allowed to nominate a legal practitioner to represent him under the cloak of an arbitrator^[14].

According to Emiaso^[15], a party to a co-operative dispute who desires that he be represented by counsel for the purpose of fairly and effectually presenting his case before a co-operative arbitration panel, but is denied such representation has been

denied his constitutional right to fair hearing and would, on appeal, succeed in having the arbitral award set aside. Fair hearing, according to Obaseki, JSC “is....not only a common law requirement in Nigeria, but also a statutory and a constitutional requirement”^[16]. This must have informed the institution of the case of *Sunday Fatogun & Ors v Ibadan Co-operative Textile Distributive Thrift and Credit Society Ltd & Ors*^[17]. In that case, there arose a rift among the members of the management committee of the Ibadan Co-operative Textile Distributive Thrift and Credit Society. Pursuant to section 51(4) of the law, an arbitrator was appointed to inquire into and settle the dispute. During the arbitration proceedings, the chairman and the treasurer who were the principal “accused” were denied legal representation. At the end of the domestic proceedings, the two officers were held liable to pay the sum of N41, 000.00 into the coffers of the society. In the appeal to the Commissioner, the plaintiff’s right to legal representation was also ignored. The “accused” challenged both the arbitration procedure and the award in the High Court of Ibadan, for breach of the rules of natural justice in denying their legal representation. The counsel representing the defendant society conceded that the legal right of the plaintiffs to fair hearing had been violated. The plaintiffs consequently withdrew the matter from court and it abated.

A person’s right to legal representation is unassailable, however we opine that, this legal right is only impugned if the mechanism in place for the resolution of disputes, does not allow appeal to the regular courts by disenfranchised parties following the results of arbitration. In *Maynard v Osmond*^[18], the English Court of Appeal upheld a regulation excluding the right to representation by a legal practitioner, after taking account of the fact that, there could be legal representations on appeal. Moreover, opportunity to be heard does not require more than fairly listening to both sides of a dispute before a decision is reached. Thus, in *Adeniyi v Governing Council, Yabatech*^[19], the Supreme Court held *inter alia* that, failure to provide opportunity to cross-examine by a domestic tribunal was not fatal, once the party has been given adequate opportunity to be heard. Any person in whom the parties have confidence and to whose decision they may choose to refer their dispute or difference may be selected to act as an arbitrator, provided that he is not prohibited from so doing by an express provision of a statute or by reasons of public policy^[20]. If the parties choose an incompetent or unfit person, that is their own affair^[21]. This is however, subject to the power of the Director to withdraw any dispute referred to an arbitrator by him and settle the dispute himself^[22].

3.3 Proceedings before Arbitrators

In such proceedings, arbitrator or arbitrators are required to give notice of the time and place at which the proceedings are to be held in writing to the parties to the dispute and such notice shall not be less than ten day’s notice^[23]. A record of the evidence adduced before the arbitrator or arbitrators shall be made, dated and signed by the arbitrator or arbitrators. Documents produced as exhibits before the arbitrator or arbitrators, shall be marked, dated and initialled by the arbitrator or arbitrators and shall be attached to the file of the proceedings^[24]. In the absence of any party duly notified to attend, the dispute may be decided by the arbitrator or

arbitrators *ex parte*^[25]. The award of the arbitrator or arbitrators shall be in writing; dated and signed by the arbitrator or arbitrators and be read to the parties to the dispute, and be handed to each party to the dispute^[26]. A decision made by an arbitrator shall be final^[27]. Although not expressly stated, implanted in these procedures are the tenets of natural justice, giving the parties opportunity to be heard and the rule against bias. Although, the law requires that the evidence and the decision be recorded in writing, but the arbitrator is not mandated or compelled to write down reasons for the decision. True justice demand the reasons to be stated. Although it is not a valid objection to an award, that an arbitrator has not acted in strict conformity with rules of evidence, it is at the same time submitted that, as it is important that award carry the same weight and command, the same respect as judicial decisions, arbitrators should follow the spirit of the Evidence Act. They should ensure that their procedure is fair to all the parties, by allowing evidence from any party to be given. The Director or an arbitrator may at any time after a dispute has been referred to him and before making a decision, or the Minister or Commissioner at any time when an appeal has been referred to him against any decision of the Director, may reserve any question of law arising out of such dispute or decision, as the case may be for the opinion of the High Court^[28].

3.4 Enforcement of Award

Any party in whose favour an award is made, may make a written application to any court which has jurisdiction in a civil suit between the parties to the dispute, to give a judgment for the payment of the amount awarded or where the decision does not relate to the payment of money, to give a similar decision in the same manner as if the decision has been a judgment or decision of the court^[29].

3.5 Appeal against Award

A party aggrieved by the decision of the Director or of the arbitrator may appeal to the Minister or the Commissioner as the case may be, within thirty days of the decision or award and the decision of the Minister or Commissioner shall be final and conclusive^[30]. The Act makes provisions for appeals to the Minister or Commissioner by persons dissatisfied with the decision of the Director or the arbitrator, but the decision of the Minister or Commissioner is considered final and not subject to review by the court^[31]. Again, this provision of the Act cannot be valid in view of section 36 (2) of the Nigeria Constitution, 1999 which provides that, a law conferring on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person, shall not be valid, unless such law contains no provision making the determination of the administering authority final and conclusive^[32].

The objectives of arbitration as set out in the course of our discussion, could be achieved by permitting co-operatives to seek the Director’s arbitration if they so wish, only making it obligatory on the Director to decide the matter himself or refer it to an arbitrator or a panel of arbitrators for disposal, if any dispute is referred to him under the bye-law of a society. However, arbitration by the Directors may be made

compulsory under the bye-law provided that, the law authorizes him to arbitrate by virtue of power given him by the bye-law to this effect. That would be a voluntary acceptance of the procedure, which would be in accord with co-operative autonomy, which abhors compulsory arbitration. It can even be free to seek normal legal redress if it so wishes, since the citizen's right to seek redress in court, is an important part of justice. The Act should provide as suggested. In addition, there should be provision for a right of appeal to the court from the determination of the Minister or Commissioner. Lengthy appeal procedures can obstruct justice and prevent co-operatives from serving their members effectively and the law must also guide against it.

4. Alternative Remedies for Maladministration

If members of a society are dissatisfied with the way it is being run, one way of dealing with the situation is to end the society's existence by having it wound up. Dissolution of a society may also be necessary if the members no longer feel a need for the society^[33]. There is no point in keeping alive a society in which, there is no serious possibility of reawakening members' interest. Financial difficulties are usually the common cause for co-operatives to cease to exist^[34]. Among consumer co-operatives amalgamation with, or more usually, a transfer of engagements to another stronger society is the most frequent result of a decline. The lack of any market in shares in co-operative societies prevent take-over battles of the kind that happen among public companies, when assets are not regarded as being used to the full. The legal rules surrounding how a society's life could be brought to an end is our next focus.

4.1 Division, Amalgamation and Cancellation of Registration

A society divides itself into two or more separate societies if at a meeting of its general body, specially called for the purpose, of which at least fourteen days notice is given to the members, it resolves to split into two or more societies^[35]. Two or more registered societies, at a general meeting of each society, specifically called for the purpose, of which at least fourteen days notice is given to their respective members, may pass a resolution to amalgamate or merge to create an entirely new society and in so doing lose their separate registration^[36]. The Act protects the right of members and creditors by allowing them to withdraw from engagements or receive payments for money due before or soon after, the constitutional changes come into effect^[37]. The Director has discretion on whether or not to register the divided^[38] or amalgamated^[39] societies and his decision shall not be subject to any appeal^[40]. The Director's approval of the resolution which creates new societies carries with it, the cancellation of registration of the defunct societies and appropriate adjustment of property rights^[41].

Apart from purposes of division and amalgamation, a society may have its registration cancelled, if it is proved to the satisfaction of the Director that, the society is operating with less than the required minimum number of members^[42], or after holding or making an inquiry or conducting an inspection under section 37 of the Act, or on receipt of an application made by not less than three fourth of the members of the

society, the Director is of the opinion that, the society ought to be dissolved. The order of cancellation can be made to the Minister or Commissioner as the case may be. While conceding that the Director's approval is needed for any change that requires the registration of the new society, there is a good case for modifying their discretion to refuse approval. For example, written reasons should be given for any refusal, while appeal should lie to higher authorities and even the court for such refusal.

5. Conclusion

It is only natural that conflict and disputes arise in co-operative societies, as in any human organization. Disputes may arise between the co-operative society and its members, between members, or between co-operatives. What matters is that a mechanism is available for rapid and economic settlement of any dispute as this also impinges on governance. The Act stipulates procedures for resolving disputes and conflicts by requiring compulsory arbitration with the Director having exclusive right to arrange for such arbitration. The advantages of arbitration include low cost, simplicity and relative speed. But the same can be said of mediation or other traditional method of conflict resolution. The citizen's right to seek redress in court is an important part of justice and it is wrong to take it away from him simply because he has chosen to belong to an organization. Also, a person's right to legal representation is unassailable, but with regards to co-operative societies, this right is only impugned, if the mechanism in place for the resolution of disputes, does not allow appeal to the regular courts from awards of arbitration panels. In spite of the numerous advantages of arbitration over the court as noted in this work, the citizen's right to seek redress in court is an important part of justice and must not under any guise be taken away from people only because they have chosen to join a co-operative society. Arbitration should not be compulsory. Co-operators must have a choice between mediation, arbitration and reference of dispute to a court. Moreover settling disputes outside judicial or administrative procedures, also known as Alternative Dispute Resolution (ADR) may appeal to co-operators and must be integrated in the law. It has advantage of being speedy, inexpensive and it is not skewed with procedural complexities. It also reduces potential animosity between parties since the mediator or arbitrators will tend to find a win-win solution, where results will enhance co-operative sustainability. Alternative Dispute Resolution (ADR) can also be used to bolster traditional mediation processes where the role of elders and community heads in dispute resolution will greatly appeal to largely rural communities.

It is further noted that, the upsurge in co-operative activities and expected complexities in co-operative disputes will require an efficient arbitration machinery. It is therefore not out of place to suggest the creation of an independent co-operative disputes tribunal to be manned by specialist personnel working on full-time basis. It is also important that available dispute resolution machinery be publicised.

6. References

1. Olowe MO. Contemporary Issues in Co-operative Management, Ibadan: Icon Books. 2011, 105.

2. See Section II Nigerian Co-operative Societies Act, 2004.
3. Snaith I. *The Law on Co-operative*, London: Waterlow, 1984, 36.
4. The Act vests in the minister the power to draw up regulations that may be necessary for the purpose of carrying out or giving effect to the provisions of the Act. For example, in the resolution of disputes, the regulations, should provide for how an arbitrator is appointed, number of arbitrators, qualifications and how proceedings are to be conducted. See generally section. 56(2)(t).
5. Yebisi ET. *Governance Issues under the Co-operative Societies Law of Nigeria*, Saarbrucken, Germany; Scholars Press. 2015, 5-7.
6. Yeo P. *Co-operative Law-A Handbook on Legislation For Co-operative Development*. Manchester: Holyoake Books. 1989, 169.
7. *Rangibai v The Gujarat Co-operative Tribunal*, 1972 quoted in Bedi RD. *Law for the Co-operatives*. New Delhi: National Council for Co-operative Training. 1982, 151.
8. Section 49(2)
9. Regulation 48(1), *Co-operative Societies Regulations*, Cap 35(Oyo State, 2000).
10. Regulation 49(3)
11. Regulation 49(4)
12. Regulation 49(5)
13. Yeo, P. *op. cit.*, p.177
14. Calvert H. *The Law and Principles of Co-operation*, Calcutta: Thacker Spinks & Co. Ltd. 1959, 308.
15. Emiaso M. *Co-operative Societies Law and Practice in Nigeria*, Lagos: Peakmans Ltd. 2011, 255.
16. *Garba & Ors v University of Maiduguri*. 1NWLR. 1986, 550-584:183.
17. 1977/1/319/77 cited by Emiola, A. *Corporation Law*, Ogbomosho: Emiola(Publishers)Ltd. 2005, 82-83.
18. [1976] 3 WLR 711
19. [1993] 6 NWLR, 433
20. Ibid
21. Banerji DC. *Treatise on the Law of Arbitration in India*,p152, cited in Calvert, *op.cit.* 2005, 308.
22. Section 50(2)
23. Regulation 50(i)(a)
24. Ibid
25. Ibid
26. Regulation 50(2)
27. Regulation 50(4)
28. Section 50
29. Section 49(5)
30. Section 49(6)
31. Emiola *op. cit.*, p.81
32. *Bakare v Lagos State Civil Service Commission*, supra
33. Yeo, *op. cit.*, p.228
34. Snaith I. *The Law on Co-operative*, London:Waterlow. 1984, 133.
35. Section 51(1)
36. Section 52
37. Sections 51 and 52
38. Section 51(7)
39. Section 52(6)
40. Section 51(8) and 52 (7)
41. Section 51(7) and 52(6)
42. Section 38(1)