



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND COURT AT KAJIADO**

**CIVIL APPEAL NO. 16 OF 2020**

**(Being an Appeal against the Ruling delivered on 3<sup>rd</sup> February, 2020 in Kajiado Chief Magistrates Court Civil Suit No. 136 of 2019)**

**JULIANA WANJA MBURUGU.....APPELLANT**

**-VERSUS-**

**ASILI SACCO LIMITED.....RESPONDENT**

**JUDGMENT**

(1) Juliana Wanja Mburugu hereinafter referred to as the Appellant filed this Appeal on 2<sup>nd</sup> March, 2020 vide a Memorandum of Appeal dated 25<sup>th</sup> February, 2020.

(2) The Memorandum of Appeal contains four grounds of Appeal; namely, that the learned Magistrate erred in fact and in law in his finding that the dispute between the Appellant and the Respondent, Asili Sacco Society, concerned the business of a co-operative Society yet it concerned ownership of land.

This means therefore that the Co-operative Tribunal did not have jurisdiction in the matter yet the Court ruled otherwise.

(3) The facts of the case are that the Appellant was a member of the Respondent. She then acquired two (2) parcels of land namely KAJIADO/KAPUTIEI-NORTH/59257 and 88691 through the Respondent.

Later on, a search at the Kajiado Land Registry established that there was a problem with one of the two parcels namely L.R. 59257. The land registry commented;

***“Card not signed. Let the Registered Owner produce the original title plus transfer documents.”***

(4) The Appellant complained to the Respondent who promised to take corrective action but failed to do so. It is then that the Appellant filed Civil Suit Number 136 of 2019 at the Kajiado Chief Magistrate’s Court. The suit was dismissed on the grounds stated earlier, hence this Appeal.

(5) I have perused the entire file which contains only the record of Appeal and the Appellants’ submissions.

There are no submissions by the Respondents’ counsel.

(6) I find that the following issues arise for determination in this Appeal.

- (i) What is the jurisdiction of the Cooperative Tribunal under **Section 76** of the **Cooperative Societies Act (Act No. 12 of 1997)** ?
- (ii) What was the dispute between the parties in the proceedings before the learned trial Magistrate?
- (iii) Did the Cooperative Tribunal have jurisdiction to adjudicate the dispute between the Appellant and the Respondent?

On the first issue, I find the jurisdiction of the Cooperative Tribunal to be limited as per Section 76 (2) of the Act as follows;-

***“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 a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not”.*

*(b) A claim by a member, past member or the nominee or personal representative or a deceased member for any debt or demand due from a Cooperative society, whether such debt or demand is admitted or not.*

*(c) A claim by a Sacco Society against a refusal to grant or a revocation of licence or any other due from the authority.*

From the above, it is evident that the jurisdiction of the Cooperative Tribunal is limited to three areas namely; claim for debt or demand due from a member to a Co-operative Society, claim for debt or demand due from a Co-operative Society to a member and refusal to grant or revocation of a Sacco Society licence by the licensing authority.

On the second issue, I find that the dispute between the Appellant and the Respondent at the Lower Court concerned land and not debt, demand due or license.

The Appellant wanted the Respondent to take corrective action to ensure that her title to L.R. 59257 was supported by mandatory documentation required in registration of land.

I find that the Cooperative Tribunal did not have jurisdiction to adjudicate on the dispute between the parties.

The jurisdiction to determine the dispute is vested exclusively in the Magistrate’s Court by virtue of **Section 9 (a) of the Magistrates’ Court Act (Act No. 26 of 2015)** as well as by other provisions of law and the Constitution.

For the above stated reasons, I allow the Appellants’ appeal and order as follows;

(a) The Ruling of the Learned Magistrate dated 3<sup>rd</sup> February, 2020 is hereby set aside.

(b) Appellant’s suit in Kajiado CMCC No. 136 of 2019 reinstated and to be heard on merit before a different Magistrate of competent jurisdiction.

(c) Each party to bear its own costs because litigation over the dispute is not over yet.

Order accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 10TH DAY OF MARCH, 2022.**

**M.N. GICHERU**

**JUDGE**