



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 284 OF 2016

HAROUN MBUGUA KIMANI.....1ST APPELLANT

MBURU WACHIRA.....2ND APPELLANT

KAMAU KIMARI.....3RD APPELLANT

JACKSON WARUL.....4TH APPELLANT

EDWARD KIHORO.....5TH APPELLANT

SAMUEL MBUGUA NGANGA..... 6TH APPELLANT

PETER GITURA.....7TH APPELLANT

JOSEPH CHEGE MUNYIRI.....8TH APPELLANT

JAMES NGUGI CHEGE.....9TH APPELLANT

KANGETHE MUKABI.....10TH APPELLANT

-VERSUS-

LARI FARMERS CO-OPERATIVE SOCIETY LIMITED.....RESPONDENT

(Being an appeal from the judgment of the honourable chairman Mr. Alex Ithuku delivered on 28th April 2016 at Co-operative Tribunal at Nairobi in CTC. no. 88 of 2007)

JUDGEMENT

1. Lari Farmers Co-operative Society Kenya Ltd, the respondent herein filed a claim before the Cooperative Tribunal, against the appellant in which it sought for:

- a. A declaration that the purported acts of the respondents (appellants herein) in carrying out business in the name of the society is illegal, null and void.
- b. An injunction to restrain the respondents (appellants herein) by themselves, their servants or agents from entering the society's premises, interfering with the employees of the society or interfering with the society's property.
- c. The respondent to refund with interest the rent collected irregularly.
- d. Cost of the suit.
- e. Any other relief this honourable court may deem fit.

2. The appellant resisted the respondent's claim and filed a defence together with a counter-claim whereof they sought for an order declaring parcels nos. Kiambu/Lari 112, Kiambu/Lari/686, Kiambu/Lari/687, Kaimbu/Lari/111 and Gilgil/Gilgil/645 Kikopey to belong to the original group of 107 members and an order vesting the same in the aforesaid group or their nominees. The Co-operative Tribunal heard the claim and by the judgement delivered on 28th April 2016, the respondent's claim was allowed and the appellant's counter-claim was dismissed.

3. The appellants were aggrieved hence they preferred this appeal and put forward the following grounds:

i. THAT the learned chairman erred in law and in fact in acting without jurisdiction.

ii. THAT the learned chairman erred in law and in fact in considering issues which ought not to have been considered and declaring that the acts of the appellants in carrying out business in the name of the society are illegal, null and void.

iii. THAT the learned chairman erred in law and fact in issuing an order of injunction restraining the appellants by themselves, their servants or agents from entering the society premises, interfering with the employees of the society or interfering with the society's property.

iv. THAT the learned chairman erred in law and fact in ordering the appellants to refund with interest the rent they collected irregularly.

v. THAT the learned chairman erred in law and in failing to consider appellants' submissions and evidence on record and in dismissing the appellants counterclaim.

vi. THAT the learned chairman erred in law and fact in failing to appreciate that the respondent was holding parcels of land known as Kiambu/Lari/1085, 1038, 1101, 1087, 1041, 1001, 99, 1002, 1003, 1004 & 722 in trust of the 107 founder members.

4. When this appeal came up for hearing, learned counsels appearing in this matter, recorded a consent order to have the appeal disposed of by written submissions.

5. I have re-evaluated the evidence that were presented before the Cooperative Tribunal. I have also considered the rival written submissions together with the authorities cited.

6. On the first ground of appeal, it is the submission of the appellants' that the Cooperative Tribunal had no jurisdiction to entertain, hear and determine the claim under Section 76 of the Cooperative Societies Act. The appellants pointed out that the respondent's claim before the Cooperative Tribunal was about illegal holding of office/management of the office and ownership of the properties known as Kiambu/Lari/112, Kiambu/Lari/686, Kiambu/Lari/111, Kiambu/Lari/687, Gilgil/Gilgil/Kikopey/645.

7. The appellants argue that the aforesaid claims do not fall within those envisaged under Section 76 of the Cooperative Societies Act hence the Cooperative Tribunal acted without jurisdiction.

8. The respondent is of the submission that the Cooperative Tribunal had jurisdiction to entertain the claim under the Cooperative Societies Act.

9. I have considered the pleadings filed before the Cooperative Tribunal and it is apparent that the respondent's claim included inter alia:

i. An order for refund of rent collected by the appellant.

ii. An order for injunction to restrain the appellants from entering and interfering with the respondent's property.

iii. An order declaring the appellants' acts of carrying out business in the respondent's name to be illegal, null and void.

10. It is clear in my mind that the claim before the Cooperative Tribunal is clearly that envisaged under the Cooperative Societies Act. The Cooperative Tribunal therefore had jurisdiction to entertain the respondent's claim, therefore the appellants' contention fails.

11. Though the appellants put forward a total of six (6) grounds, they opted in their written submissions to argue the ground touching on jurisdiction as their main ground in this appeal.

12. In their second ground of appeal, the appellants aver that the chairman cooperative erred when he considered issues which ought not to have been considered and declaring that the acts of the appellants in carrying out business in the name of the society illegal, null and void.

13. The respondent is of the submission that the chairman cannot be faulted in the manner he determined that issue. The record shows that the chairman clearly stated in his judgment that a Cooperative Society such as the respondent exercised its authority through a committee elected under Section 27(3) of the Cooperative Societies Act.

14. The chairman further pointed out that the appellants at time were not committee members of the respondent. The Tribunal chairman also noted that the appellants failed to show that they were trustees of the founder members.

15. On the basis of the above reasons the appellants actions of collecting rent were declared illegal, null and void. With respect, I am convinced that the chairman, Cooperative Tribunal correctly determined the issue and was entitled to do so under the law.

16. Grounds 3, 4, 5 and 6 are closely related to the second ground.

The Cooperative Tribunal Chairman found the appellants had failed to show that they were trustees for 107 founder members and went ahead to dismiss their counter claim. In my view, the chairman arrived at the correct decision.

17. The appellants admitted in paragraph 3 of their defence and counter-claim that they were not members of the management committee of the respondent. The Cooperative Tribunal chairman was therefore right to declare the appellants' action to collect rent in respect of the properties registered or held by the respondent illegal and void.

18. In the end this appeal is found to be without merit. It is dismissed with costs being awarded to the respondent.

Dated, signed and delivered online via Microsoft Teams at Nairobi this 24th day of September, 2020.

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J. K. SERGON

JUDGE

In the presence of:

..... for the Appellant

..... for the Respondent