



REPUBLIC OF KENYA



Thiong'o & 2 others v Mbugua & 2 others (All being sued as Chairperson, acting Secretary and Treasurer, respectively of and on behalf of Muungano Slaughterhouse Women Society) (Civil Case 119 of 2017) [2023] KEHC 2930 (KLR) (Civ) (28 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2930 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CIVIL

CIVIL CASE 119 OF 2017

JK SERGON, J

MARCH 28, 2023

FORMERLY ELC CASE NO. 971 OF 2012

BETWEEN

**KAMAU THIONG'O 1ST PLAINTIFF
WEDDY NJERI GITAU 2ND PLAINTIFF
FRASIAH MBUGUA 3RD PLAINTIFF**

AND

**MARY WAMBUI MBUGUA 1ST DEFENDANT
JESSICAH AKINYI ODHIAMBO 2ND DEFENDANT
EUNICE WANJIKU MARARO 3RD DEFENDANT**

**ALL BEING SUED AS CHAIRPERSON, ACTING SECRETARY AND
TREASURER, RESPECTIVELY OF AND ON BEHALF OF MUUNGANO
SLAUGHTERHOUSE WOMEN SOCIETY**

JUDGMENT

1. The 1st, 2nd and 3rd plaintiffs herein instituted a suit against the 1st, 2nd and 3rd defendants by way of the plaint dated 10th December, 2010.
2. The plaintiffs pleaded in the plaint that the parties herein were at all material times members of Muungano Slaughterhouse Women Society (“the Society”).
3. The plaintiffs pleaded in the plaint that the Society has been engaged in conflict between its officials and members in respect to its management and that the defendants together with other members who



- are not parties to the suit have participated in the mismanagement of the Society and in contravention of the Society's Constitution. The particulars of the mismanagement are set out under paragraph 5 of the plaint.
4. It is pleaded in the plaint that the defendants also unlawfully convened a meeting with the aim of selling the Society's sole asset namely the property known as Title No 220/3 PT (UNS Plot No 'B' Mathare) ("the property") in contravention of the procedures laid out in the Society's Constitution.
 5. It is also pleaded in the plaint that the plaintiffs are apprehensive that both the mismanagement of the Society and the intended sale of the property will cause irreparable damage to the Society and to its members alike.
 6. Consequently, the plaintiffs sought for the reliefs in the plaint:
 - i. A declaration that the defendants have run the affairs of the Society in contravention of the Society's Constitution.
 - ii. A declaration that the special delegates meeting of the Society held on 5th September, 2012 was unlawful as it was held in contravention of the Society's Constitution.
 - iii. A declaration that all and/or any resolutions of the special delegates meeting of the society held on 5th September, 2012, including the resolution to sell the Society's plot, are null and void.
 - iv. An injunction restraining the defendants jointly and/or severally by themselves, their servants, employees, agents and/or through trustees of the Society or otherwise howsoever, from selling, transferring, alienating, disposing or in any other way whatsoever parting with ownership and possession of all that parcel of land known as Title No 220/3 PT (UNS Plot No 'B' Mathare).
 - v. An order requiring the defendants to give a true and just account of the Society's income.
 - vi. An order compelling the defendants to convene an all-inclusive special general meeting of the Society as directed by the Deputy Registrar of Societies vide his letter dated 10th May, 2012 under the supervision and coordination of the Registrar of Societies.
 - vii. Costs of the suit.
 - viii. Interest on costs.
 - ix. Any other or further relief that this Honourable Court may deem fit to grant.
 7. Upon service of summons, the defendants entered appearance and filed their joint statement of defence on 21st July, 2017 to deny the plaintiffs' claim.
 8. At the hearing of the suit, the 2nd plaintiff and the 1st defendant testified for the plaintiff and defence case respectively.
 9. On her part, the 2nd plaintiff adopted her signed witness statement as her evidence-in-chief and produced the plaintiffs' list and bundle of documents as exhibits.
 10. The 2nd plaintiff states that she was pushed out of the Society's official list in contravention of the Constitution and further that the defendants' decision to sell the property was made without proper consultation.
 11. The 2nd plaintiff further states that she was expelled from her official position in the Society without being served with an expulsion letter and that no Annual General Meeting (AGM) has been held on behalf of the Society since the year 2011.



12. It is the evidence by the 2nd plaintiff that no accountability exists in the running of the Society.
13. In cross-examination, the 2nd plaintiff gave evidence that she is the Secretary of the Society though the members of the Society constitute registered groups.
14. The 2nd plaintiff also gave evidence that she attended the Society's AGM in the year 2011 and which meeting was also attended by representatives from the various groups.
15. It is the testimony by the 2nd plaintiff that by the time she left her official position as the Society's secretary, no Committee had been elected.
16. The 2nd plaintiff states that she did not challenge her suspension but filed a suit in court.
17. The 2nd plaintiff further states that the wrangles in the Society began as soon as she took office.
18. It is the testimony by the 2nd plaintiff that the Chairlady of the Society (the 1st defendant) was ordered by the Registrar of Societies to convene a meeting to discuss the issues in controversy but that she did not.
19. It is also her testimony that most members of the Society are opposed to the sale of the property.
20. In re-examination, the 2nd plaintiff states that the Chairperson of the Society declined to consult members regarding the sale of the property.
21. At the time of closing the plaintiffs' case, the 2nd plaintiff mentioned that the 1st plaintiff is now deceased while the 3rd plaintiff is critically ill. She therefore urges this court to rely on her testimony and documents tendered in evidence.
22. For the defence case, the 1st defendant likewise adopted her execute witness statement as evidence and further produced the defence list and bundle of documents as exhibits.
23. In cross-examination, the 1st defendant states that like the 2nd plaintiff, she is a member of the Society through her group, adding that the 1st plaintiff was not a member of the Society.
24. The 1st defendant further states that the 2nd plaintiff was elected to serve as the Secretary of the Society at all material times, while she was elected in the capacity of Chairperson, which position she continues to hold.
25. It is the testimony of the 1st defendant that no elections have been held so far but that the 2nd plaintiff was voted out of her official position by the Society's members owing to misconduct.
26. It is also her testimony that the proceeds from the Society are usually shared out amongst the member groups, while the balance is deposited in the Society's bank account.
27. The 1st defendant gave evidence that she has copies of the audit reports for the Society though the same had not been produced as part of the defence documents.
28. The 1st defendant also gave evidence that no plans have ever been made to sell the property belonging to the Society.
29. During re-examination, the 1st defendant testified that the Society has not conducted any elections recently due to the various cases pending in court.
30. At the close of the hearing, the parties filed and exchanged written submissions as directed by the court.
31. The plaintiffs submits that the 2nd plaintiff in particular is a member of the Society and was at all material times an official in the Society following her election to the post of Secretary.



32. The plaintiffs further submit that the 1st defendant in particular has contravened the provisions of the Society's Constitution by failing to convene an AGM since the year 2011 despite the Constitution requiring that an AGM be held annually.
33. To support the above arguments, the plaintiffs have drawn this court's attention to the case of *Gitabi Gethenji & 3 others v James Ndungu Gethenji & 3 others* [2018] eKLR where it was held thus:
- “The general meetings are of great importance for shareholders as it is from such a meetings that shareholders get assurance of accountability of directors as was noted in the case of *Agricultural Development Corporation of Kenya v Nathaniel K. Tum & another* [2014] eKLR... It is therefore clear that the directors have to promote the success of the company and in doing so have to act fairly as the members of the company. The director must therefore be put to task and held accountable...”
34. It is the submission by the plaintiffs that the defendants have not demonstrated the manner in which the revenue obtained by the Society is applied by way of any audit reports and hence the need for compelling the defendants to avail audit reports for previous years setting out the income and expenditures of the Society.
35. It is also the submission by the plaintiffs that the special general meeting which was held on 5th September, 2012 did not comply with the provisions of the Society's Constitution which make it a requirement for notice of such a meeting to be issued to all members not less than 7 days to the date of such meeting and further making it a requirement for any requisition for a special general meeting to be made by way of a written order to the secretary of not less than 70 group members and that such meeting be held within 21 days from the date of requisition.
36. The plaintiffs therefore urge this court to find that the actions by the defendants are in contravention of the Society's Constitution.
37. On the reliefs sought, it is the contention by the plaintiffs that in view of the above, they are entitled to the declaratory and injunctive orders sought in the plaint, plus costs of the suit.
38. In reply, the defendants by way of their submissions argue that the plaintiffs are not themselves members of the Society since their membership falls under the groups constituting members of the Society and hence they cannot institute the present suit.
39. The defendants further argue that the question on the sale of the property never arose in any of the meetings held on behalf of the Society and hence the claims being made by the plaintiffs unfounded.
40. The defendants are of the view that the plaintiffs' case has no merit and that it ought to be dismissed with costs, as a result.
41. I have considered the various pleadings, the evidence tendered in court and the contending submissions which culminated the matter. I identified the following as the main issues pending for determination:
- a. Whether the plaintiffs have locus standi to institute the suit;
 - b. Whether the defendants contravened the Society's Constitution in their management of the Society;
 - c. Whether the plaintiffs are entitled to the reliefs sought in the plaint.
42. I will address the substratum of the issues hereinbelow.



a. Whether the plaintiffs have locus standi to institute the suit

43. On this issue, I considered the evidence tendered by the 2nd plaintiff to indicate that she is a member of the Society by virtue of her membership and official position held with Starehe Women Group and which Group is a registered member of the Society.
44. The 2nd plaintiff also adduced various documents to show that the 1st plaintiff; now deceased; was also a member of a group which was associated with the Society by way of membership.
45. From the record, I note that in addition, the 2nd plaintiff tendered a letter from Starehe Women Group signed by most of the members and executed by its various officials, granting the 2nd plaintiff authority to represent them in the present suit.
46. Upon my examination of the material and evidence tendered, I observed that the membership of the Society essentially consists of various Women Groups.
47. Upon my further consideration of the pleadings and material, I did not come across anything precluding a natural person from instituting a suit in his or her capacity as a member or official of a Society or other lawfully recognized and registered Group and on behalf of such Society or group.
48. In view of all the foregoing circumstances, I am satisfied that the 2nd plaintiff has locus standi to institute the suit.
49. Concerning the 1st plaintiff and as earlier mentioned, it is obvious that his standing in the suit abated by virtue of his death.
50. Suffice it to say that and with respect to the 3rd plaintiff, I did not come across anything from the record to clarify the nature of her membership in the Society in order to arrive at the finding that she is a rightful party to the suit.
51. This leads me to the second issue below.

b. Whether the defendants contravened the Society's Constitution in their management of the Society

52. This particular issue forms the crux of the case.
53. From my reading of the pleadings, it is clear that the defendants are being faulted for not complying with the Society's Constitutional provisions in respect to the filing of audit reports; the suspension of the 2nd plaintiff as the Secretary of the Society; the convening of meetings including the Special General Meeting and the purported sale of the property.
54. Upon my examination of the record, it is clear that the Society was formally registered on 13th April, 2011 as seen in the Certificate of Registration tendered in evidence.
55. Upon my further examination of the record, I note that the Society's Constitution was tendered in evidence setting out the manner in which the Society is to be managed.
56. On the subject of the validity of the meetings held on behalf of the Society at all material times, the Constitution provides that the AGMs are to be held annually and not later than the month of April of each year. Furthermore, it is apparent from the Constitution that the audit reports are to be tendered in the AGMs. It is equally apparent that the election of the officials of the Society shall take place during the AGM.



57. Upon my study of the record and upon my examination of the evidence, I note that the defendants did not tender any credible evidence to show compliance with the above provisions in order to disprove the allegations set out in the plaint.
58. In her evidence, the 1st defendant admitted to not having held an AGM in the recent past. Furthermore, it is apparent from the record that the audit report tendered in evidence was for the year ended 31st March, 2007, which is equally in contravention of the proviso of Section 28 of the Societies Act, Cap 108 Laws of Kenya which stipulates that:
- “(1) Every registered society shall, at least once in every year, hold a general meeting to which all its members shall be invited, and shall at such meeting—
- (a) render a full and true account of the moneys received and paid by the society, such account being audited in accordance with the rules of the society.”
59. Concerning the Special General Meeting, the Society’s Constitution provides in Article 8 that notice of such a meeting ought to be given to all members not less than 7 days and where practical, such notice ought to be advertised not less than 7 days to the scheduled date.
60. From my perusal of the record, it is apparent that following her suspension, both the 2nd plaintiff and other members of the Society wrote to the Registrar of Societies requesting a prompting of the Society to hold a Special General Meeting in a bid to discuss and resolve the wrangles and contentious issues affecting the Society.
61. From my further perusal of the record, it is also apparent that the Registrar of Societies in turn conveyed the message via correspondences to the Society urging its officials to convene a Special General Meeting.
62. The record shows that later on 5th September, 2012 a Special General Meeting was held and for which the agenda entailed the discussion of preliminary issues; the suspension of the 2nd plaintiff; and the land rate arrears, which gave rise to the decision to sell the property.
63. The record also shows that out of the meeting, a resolution was passed inter alia, resolving that the 2nd plaintiff remains suspended and that the Sub-Committee comprising of 12 members of the Society does oversee the sale of the property while the proceeds should be banked in a separate bank account.
64. However, the defendants did not tender any credible evidence to show that prior notice of the Special General Meeting had been issued and/or that the resolution was passed by the requisite number of members, in line with the provisions of the Society’s Constitution.
65. In view of all the foregoing circumstances and in the absence of any sufficient evidence to the contrary, I find that the 2nd plaintiff brought credible evidence to demonstrate that the Special General Meeting and the resolution resulting therefrom, including the resolution for the intended sale of the property, is in contravention of the Society’s Constitution.
66. Concerning the suspension of the 2nd plaintiff, it is not in dispute that prior to her suspension vide the letter dated 26th March, 2012 the 2nd plaintiff at all material times held the position of Secretary of the Society.
67. Upon my examination of the pleadings and evidence, I observed that the procedure for suspending and/or expelling an official is similar to that set out for the suspension/expulsion of members under the Society’s Constitution; namely, by way of the Committee which is to consist of three (3) office bearers and other members elected at the AGM.



68. Upon my consideration of the record, I find that the 2nd plaintiff has equally brought credible evidence to show that the Society's Constitutional provisions in respect to her suspension were not complied with.
69. For all the foregoing reasons, I am satisfied that the 2nd plaintiff has proved her case against the defendants, and I therefore find the defendants jointly and severally liable.
70. However, the 3rd plaintiff's case is hereby dismissed with costs, whereas the 1st plaintiff's case has abated.

c. Whether the plaintiffs are entitled to the reliefs sought in the plaint.

71. Upon arriving at the conclusion that the 2nd plaintiff in particular has proved her claim against the defendants, I am satisfied to consider the reliefs being sought as a result.
72. I note that among the reliefs sought are the declaratory orders set out earlier in this decision.
73. In view of my findings hereinabove, I am convinced to grant the declaratory orders sought.
74. Concerning the injunctive order sought, upon my finding that there is credible evidence to show that resolution permitting the purported sale of the property was not made in compliance with the Society's Constitution, I find that it would be in the interest of justice and the Society to grant the injunction in the circumstances, to give the Society and its members an opportunity to resolve the internal wrangles.
75. Similarly, in the absence of clear audits to ascertain the true financial position of the Society, I am convinced to grant the order requiring the defendants to provide the requisite accounts.
76. I am also convinced that it would be in the overall interest of the Society and its members, to grant the order compelling the defendants to convene a Special General Meeting.
77. In the end, judgment is hereby entered in favour of the 2nd plaintiff and against the defendants jointly and severally, and the following orders are made:
 - i. A declaration be and is hereby issued that the defendants have run the affairs of the Society in contravention of the Society's Constitution.
 - ii. A declaration be and is hereby issued that the special delegates meeting of the Society held on 5th September, 2012 was unlawful as it was held in contravention of the Society's Constitution.
 - iii. A declaration be and is hereby issued that all and/or any resolutions of the special delegates meeting of the society held on 5th September, 2012, including the resolution to sell the Society's plot, are null and void.
 - iv. An injunction be and is hereby issued restraining the defendants jointly and/or severally by themselves, their servants, employees, agents and/or through trustees of the Society or otherwise howsoever, from selling, transferring, alienating, disposing or in any other way whatsoever parting with ownership and possession of all that parcel of land known as Title No 220/3 PT (UNS Plot No 'B' Mathare).
 - v. An order be and is hereby issued requiring the defendants to give a true and just account of the Society's income.
 - vi. An order be and is hereby issued compelling the defendants to convene an all-inclusive special general meeting of the Society as directed by the Deputy Registrar of Societies vide his letter dated 10th May, 2012 under the supervision and coordination of the Registrar of Societies.



vii. The defendants shall pay the 2nd plaintiff's costs of the suit.

viii. The 1st plaintiff's suit abated while the 3rd plaintiff's suit is hereby dismissed with costs.

78 It is so ordered.

DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS THIS 28TH DAY OF MARCH, 2023.

J. K. SERGON

JUDGE

In the presence of:

.....for the Plaintiffs

.....for the Defendants

