



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL CASE NO. 72 OF 2008

OIKO CREDIT ECUMENTICAL

DEVELOPMENT CO-OPERATIVE U.A.....PLAINTIFF

-VERSUS-

NANDI TEACHERS CO-OPERATIVE

SAVINGS & CREDIT SOCIETY LIMITED.....1ST DEFENDANT

HENRY K. BIRGEN.....2ND DEFENDANT

PAUL K. KORIR.....3RD DEFENDANT

BENJAMIN K. KOSGEY.....4TH DEFENDANT

BEN K. RUGUTT.....5TH DEFENDANT

SAMUEL KIRWA.....6TH DEFENDANT

RULING

1. The 1st defendant prays that this suit be transferred to the Co-operative Tribunal at Nairobi. The primary grounds urged are that the dispute involves two co-operative societies; and, that the Tribunal is vested with jurisdiction by dint of section 76 of the Co-operatives Societies Act. Those matters are buttressed further by the deposition of Alfred Ng'etuny sworn in support of the notice of motion dated 4th June, 2013.
2. The motion is contested. There is a replying affidavit of Betty Kirai sworn on 20th December, 2013. In a synopsis, she deposes as follows: that the dispute is not between two co-operative societies; that the applicant by filing a defence has acquiesced in the jurisdiction of the court; that the present motion is a device contrived to delay the early determination of the suit; and, that the motion is devoid of merit and should be dismissed with costs.
3. I have studied the original plaint in this suit. The plaintiff pleaded at paragraph 1 that "*it is a co-operative society organized and registered under the laws of Netherlands.....and having an office at Sir Ibiyam House (AACC) building, 4th Floor, Waiyaki Way, Nairobi*". A local postal address is also provided. It is thus to put logic onto its head for Betty Kirai to depose at paragraph 11 of her reply that the plaintiff is *not* a co-operative society operating in Kenya. From the amended pleadings, the dispute revolves around a loan granted by the plaintiff to the 1st defendant, another co-operative society. The 2nd to 6th defendants are alleged to have executed

- personal guarantees for the loan. There is a counterclaim.
4. The Co-operative Tribunal is established by section 77 of the Co-operative Societies Act (as amended by Act No. 2 of 2004). It has *unlimited* pecuniary and geographical jurisdiction in Kenya. Section 76 of the Act donates jurisdiction to the tribunal in the following cases:-

“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;

(2) A dispute for the purpose of this section shall include

(a) A claim by a co-operative society for any debt or demand due to it from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) A claim by a member, past member or the nominee or personal representative of the deceased member for any debt or demand entitled due from a co-operative society, whether such debt or demand is admitted or not.”

5. It is clear from section 76(1)(c) that the Tribunal is seized of jurisdiction. Like I observed earlier, the Co-operative Tribunal has unlimited pecuniary and geographical jurisdiction. Any doubt about jurisdiction is removed completely by the definition of a *dispute* in section 76(2)(a). Furthermore, the claim by the plaintiff is against *another* co-operative society for the nature of debts or business of a co-operative envisaged by section 76(2)(a) of the Act. Appeals from the Co-operative Tribunal are to the High Court. Accordingly, the proper forum for the primary dispute and counterclaim in this suit is the Co-operative Tribunal. Section 18(1)(a) of the Civil Procedure Act empowers this Court to transfer a suit to any subordinate court competent to try the matter. In the instant case, the transfer to a specialist tribunal will expedite justice and save on costs. The transfer thus promotes the court’s overriding objective.
6. For all the above reasons, I find that the notice of motion dated 4th June, 2013 has merit. It is allowed. In the result, the whole of this suit is transferred to the Co-operative Tribunal at Nairobi for hearing and disposal. Costs shall abide the final judgment of the Co-operative Tribunal.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET this 19th day of June, 2014

GEORGE KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

Mr. for the plaintiff

Mr. for the defendants

Mr. Weyama, Court clerk.