



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CIVIL CASE NO. 2 OF 2014

JAMES IRERI M'MITI.....PLAINTIFF

VERSUS

THOMAS NJIRU BENSON NJAGI.....RESPONDENT

J U D G M E N T

The plaintiff's claim against the defendant is for the following orders:-

1. *A declaration that the meeting held on 10th April 2014 in respect of Njeruri Coffee Factory to remove the plaintiff as a member of Njeruri Factory Management Committee the defendant is illegal, null and void;*
2. *Reinstatement of the plaintiff to the management committee;*
3. *General damages;*
4. *Exemplary damages;*
5. *Costs of the suit.*

The plaintiff avers in the plaint that he was elected by the members of Njeruri Coffee Factory on the 19th March 2014 as a member of the Kiangagwa Farmers Co-operative Society Ltd representing Njeruri Coffee Factory. In a meeting held on the 10th April 2014 at Njeruri Coffee Factory and chaired by the Defendant, the plaintiff was unlawfully removed from the management committee and another committee member elected to replace him.

The plaintiff's evidence is that the meeting was not legally constituted. Firstly, the meeting lacked minutes of the Kiangagwa Co-operative Society to authorize or recommend removal of the plaintiff. Secondly, there was no notice of the special general meeting issued by the society as required by the law. The plaintiff was not served with any notice of the meeting. The meeting contravened the constitution of the Kiangagwa Farmers Co-operative Society ought to be declared null and void.

The plaintiff called one witness PW2 who testified that the plaintiff was elected on 19/3/2014 as a member of the management committee to represent Njeruri Coffee Factory. The election was presided over by the District Co-operative Officer who declared the plaintiff as the winner. Two witness of the plaintiff namely Robert Njiru Noman and Elijah Njue filed their evidence affidavits sworn on the 17th June 2014 but did not attend court to give their testimonies. However, in their affidavits they confirmed that the plaintiff was elected as a committee member of Njeruri Coffee Factory on 19/3/2014.

The defendant denies the claim in his defence dated 20th May 2014. He also denies every allegation in the plaint. He avers that the meeting of 25/3/2014 was called by the District Co-operative Officer where the plaintiff was informed that he did not qualify as a Management Committee member and was thereby replaced. Any complaints regarding elections should have been referred to the District Co-operative

Officer.

In his evidence the defendant states that he is the chairman of Kiangagwa Co-operative having been elected on the 25/3/2014. He had been elected on 19/3/2014 as a committee member representing Mururiri Coffee factory. In the meeting convened by the District Co-operative officer (DCO) on 25/3/2014, the plaintiff was informed that he did not qualify as a committee member having been expelled by the Special General Meeting of 5/5/2005 Min.3/2005/2006 and memorandum dated 20/5/2008.

The plaintiff then vacated the office and instructed the defendant to convene a meeting at Njeruri Coffee factory where the DCO conducted elections replacing the plaintiff. Although the plaintiff wrote a letter to the defendant dated 6/4/2014, the defendant had no authority to stop the meeting.

The DCO one Edward Gachau (DW2) testified that he is the sub-county co-operative officer in charge of Embu East Runyenjes sub-county under the Ministry of Agriculture Department of co-operatives. On the 19/3/2014 DW2 was the presiding officer in the 1/3 rotational elections for the Kiangagwa Farmers Co-operative Society at Njeruri Coffee Factory where the plaintiff was a candidate. Some members raised objections against the plaintiff's candidature on the grounds that he had been earlier expelled by members in a general meeting. Since the members had no documentary evidence to support the objections, DW2 went ahead and held the elections where the plaintiff won with 49 votes against 19. In accordance with the co-operative regulations, the DCO is required to verify the validity of elected members within 14 days through a resolution. When DW2 carried out this duty in regard to the plaintiff's election, he confirmed that the plaintiff had indeed been expelled from the society's management committee on 27/6/2008 vide minute No. 7/2007/2008 under memorandum dated 20/5/2008. DW2 then called for the management committee meeting where the defendant was elected the chairman. The chairman was then directed by the DCO to call a special general meeting on 10/4/2014 whereas an election was conducted replacing the plaintiff as the Njeruri coffee factory committee member.

The following issues for determination have been identified:-

1. *Whether the court has jurisdiction in this case to hear and determine the matter.*
2. *If the court decides it has jurisdiction, then the following issues require to be determined:-*
 - (a) *whether the plaintiff qualified to contest the election held on 19/3/2014;*
 - (b) *whether the meeting held on 10/4/2014 to remove the plaintiff from office was valid and whether it was held in accordance with the law;*
 - (c) *whether the plaintiff is entitled to damages;*
 - (d) *who should bear the costs of the suit.*

The parties in this suit admit the jurisdiction of this court. However, the court must investigate the issue of jurisdiction and satisfy itself that the matter is properly before it.

Section 76 of the Co-operative Societies Act (revised in 2012) provides for settlement of disputes concerning co-operative societies. It provides that the following matters shall be referred to the Co-operative Tribunal:-

Section 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*

Section 76(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 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; or*

(b) *a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand due from a co-operative 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.*

In this case, the plaintiff was aggrieved for being removed from office as a member the management committee representing Njeruri Coffee Factory after he won the election on the 19th March 2014. The meeting which removed him was called on the advise of the District Co-operative Officer. The officer had received information that the plaintiff had been barred in the year 2008 from contesting for election in a decision made by a general meeting held on /5/6/2008.

The meeting of 10th April 2014 was chaired by the defendant in his capacity as the chairman of Kiangagwa Co-operative Society. The defendant has been sued in his personal capacity although he was acting in his official capacity at that time. He was exercising his official duty as the chairman by chairing the society's meeting. Any decision that was made during the meeting including that of removing the plaintiff from office was an official decision of the Society by its management committee.

The dispute between the plaintiff and the defendant herein is a dispute between a member and the society and which is covered by Section 76(1)(b) defined in Section 76(2)(b). The dispute ought to have been referred to the Co-operative Tribunal. The right party to be sued was the Society and the chairman of the society in his official capacity. If the court or the tribunal was to determine the case in favour of the plaintiff, it cannot order the defendant in his personal capacity to reinstate the plaintiff or to comply with any other order.

Article 49 of the Kiangagwa Farmers Co-operative Society provides that all disputes concerning the business of the society which cannot be settled by the committee or the general meeting be referred to the Tribunal established under Section 77 of the Act.

By virtue of Section 13 of the Act all members are bound by the by-laws of their co-operative society upon registration of such by laws. The copy of the by-laws produced in court show the date of registration to be the 11th of January 2001.

I come to the conclusion that the plaintiff as member of Kiangagwa Co-operative Society is bound by the By-laws of the Society and Section 76 of the Act in relation to any dispute between him and the Society. In compliance with the law, he was duty bound to file his dispute at the Co-operative Tribunal.

This court therefore has no jurisdiction to hear and determine the dispute before it being one between the Society and its member.

The suit is therefore struck out with costs to the defendant.

DELIVERED, DATED AND SIGNED AT EMBU THIS 8TH DAY OF DECEMBER, 2014.

F. MUCHEMI

JUDGE

In the presence of both parties in person.

F. MUCHEMI

JUDGE