



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**COMMERCIAL & TAX DIVISION – MILIMANI**  
**CIVIL CASE NO. 760 OF 2009**

**KENVERSIY CO-OPERATIVE SAVINGS & CREDIT SOCIETY  
LIMITED.....PLAINTIFF**

**VERSUS  
EVANS NYANG'AU**

**NYAKUNDI.....1<sup>ST</sup> DEFENDANT**  
**SAMUEL MAINA**

**MUGO.....2<sup>ND</sup> DEFENDANT**  
**DICKENS ODHIAMBO**

**OUMA.....3<sup>RD</sup> DEFENDANT**  
**SAMUEL KISIANGANI**

**NYONGESA.....4<sup>TH</sup> DEFENDANT**  
**SAMUEL MWANGI**

**KAMAU.....5<sup>TH</sup> DEFENDANT**  
**FIDELIS KIOKO**

**MBULO.....6<sup>TH</sup> DEFENDANT**  
**KENNETH KINYANJUI**

**MWANGI.....7<sup>TH</sup> DEFENDANT**  
**CAROLINE WANJIRU**

**NG'ANG'A.....8<sup>TH</sup> DEFENDANT**  
**MARY AKINYI**

**ODERO.....9<sup>TH</sup>**  
**DEFENDANT**

**R U L I N G**

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> defendants have filed preliminary objection to the plaintiff suit. They object to the jurisdiction of this court to hear and determine the plaintiff suit maintaining that it is a contravention of the provisions of the Cooperatives Societies Act Cap 490.
2. The plaintiff is a Cooperatives Savings and Credit Societies Company Limited. The company had sued the defendants who were all employees of the plaintiff society until 28<sup>th</sup> February, 2008 when their employment was terminated. The plaintiff society is claiming various amounts from the defendants being loss incurred by it as a result of fraud, negligence and gross violation of internal controls, on the part of the defendants.

3. The defendants have filed defences denying the allegations of fraud. The defendants further deny being liable for loss suffered by the plaintiff.
  
4. Mr. Muriuki who argued the objection on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and the 7<sup>th</sup> defendants submitted that the matter before the court was a dispute falling squarely within Section 76B of the Cooperative Societies Act. Mr. Muriuki argued that under that Section, any dispute should be referred to the Cooperatives Tribunal. He submitted that this court lacks jurisdiction to hear the dispute as a court of first instance because Section 81 of the Cooperatives Societies Act, gives jurisdiction to the High Court in such matters by way of appeal only. Mr. Muriuki pointed out that Section 58 and 73 of the Cooperative Societies Act deals with issues of embezzlement of funds. Such issues go to the tribunal under Section 74 of the Act. Mr. Muriuki therefore argued that the matter was before this court prematurely as they should have been canvassed with the Cooperatives Tribunal as a court of first instance.
  
5. Mr. Kopere who appeared for the 3<sup>rd</sup> defendant also argued that under Section 76(2) of the Cooperative Societies Act, the Tribunal deals with disputes concerning loss or demands arising out of negligence or embezzlement. Mr. Kopere pointed out that since the defendants were all employees of the plaintiff, the matter can only be dealt with under Section 87(1) of the Employment Act which deals with disputes between employer and employee. He noted that jurisdiction of such disputes is given to the Industrial Court by virtue of Section 87(2) of the Employment Act. The court was therefore urged to dismiss the entire suit with costs.
  
6. Mr. Wetangula who appeared for the plaintiff, submitted that the preliminary objection did not raise a pure point of law argued on the assumption that the facts pleaded on the other side are correct. He pointed out that the court would have to delve into the facts to determine the capacity of the defendants. Mr. Wetangula argued that Section 76 of the Cooperative Societies Act only deals with disputes between the Cooperative Societies Act and its members. He pointed out that the 3<sup>rd</sup> defendant has in fact already admitted the jurisdiction of the court. Mr. Wetangula maintained that the issue of the Employment Act was raised as an afterthought as the same was not referred to in the preliminary objection which was filed in court. Thus the court was urged to overrule the preliminary objection.
  
7. The preliminary objection raises the issue of jurisdiction. This is an issue of law to be determined on the pleadings. Therefore, the objection has been well taken. From the pleadings, it is evident that the relationship between the plaintiff and the defendant is not in dispute. The defendants were employees or officers of the plaintiff society. The dispute concerns funds allegedly lost by the plaintiff as a result of the defendants' alleged fraudulence and negligence during the course of their employment. Therefore, the dispute between the plaintiff and the defendants is one which concerns the business of the plaintiff society. It is also a dispute between the plaintiff society and its officers. Therefore, it is a dispute which falls squarely under Section 76(1)(b) of the Cooperative societies Act.
  
8. Reference was made to Section 87(1) and (2) of the Employment Act which gives jurisdiction to the Industrial Court. Nonetheless, the pleadings herein show clearly that the dispute before the court is not an industrial dispute, but it is a dispute which, as already stated falls within the ambit of the Cooperative Societies Act. It matters not that the 3<sup>rd</sup> defendant admitted the jurisdiction of the court. This court having been specifically denied jurisdiction by law, the parties cannot by consent confer jurisdiction where there is none.
  
9. For the above reasons, I uphold the preliminary objection and rule that the plaintiff's suit is incompetent as this court has no jurisdiction to try it. The plaintiff's suit is accordingly struck out. In the circumstances of this case, I do not find it appropriate to award any costs.

Those shall be the orders of this court.

**Dated and delivered this 20<sup>th</sup> day of May, 2011**

**H.M. OKWENGU**

**JUDGE**

In the presence of:

Mogere H/B for Wetangula for the plaintiff

Omondi H/B for Gitonga for 1<sup>st</sup>, 2<sup>nd</sup> and 7<sup>th</sup> defendants

Adera H/B for Kopere for 3<sup>rd</sup> defendant

Mwangi H/B for Kalwa for 4<sup>th</sup> defendant

Kosgei – Court clerk