



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL SUIT 265 OF 2012

GLADYS WANGARI NGOKONYO.....PLAINTIFF

-VS-

PENDANA WOMEN GROUP.....1ST DEFENDANT

WENDANI WOMEN GROUP.....2ND DEFENDANT

RULING

1. Before me is a Notice of Preliminary Objection brought by the Defendants dated 15th May 2012 and filed on 17th May 2012. The grounds of the Preliminary Objection are as follows:

- 1) That this Court does not have territorial jurisdiction to handle the suit in this matter;
- 2) That the Plaintiff has sued wrong parties who do not possess legal personality to be sued in their own names;
- 3) That the Plaintiff seeks to defeat duly executed agreements unprocedurally; and
- 4) That the pleadings do not disclose a reasonable cause of action.

2. The suit in this matter was filed on 4th May 2012. Contemporaneous with the suit, the Plaintiff filed a Notice of Motion dated the same day seeking for orders of temporary injunction against the Defendants.

3. The background to the suit is that the Plaintiff was an active member of the defendants' self-help group. The defendants advanced the Plaintiff a sum of money which she had been servicing regularly until her business collapsed and it became difficult to continue repayments consistently. It was a term of the facility that if one failed to clear the loan in the course of one year, the loan should be cleared in the succeeding year.

4. On 26th January 2012, the Plaintiff claims to have been abducted by the Defendants and taken to Murang'a police station where she spent the night and was forced to sign a commitment agreement to repay the outstanding balance. The Plaintiff claims that the said agreement was procured under duress. She claims that the defendants took all original documents of ownership to the Plaintiff's plot in Ruiru as well as the original log book to her motor vehicle KXU 262 Toyota Corolla.

5. At the hearing of the Preliminary Objection, Mr. Kissinger appeared for the Plaintiff while Mr. Onjoro appeared for the Defendant. In his submissions, Mr. Onjoro told the court that in respect of the first ground of objection, the defendants' group was based in Murang'a and therefore the suit should have

been brought before the High Court at Nyeri. He cited the Practice Notes of 2009 requiring the Court to strictly oversee the place of suing. On the second ground of objection, Mr. Onjoro argued that the defendants were a self-help group not incorporated and therefore could not be sued in their group names. He stated that only officials could be sued. He relied on the case of **Geoffrey Ndirangu & 5 Others vs. Chairman of Mariakani Jua Kali Association & 2 others** where **Maraga, J** (as he then was) held that the Jua Kali Association was not a legal person and could not be sued. On the third ground of objection, Mr. Onjoro submitted that the Plaintiff sought to defeat an executed agreement unprocedurally and urged the Court to strike out the suit. Mr. Onjoro made no submissions on the final ground of objection.

6. In response to the first ground of objection, Mr. Kissinger, for the Plaintiff, argued that the property in respect of the suit was situated in Ruiru Municipality which fell under the jurisdiction of the High Court in Nairobi. He stated that appeals from Thika Magistrate's Court lie with the High Court of Nairobi. On the second ground of objection, Mr. Kissinger urged the court to disregard the same as a technicality and cited Section 159 of the Constitution. He further submitted that Article 22 of the Constitution allowed groups to sue and to be sued in their group names. On the third and fourth grounds, Mr. Kissinger stated that the same related to facts that had to be ascertained and were therefore not grounds of preliminary objection. He cited the case of **Mukisa Biscuits Manufacturing Co. Limited vs. West End Distributors Limited [1969] EA 696** where it was held that a Preliminary Objection should only consist of points of law.

7. I have considered the pleadings and the submissions by Counsels and can now make my view on the points of preliminary objection raised by the Defendants.

8. On the outset, I concur with counsel for the Plaintiff that the third and fourth grounds of objection require to be backed by facts and are therefore not points of law. It is no wonder that Counsel for the Defendants did not say much in respect of the two grounds. Consequently, the same fail as preliminary objection points.

9. On the first ground of objection that challenges the territorial jurisdiction of this court, my take is that Section 12 of the Civil Procedure Act, Cap 21 Laws of Kenya prescribes that suits should be instituted where the subject matter of the dispute is situated. The subject matter of the suit is a property situated in Ruiru which falls within the jurisdiction of Thika Law Courts. However, as the value of the Property is around Kshs. 4,500,000/- which exceeds the pecuniary jurisdiction of that court, the matter has to be filed in the High Court to which Thika Law Courts is attached. That High Court is Nairobi and therefore this court has territorial jurisdiction over the matter.

10. On the second ground of objection, I am of the view that while Article 22 of the Constitution of Kenya allows suit to be instituted by an association acting in the interest of members, such allowance only applies to suits seeking enforcement of fundamental rights and freedoms and the provision is made to cure any incapacity an individual member may face in bringing suits for enforcement of fundamental rights and freedoms. In respect of contractual rights, it is trite law that a party instituting suit or defending suit must have legal capacity to do so. Lack of capacity vitiates enforcement of contractual rights by or against a party. I do not think that Article 22 can be invoked to accord legal capacity to a group that lacks such capacity. I would therefore be persuaded that in respect of unincorporated groups, the holding of **Maraga J in Geoffrey Ndirangu & 5 Others vs Chairman of Mariakani Jua Kali Association & 2 Others** remains sound even in the face of enactment of the Constitution of Kenya, 2010. This ground of objection succeeds and the suit is incompetent in as far as it is instituted in the group names of the Defendants instead of the groups' elected officials.

11. Nevertheless, in exercise of this Court's inherent jurisdiction and its overriding objective under Sections 1A, 1B and 3A of the Civil Procedure Act, and pursuant to the court's jurisdiction to order amendments to pleadings under the Civil Procedure Rules, I hereby grant leave to the Plaintiff to amend the Plaintiff to reflect that suit is brought against the officials of the groups sued on behalf of the groups. Such amendments should be made within 30 days from today after which the parties should embark on fulfilling pre-trial requirements and procedures under Order 11 of the Civil Procedure Rules.

12. In view of the foregoing, the Preliminary Objection dated 15th May 2012 is compromised in the above terms and with no orders as to costs.

IT IS SO ORDERED

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF JULY 2012.

J.M. MUTAVA

JUDGE