



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI COMMERCIAL COURTS

Civil Appeal 42 of 2010

NANASI HOUSING CO-OPERATIVE SOCIETY LTD. APPELLANT

VERSUS

JAMES MWANGI KARIUKI..... RESPONDENT

(From the Judgment and Orders of L W Gicheha, Senior Resident Magistrate in Thika CMCC No. 289 of 2009)

J U D G M E N T

The Respondent/Plaintiff filed in the lower court, a plaint dated 27th April, 2009 seeking certain injunction orders. The Appellant, a Housing Co-operative Society Limited, filed a defence dated the 22nd May, 2009 in which it raised and asserted lack of jurisdiction of the lower court to handle the issue arising from the affairs under the Co-operative Societies Act.

The Appellant by and by, filed an application dated 22nd September, 2009 asserting, inter alia, that the suit therein fell under the Provisions of the Co-operative Societies Act, Cap 490 of Laws of Kenya and that plot of land the subject of the suit belonged to a member of the Defendant, a Co-operative Society. The Appellant further asserted that the land had never exchanged hands since it was originally registered and the Plaintiff who purported to purchase it never fulfilled the requirements expected to be complied with to enable an effective legal sale and transfer.

The application above was dismissed by the lower court provoking this appeal.

The main issue before this court accordingly is whether or not the lower court had jurisdiction to entertain the suit.

The facts of the case, as this court understands them, are as follows:-

The Defendant/Appellant is a Co-operative Society formed and operating under the Co-operative

Societies Act. Its core business was to purchase land in mass by raising funds through its members and thereafter subdividing the land to its members in accordance with the members' contribution. The society kept a register of members and their shares per se as well as the number of land shares purchased by a member. It appears from the parties' arguments and evidence that so long as a member maintained his membership by complying with the society rules, including payment of related fees, such member had the freedom of selling his shares in the society inclusive of land shares.

It is also clear from the records that any person who bought a share from a member of the defendant Society could be registered as new member of the society only if he complied with certain fixed rules and requirements. Such conditions included the following: -

- 1. That the intended sale and transfer was in writing.**
- 2. That the potential member must purchase at least one share of the Co-operative Society by paying cash or any accepted money's worth.**
- 3. That the new member to qualify to be registered, must pay prescribed entry fee.**

In this case, the Plaintiff/Respondent bought a share and plot No. 325 from a registered member of the Defendant Society and reduced the transaction into a sale agreement. He took over the plot and undertook to pay the required entrance fee as well as purchase one share of the Society by paying cash or cash worth very soon after. The transaction was noted in the society records and the Society began treating him as member by sending to him notices and other documents sent to other registered members.

Among the notices sent to the Respondent were those demanding from the Respondent payment for entrance fees as well as for the one share which would legalize him to be registered as a member of the society. However, the Respondent did not pay the money required for those two items or requirements.

In the year 2000, the Appellant society went ahead to recall the ownership and membership which would have gone to the Respondent. It reallocated the same to a different third party. The Respondent was not notified of this change until 2007. That aggrieved him and he filed in the lower court, a suit claiming ownership of the plot No. 325 aforesaid and seeking injunction orders against the Co-operative Society – Defendant, to prevent it from interfering with the enjoyment of his rights pertaining to the ownership of the said plot of land.

In so far as this appeal is concerned, the Defendant society asserted that the plot No. 325 belonged generally to the original owner through the society and that notwithstanding the sale of the same to the plaintiff, it was a subject of a dispute within the jurisdiction of the Co-operative Societies Tribunal and outside the jurisdiction of the ordinary courts. That accordingly, the lower court had no jurisdiction and should have struck out the suit for lack of jurisdiction. The lower court refused to strike out the suit, hence this appeal.

I have carefully perused the record. It is conceded by both sides that the Respondent/Plaintiff who bought the plot no. 325 refused or failed to pay entrance fee and also failed to purchase at least one share of the Co-operative Society. He accordingly never himself became a member of the Defendant society at any stage although he was for a long time treated as such member. It is not denied however, that the plot no. 325 originated from the membership of the Defendant Society and was subject of overall society administration and management. That is why, in this court's opinion, any person wishing to purchase it, whether an outsider or a member, must pay entrance fee and must purchase at least one share of the society to make him a member who would then as member, co-operate with other members in joint projects and benefits arising from such membership. To that end the Defendant Co-operative Society maintained institutional rules and regulations whose compliance led to joint benefits for which the society was formed.

In this case the Respondent/Plaintiff, is not shown to have purchased plot No. 325 belonging generally to the membership of the Co-operative Society, with a view to own it outside the society rules and

management. Indeed he knew and/or must have known the rules and regulations of entry when he was purchasing the plot. Nor is the Respondent shown to have made it clear to the society that he would not be bound by the rules and regulations binding together the membership of the society. On the contrary, indications are that he promised to pay entrance fee and pay one shares worth. He knew and must have known the effect of the Co-operative Society's rules and regulations which would bind him when he would become a registered member. He knew or ought to have known too that the society could reallocate the plot for non-compliance of the rules. Indeed, in this record the Respondent admitted being served with notices for entry fees and reallocating of the plot if he failed to respond.

Furthermore, the core business of the Defendant Co-operative Society was to purchase land, subdivide it and administer and manage the same as it lay and was used by members. The society always had control of the land through its management rules. That is to say, the land was sold to the Respondent by a member of the society and the Respondent who became a potential member, who would be bound by the same rules as other members. Had the Respondent revealed to the Co-operative Society that he would not become a member the sale to him would not obviously have been approved by the Society.

Finally, the reallocation of the plot No. 325 to another person, a power the Defendant Society did not let go at any stage of the sale transaction of the plot to the Respondent, confirmed that the rights over the plot always remained with it, the same being its core business.. In this court's view accordingly, any rights touching the plot would always remain under the Co-operative Societies Act. The lower court being an ordinary court had therefore, no jurisdiction over a subject matter of a Co-operative Society. It should, therefore, have upheld the Appellant/Co-operative Society's assertion.

In the circumstances, this appeal has merit. It is hereby allowed. In consequence, this court hereby strikes out the lower court suit for lack of jurisdiction. Costs are to the Appellant. Orders accordingly.

Dated and delivered at Nairobi this 18th day of September 2012.

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D.A. ONYANCHA
JUDGE