



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
LAND AND ENVIRONMENTAL LAW DIVISION
CIVIL SUIT (ELC) NO.587 OF 2010

CHEGE
KABITA.....PLAINTIFF
F
VERSUS
KARIOBANGI HOUSING & SETTLEMENT COOPERATIVE
SOCIETY.....DEFENDANT

R U L I N G

1. The defendant has raised a preliminary objection to the plaintiff's suit and chamber summons application dated 1st December, 2010 on the ground that this court has no jurisdiction to hear and determine the application, and the suit upon which the application is hinged. It is contended that the defendant is a cooperative society duly registered under the Cooperatives Societies Act Cap 490, and the plaintiff is a member of the defendant society. It is argued that the plaintiff's claim is based on his position as a member of the defendant society. It is submitted that the dispute between the plaintiff and the defendant ought to have been referred to the Cooperative Tribunal established under Cap 490, as it falls squarely within the provisions of Section 76(1)(b) of the Cooperative Societies Act. The court was therefore urged to strike out the suit for want of jurisdiction.
2. For the plaintiff it was submitted that Section 76(2)(b) of Cap 490 which defines a dispute for the purposes of the Cooperative Societies Act, does not cover a dispute involving land. It is maintained that the land subject of the dispute between the plaintiff and the defendant is governed by the Registration of Titles Act (Cap 281) under which the High Court has jurisdiction to deal with disputes involving land.
3. It is further submitted that the Cooperative Tribunal has no powers to issue an injunction which is the relief sought by the plaintiff. It is argued that assuming the High Court has no jurisdiction to hear the matter, it has powers under Section 18 of the Civil Procedure Act (Cap 21) to transfer any proceedings before it to any court, and therefore it can transfer the matter to the Cooperative Tribunal. Relying on ***Oraro vs Mbajah [2005] 1 KLR 141***, the court was urged to dismiss the preliminary objection as it was raising factual issues instead of points of law.

4. I have given due consideration to the objection and the submissions made. I find that the preliminary objection is not anchored on factual details, but it is anchored on a point of law which is the issue of jurisdiction. From the plaint filed on 2nd December, 2010, the plaintiff's suit is hinged on his relationship with the defendant as a member of the defendant's society. The dispute concerns land being plot No.192 on LR No.220/4 which the plaintiff claims to be entitled to as a member of the defendant society, which land is also being claimed by the defendant. In my view the dispute concerns the business of the defendant as a Housing and Settlement Society and falls within Section 76(1)(b) of Cap 490. I find that Section 76(2) of Cap 490 which provides the definition of a dispute, is not exhaustive as it uses the word "includes".

5. As regards the argument that the Cooperative Tribunal has no powers to issue orders of injunction, I find that Section 79(1)(a) of the Cooperative Societies Act gives general powers to the Cooperatives Tribunal to make such orders as it deems necessary or expedient. Moreover, Section 80(4) expressly provides for jurisdiction to the Chairman of the Cooperative Tribunal to deal with temporary injunctions. In my view, the Tribunal cannot be able to deal with temporary injunctions and not have powers to issue an order of injunction as a substantive relief. I therefore reject the submission that the Tribunal has no powers to issue orders of injunction.

6. I find that the dispute between the plaintiff and defendant ought to have been referred to the Cooperative Tribunal, as jurisdiction in such disputes has been specifically conferred on that Tribunal by the Cooperative Societies Act Cap 490. I reject the submissions that this court should refer the matter to the Tribunal as the plaintiff ought to have commenced his suit in the Tribunal and not in this court.

7. I do therefore uphold the preliminary objection and order the plaint and chamber summons dated 1st December, 2010 to be struck out for want of jurisdiction.

Dated and delivered this 28th day of January, 2011

H. M. OKWENGU

JUDGE

In the presence of: -

Thimba for the plaintiff

Amuga for the defendant

B. Kosgei - Court clerk