



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 119 OF 2012

Kieni Farmers Co-operative Society Limited.....Respondent

Versus

Rose Wanjiru Mwangi.....Appellant

JUDGEMENT

This appeal challenges the decision of the learned Chief Magistrate rendered on 15th October 2012 in CMCC No 74 of 2006.

The background history is that the Respondent herein sued the Appellant seeking recovery of **Ksh. 188, 506.90** alleged to be the Respondents contributions and those of the Appellant as her employer at the Provident Fund which were never forwarded. The Respondent pleaded that at the material time she was an employee of the Appellant working as a secretary/Manager.

The appellant denied the said claim maintaining that there were no deductions from the employee for the Provident Fund. In her judgement, though the learned Magistrate noted that the Respondent had no documents to support the fact that she paid monies to the provident fund, she nevertheless proceeded to conclude that she was satisfied that Respondent proved her case and entered judgement in her favour.

The appellant now seeks to overturn the said judgement stating *inter alia* that the lower court had no jurisdiction to entertain the said case citing the provisions of Section 76 of the Co-operative Societies Act. [1] The Appellant also maintained that the Respondent did not prove her case in the lower court.

With regard to the issue of jurisdiction, the relevant provision is *Section 76 of the Act*[2] which provides as follows:-

“76. (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.

It is common ground that the Respondent was working as a secretary/Manager of the Appellant at the material time. Section 2 of the Act[3] provides that except where the context otherwise requires—

“officer” includes a chairman, vice-chairman, secretary, treasurer, committee member, employee or any other person empowered under any rules made under this Act, or by-laws of a co-operative society, to give directions in regard to the business of the society;

The point for determination in this appeal therefore is whether the dispute between the parties is a dispute concerning the business of a cooperative society, which should have been referred to the Co-operative Societies Tribunal as provided for under Section 76 cited above.

The expression “business of the society” has not been defined in the Act or elsewhere. The expression has fallen for interpretation by the courts in this country and elsewhere with commendable frequency. Pronouncements from different Courts in this country and elsewhere have even led to a cleavage in judicial opinions as to the true meaning and scope of that expression said appearing in the co-operative Societies Act.^[4]

As we search for the meaning of the expression "business of a society," it is important to bear in mind that Tribunals are established under an Act of Parliament to deal with disputes that arise as stipulated in the particular Act.

In the case of *Gatanga Coffee Growers Co-operative Society Ltd vs Gitau*^[5] the High Court of Kenya interpreted the meaning of the term ‘business of the society’ in the Co-operative Societies Act. The court refused to adopt a restricted interpretation and cited the Ugandan case of *Wakiro and Another v Committee of Bugisu Co-operative Union*,^[6] at p 527 where Russell J, considering the expression "business of the society" under the Ugandan Co-operative Societies Act which provision is similar to our Section 76 cited above stated as follows:-

“.....The expression "business of the society" is not confined to the internal management of the society but covers every activity of the Society within the ambit of its by laws and rules.”

A similar position was arrived at by T. Mbaluto J in *Murata Farmers Sacco Society Ltd v Co-operative Bank of Kenya Ltd* .^[7] In *Bernard Mugo & others v Kagaari South Farmers Co-operative Society & 4 others*^[8] Muchemi J held that:-

"It is imperative to note that decisions of the Co-operatives Tribunal are appealable to the High Court which is the court of final resort on that category.^[9] Matters in which the court has jurisdiction other than those included in the Act may be heard in the High court and follow the laid down process for appeal. The need to seek justice in the right forum cannot therefore be overemphasized. The provisions of Section 76 (1) and (2) are very clear.....".

In the case of *Kirinyaga Farmers Society vs Kirinyaga Co-operative Union*,^[10] the court observed that the exercise of determining whether a dispute is one involving the business of the society is a novel one. It then proceeded to examine past decisions with a view of capturing the matters considered by the courts. However, the court held that since the High court is the final court in Co-operative matters; it is not right for the High court to assume both appellate and original jurisdictions.

From the pleadings, it is evident that the relationship between the Appellant and the Respondent is that the Respondent was a secretary/Manager of the Appellant, a post created by the bye-laws and its operations are also governed by the bye-laws and therefore the dispute relating matters arising from the said relationship fall within the meaning of section 76 (1) (b) cited above. As shown in the definition offered by the Act at Section 2 cited above, the Respondent was an officer of the Respondent.

The Bombay High Court in the case of *Rambhau Jairam Dhamange vs Vinkur Co-Operative Society Ltd*.^[11] discussing a similar dispute had the following to say:-

"Considering the provisions of this section and particularly the expression used therein, "any dispute touching the business of society," this Court interpreted those words in a very wide sense. In a Full Bench decision in Farkhundali v. Potdar [1962 - I L.L.J. 51] this Court held (p. 53) :-

"In regard to the first point, the argument advanced is that the payment of wages or any sum due to an employee cannot be said to relate to the business of a co-operative society....., it seems to us that there is no substance in this argument. The nature of business which society does, is to be ascertained from the objects of the society. But whatever the society does or is necessarily required to do for the purpose of carrying out its object can be said to be part of its business. The word 'touching' is also very wide and would include any matter which relates to concerns or affects the business of the society. Every society must necessarily employ some servants for the purpose of carrying on its business. The payment of wages or any sum due to them under law, is, therefore, part of the business of the society. In any case, there can be no doubt that such payment would touch the business of the society."

Similarly, the High Court of Bombay in [G.I.P. Railway Employees' Co-operative Bank, Ltd. v. Bhikaji Karanjia](#) where Chagla, J. (as then was), observed that in the expression "touching the business of a society" in the act, and the word "business" was a very wide term and was not synonymous with the objects of a society and that the expression means affecting or relating to the business of a society.

In case of *Farkhundali v. Potdar* [12] referred to above, it was held that the words "touching the business of a society" are very wide and include any matter which relates to, concerns or affects the business of the society . It was further held that a dispute in which the employees of a co-operative society demand a change in their conditions of service or ask for reinstatement of the employees, whose services have been terminated, or asks for benefits, touches the business of the society. It would, therefore, in the absence of anything to the contrary, fall within the definition and meaning of the meaning of the term "business o a society."

I find that the dispute herein involves a secretary/employee of the society, hence it revolves within the ambit of the provisions of Section 76 of the Co-operatives Societies Act.[13]Therefore, it is evident that the dispute revolves around the business of the Appellant as provided under Section 76 cited above and that the Respondent who was a manager/secretary of the Appellant was within the rubric and category of persons who can be described as officers of a co-operative society under section 76 (1) (b) of the Co-operative Societies Act. I accordingly find that the dispute in the trial Court was one which fell squarely under section 76 of the Cooperative societies Act, and the trial Court had no jurisdiction to hear and determine the matter.

Guided by the facts of this case, the relevant law and the above decisions, I find that the Appellant's appeal has merits, hence the appeal is allowed for the foregoing reasons. Having found that the court had no jurisdiction, I find no reason to address the other grounds of appeal.

Accordingly, I order that the judgement and decree of W. Juma C.M. dated 15/10/2012 delivered in Nyeri Chief Magistrate's Court Civil Case No. 74 of 2006 and all consequential orders be and are hereby set aside. Further, that the said case being Nyeri Chief Magistrate's Court Civil Case No. 74 of 2006 be and is hereby struck out. Accordingly, I substitute the orders/decree/judgment of the lower court with an order dismissing the said case.

The Respondent shall pay the costs of the proceedings in the lower court and for this appeal.

Right of appeal 28 days

Signed, Delivered and Dated at Nyeri this 31st day of August 2016

John M. Mativo

Judge

[1] Cap 490, Laws of Kenya

[2] Ibid

[3] Ibid

[4] Cap 490, Laws of Kenya

[5] {1970} EA 361

[6] {1968} EA 523

[7] {2001} eKLR

[8] {2015} eKLR

[9] See Section 81 of the Act

[10] *Nairobi HCCC NO. 226 OF 2002*

[11] 1967 (14) FLR 27

[12] [1961 - I L.L.J. 51]

[13] Supra