



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL CASE NO. 11 OF 2015**

**DOMINIC KINYUA**

**FRANCIS MWANGI KINYUA**

**ALBERT MUGO.....PLAINTIFFS**

**VERSUS**

**KERURUMWE FARMERS CO-OP SOCIETY LTD**

**WIFENZIO NJERU NJIRU**

**IRERI NDUATI**

**JOSEPH NYAGA MURANI**

**BELIA RWAMBA NJIRU**

**JAMES MBUGUA**

**JOSEPH NJAGI.....DEFENDANTS**

**RULING**

1. This is ruling is in respect of a preliminary objection taken in relation to the jurisdiction of this court to hear and determine this suit. According to the defendants the court has no jurisdiction to hear and determine suit, because the jurisdiction to do so dispute is vested exclusively in the Co-operative Tribunal

2. The plaintiffs' position is that this court has jurisdiction to hear and determine the suit, because the expulsion of the plaintiffs from the society by the defendants following the disciplinary proceedings against them was not within the mandate of the defendants. It their submission that expulsion does not constitute the business of the society. And for that reason this court has jurisdiction to hear and determine the matter.

3. In order to resolve the issue reference to the prayers sought by the plaintiffs in their further amended plaint is important. According to that plaint the prayers sought are:

a. THAT this honourable court finds that the resolution passed in the special general meeting held on the 16th day of January 2015 was illegal as it did not comply to the legally set standards.

b. THAT this honourable court finds that the expulsion of the plaintiffs from membership of the 1st

defendant for three years is illegal, unjust, draconian and in blatant breach of the rules of natural justice and the applicable law.

c. THAT this honourable court finds that the refusal by the defendants to take delivery of the coffee beans from the plaintiffs is illegal and economically oppressive.

d. THAT this honourable court orders that the plaintiffs' membership status be reinstated forthwith and the defendants be compelled to take delivery of the coffee beans.

e. THAT this honourable court awards punitive damages against the defendants jointly and severally for presiding over an illegality and enforcing an illegally procured resolution.

f. THAT this honourable court awards costs of the suit to the plaintiffs.

g. THAT this honourable court awards interests at its rates

h. THAT this honourable court makes such further or other orders as it deems fit.

4. Furthermore, in the amended 1<sup>st</sup> to 7<sup>th</sup> defendants' statement of defence, the defendants have admitted that the 1<sup>st</sup> defendant is a body corporate (para 3). The defendants have also stated that the 6th defendant is not described in the plaint and wonders in what capacity he is being sued. Additionally, the defendants assert that his inclusion in the suit amounts to a misjoinder.

5. In the light of the issues raised in the pleadings, it is necessary to refer to the jurisdiction given to the Cooperative Disputes Tribunal as set out in **section 76 of the Cooperatives Society Act**. Section 76 of that Act provides as follows:

***1. If any dispute concerning the business of a co-operative society arises-***

***(a) Among members, past members and persons claiming through members, past members and deceased members; or***

***(b) between members, past members or deceased members, and the society, its committee or any officer of the society; or***

***(c) between the society and any other co-operative society, it shall be referred to the tribunal.***

6. The issue to be decided is whether the Co-operatives Tribunal has jurisdiction to hear and determine this suit. It is clear from section 76 of the Co-operative Society Act in the light of the prayers sought by the plaintiff that the dispute in issue expulsion is part of the business of the society.

7. I have considered the rival submissions of both counsel including their authorities. According to counsel for the plaintiffs, the expulsion of the plaintiffs from the first defendant does not constitute the business of the society. They have cited section 4 of the Co-operative Societies Act in which the business of the society is stated to be promoting the welfare and economic interests of its members. Basing their submission on that section, they have submitted that disciplining its members is not the business of the society, because it does not promote the welfare and economic interests of its members. They have also cited ***Republic v. Matheka Kithome and 4 others, Miscellaneous Civil Application 444 of 2010, Alex Malikhe Wafubwa & 7 others v. Elias Nambakha Wamita & 4 others, Petition Number 7 of 2012, Benard Mugo & others v. Kagaari South Farmers Co-operative Society & 4 others, Embu High Court Civil Suit Number 4 of 2015*** in support of their submissions. It is their contention that disciplining of the plaintiffs is not part of the business of the society.

8. I am unable to agree with these submissions for the simple reason that the defendant disciplined the plaintiffs pursuant to the law and their by laws. Disciplinary proceedings are meant to promote the welfare and well ordered administration of the society and its members. If the society is denied

disciplinary powers, it may be unable to perform its core functions. Disciplinary powers are necessarily incidental to the core functions of the society. And for this reason, I find that the defendants were acting within their powers to discipline the plaintiffs. The exercise of the disciplinary power may have been harsh or not. This is subject of evidentiary proof and does not concern the court at this stage. That is part of the original jurisdiction that is vested in the Co-operatives Tribunal. That act also make provisions for a final appeal to this court. In the circumstances, I find that the redress mechanism in terms of jurisdiction is vested in the Co-operatives Tribunal from which lies a final appeal to this Court.

9. Having also considered the cases cited by the defendants namely *Mukisa Biscuit Manufacturing Co. Ltd v. West End Distributors Ltd (1969) EA 696*, which is in relation as to what constitutes a preliminary point. I have also considered the case of *Owners of Motor Vessel Lillians v. Caltex Oil (K) Ltd (1989) 1653 (CAK)* which is in relation to the jurisdiction of the court.

10. Finally, also having considered *Gatanga Coffee Growers v. Gitau (1970) EA 361* in which it was held that the business of the society is not confined to the internal management of the society but covers all its activities. I find these to be persuasive authorities.

11. The upshot of the above is that the Co-operative Tribunal is the proper forum for the plaintiffs to litigate their grievances in terms of section 76 of the Co-operative Societies Act. I note one of the prayers sought is an award of punitive damages. It is doubtful whether a court of law will make an award of punitive damages in matters that appear to me to be of a contractual nature. I make no further observations on this point.

12. I therefore find after considering the pleadings, the authorities cited by both counsel and their submissions that this court does not have jurisdiction to entertain and hear this suit and I therefore uphold the preliminary objection. The upshot of this is that the suit is struck out with costs to the defendants. Finally I find it unnecessary to decide the issue as to whether there was misjoinder of the parties or not.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **21<sup>st</sup>** day of **APRIL 2016**

In the presence of Mr Omware for the plaintiffs and Mr. Mogusu holding brief for Mr. Ithiga for the defendants

Court clerk Njue

**J.M. BWONWONGA**

**JUDGE**

**21.04.16**