



Kiraithe v John; Quadco Limited & another (Interested Parties) (Environment & Land Case 73 of 2015) [2022] KEELC 12771 (KLR) (28 September 2022) (Judgment)

Neutral citation: [2022] KEELC 12771 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 73 OF 2015
CK NZILI, J
SEPTEMBER 28, 2022**

BETWEEN

JACKSON KIRAITHE PLAINTIFF

AND

THOMAS KINOTI JOHN DEFENDANT

AND

QUADCO ONE HUNDRED SIXTY NINE LIMITED INTERESTED PARTY

BALDEV KUMUR KASTURILALWAL INTERESTED PARTY

JUDGMENT

1. By an amended plaint dated August 6, 2004 the plaintiff claiming that by virtue of being a member of Nkando Farmers' Cooperative Society Ltd (herein after the society) under liquidation vide Gazette No 2771 dated May 13, 2019 and an allottee or occupant of Parcels No 283, 578, 613, 625, 626, 628 & 629 as subdivisions of LR No 7143 No Timau/Timau Block/71-763) (hereinafter the suitland) sued the defendant notwithstanding the liquidation process for unlawfully acting as an official of the society. He averred the defendant purported to allocate part of his parcel No 699, renamed it as parcel No 624 and awarded it to one Alexander Miriti Manyara hence depriving him ownership rights.
2. The plaintiff averred the defendant usurped powers he did not possess and went on to direct the land registrar Meru central to register the said land despite being aware a liquidator had been appointed to undertake such powers.
3. The plaintiff prayed for a permanent injunction restraining the defendant from interfering with the affairs of the society under liquidation by keeping its property and or directing the allocation and registration of parcel in LR No 7143 now Timau/Timau Block 7/1-763 Nkando and sought for the nullification of all actions and directives taken or given by the defendant with effect from May 13, 1999 relating to the defunct society and its assets.



4. On his part of the plaintiff filed a plaintiff list of documents on November 28, 2012 and March 7, 2017 containing 287 documents in number, list of issues dated July 29, 2013 and March 7, 2017.
5. By a defence dated September 21, 2004, the defendant admitted that the plaintiff was a member of the society but denied the alleged allocation and ownership of the suit parcels of land. He stated that LR Parcels No 578, 613, 283, (762), 701 & 702 belonged to third parties.
6. As regards the liquidation process, the defendant denied the alleged capacity of the liquidator since the suit property was never part of or an entitlement of the society. Further, the defendant maintained no cause of action could arise against him as the suit property belonged to one Alexander Miriti.
7. The defendant denied receiving any demand letter, and stated that the plaintiff was laying claim to land already allocated to another person whereof he was charged with trespass hence the suit was res-judicata, disclosed no cause of action against him, he lacked locus standi to file it and that he was no privy to the matters pleaded therein.
8. The defendant also filed a notice of preliminary objection dated September 21, 2004 on the ground that the suit was untenable in law he could not be sued and the suit offends the registered Land Act as well as the Constitution.
9. Following an application dated September 21, 2011, the interested parties sought and were allowed to join the suit.
10. The interested parties filed a defence dated August 1, 2012 denying that the plaintiff was entitled to LR No Timau/Timau/Block 7 Nkando/687 and LR No Timau/Timau Block 7/Nkando 701 & 702 which belong to them. The interested parties denied knowledge of the contents of paragraph 5, 6 & 7 of the plaint and averred the suit was bad in law, untenable, disclosed no cause of action, the plaintiff lacked locus standi, and that they were not privy to the matters raised there. The interested parties also filed a preliminary objection, on the basis of the aforesaid points of law.
11. The interested party filed a list of witnesses dated June 25, 2015 witness statements, list of documents dated August 1, 2012, January 13, 2013 & another one filed 3.7.2013 and list of issues dated July 17, 2013.
12. In compliance with court orders the plaintiff filed a paginated bundle dated November 23, 2017 containing documents from page 74-173. The court for ease of reference directed the parties however to file paginated bundles of documents.
13. The plaintiff filed a fresh bundle on November 6, 2018 dated October 31, 2018 while the defendant filed his bundle dated June 15, 2015 and later a list of issues dated March 9, 2017 containing 12 documents while the interested parties filed a bundle dated December 21, 2018.

B. Testimony

14. The plaintiff adopted his witness statement made on January 17, 2013 as his evidence in chief and urged the court to grant him a permanent injunction restraining the defendant from interfering with the affairs of the defunct society. He produced his paginated bundle as exhibits namely a letter from the chief and land registrar dated January 28, 2004 as P exhibit (1) crop damage asset as (P Exh 2, surrender letter as P Exh (3) land transfer forms as P Exh (5), two green cards as P Exh (6), official receipts for kshs 900 as P Exh (7), gazette notice dissolving the society as P Exh (8) receipts for payment of kshs 81,000 as P Exh (9), register for society members as P Exh (10), judgment in Criminal Appeal No 47 of 2004 as P Exh (11), Kenya subsidiary registration subdivision as P Exh (12), bankers cheque as P Exh (13), proceedings in Criminal Case No 2330 of 2002 as P Exh (14), proceedings in CC 95 of 2004



as P Exh (15), copy of plan as P Exh (16), confirmation letter for the appointment of the liquidator as P Exh (17), letter from the liquidator dated February 8, 2001 as P Exh (18), copy of title deed for Memen & M'Nmak as P Exh (19), resignation letter from the liquidator as P Exh (20) judgment in Cr. Case No 2330 of 2002 as P Exh (21), statutory declaration by the liquidator as P Exh (22) trust deed by Glencordes Estate as P Exh (22) pleadings as P Exh (24), statement by one Kinyua as P Exh (25), letter of appointment of liquidator dated 21.8.2007 as P Exh (26), Gazette notices No 8946 of August 21, 2007 and 13148 dated November 20, 2009 as P Exh (27) & (28), land transfer form as P Exh (29), ruling by Hon. Justice Serگون dated 1.8.2011 as P Exh (30) and certificate for registration for glecorrie as P Exh No (31).

15. In cross examination, the plaintiff admitted he acquired the suit land from the society because the society had split into two:- Mukiira and Mukira who co-owned the suit land and since he was a member of the latter. He reiterated that he had sued the defendant and not the society or Mukira since the defendant as the former chairman was the one purporting to be acting as such after the society was dissolved in 1999; and he was the one who allegedly contracted a land surveyor on Okumu and Belcon agencies to take away his land
16. PW 1 insisted he acquired shares after they were transferred to him by the society's former members.
17. PW1 said the subdivision of the land occurred between 1995 – 1996 and in 1999 he visited the liquidator. Later on the defendant told him he was the one acting as the chairman hence the reason he received from him kshs 87,000/= for 850 shares which was to cater for his plots since 26 shares comprised of one acre.
18. PW 1 denied he had filed the suit in a representative capacity on behalf of the society. He stated that after it was placed under the liquidation with effect from September 13, 1999 up to 2004 the defendant continued acting as if the society was not under liquidation claiming the suit land did not form part of the properties placed under liquidation alleging the society had split in 1994 and the suit property had been bought using proceeds of coffee harvest, hence Mukiira members had to benefit from the farm.
19. Additionally, PW 1 insisted he was claiming the suit parcel as his property and for his family members. Further, PW 1 stated that commissioner for cooperatives advise, he bought over 900 shares from various members of the society between 1996-1997 and his name replaced those members he had bought from with the assistance of both the secretary one Lucy Kagwana and that the defendant as the chairman hence the reason the defendant took from him the banker's cheque of kshs 87,150/= in 2001.
20. As regards the title deed held by third party PW 1 admitted he learned about it recently. However, he insisted the kshs 81,000/= he gave out to the defendant was supposed to cater for the survey fees and the processing of his title deed. He however admitted H.C No 134/04 Nyeri involved the same land but denied that the HCC 172/97 was his suit.
21. PW1 admitted the cheque issued on September 10, 2001 for kshs 87,150/= was in the name of the society but not the defendant. He however clarified he paid kshs 81,000/= cash and a receipt was issued on November 12, 2001 for Parcel No's 628,625 and 699 and he expected title deeds for them which parcels he was allocated by 1997.
22. PW1 admitted he acquired membership No 65 of the society from his late father though he did not have any authority to that effect save that the crop assessment report was clear that the defendant was the one who had brought people to his Parcel No 699 and caused the damage. As regards P Exh 6 the plaintiff testified it belonged to Parcel. No 613 which the defendant allegedly transferred to Memen and One M'Kathuri on August 30, 2004. The plaintiff clarified it was the defendant who presided over the merging of shares or selling of shares as advised by the commissioner of cooperatives and that he



- had acquired two numbers namely 2813 & 65 as per the register of members which he produced as P Exh No 10.
23. As regards kshs 7,400/= PW 1 admitted he paid it on September 12, 2001 and was issued with a receipt in the name of the society. He clarified that though there was a complaining group he had only sued the defendant for interfering with the land which he had bought shares from the members of the society namely Parcels No's 628, 625, 626, 699, 622, 701, 702, 283, 614, 613, 617, 578, 623, 762, 687 & 624 as per the land surveyors contracted by the defendant on his behalf.
 24. As regards the previous criminal and civil cases, PW 1 clarified some of the plots in the instant suit formed part of the previous suits, which he had either been sued by the defendant or had sued him for performing duties belonging to the defunct society.
 25. As concerns the orders sought, PW 1 clarified he could not know the number of people on his land since he does not stay on the land nor was he sure if they possessed title deeds though admittedly he had not joined them, the liquidator or the land surveyor.
 26. In line with P Exh (10) PW 1 also testified and urged the court to nullify whatever the defendant had done notwithstanding he lacked written consent from the liquidator to institute the suit.
 27. Concerning the trust deed PW 1 said it was not a registered document at all. PW 1 testified that in 1992 the society members resolved to have their land and hence was a member by virtue of his late father's share who passed on in 2012 he took over his membership. He clarified that he was not complaining on behalf of his late father but for the shares he bought as per the register of members. PW 1 testified he went to the commissioner of cooperatives who told him to consult samson kibati, the liquidator who then signed transfers for all his plots. PW 1 said though he got transfers for all his plots he saw no need to amend the plaint.
 28. PW 2 adopted his witness statement filed on November 27, 2012 and confirmed that after the society folded up members acquired their parcel of land between 1997 – 98. He confirmed that he had witnessed the plaintiff acquiring his plots under the superintendence of the defendant during several meetings they attended. He could not however confirm the registered owner of the suit parcels of land.
 29. As regards the payment of kshs 81,000/=-, PW 2 confirmed he took the plaintiff to pay the same on September 12, 2001 before the defendant and one Lucy Muthaura and were issued with receipts for survey fees and title deed.
 30. DW 1 adopted his statement dated March 18, 2013 as his evidence in chief and produced D Exh 1-12 namely;- a gazette notice as D Exh (1) minutes for August 20, 1992 as D Exh (2), register of members for Glencorrie Estate Society as D Exh (3), share certificate as D Exh (4), banker's cheque for kshs 87,150/= as D Exh (5), titles for members as D Exh (6), share certificates for Glencorrie Estate as D Exh (7), trust deed as D Exh (8), deed of surrender as D Exh (9), valuation report for the society as D Exh (10), court proceedings in Nyeri HCC No 172/97 & CMCC No 134 of 2004 as D Exh (11) and the map for the society land as D Exh (12).
 31. DW 1 confirmed the society did not exist and the prayers sought by the plaintiff could not issue since former members of the society owned and lawfully acquired their title deeds. Further DW 1 regarding parcel No 578 said, PW 1 had only two shares out of 28 people so he could not get a title deed. As concerns Parcel No 614 he said it was jointly owned with one Cosmas Kanake. DW 1 clarified that the plaintiff did not own any other parcel of land except Plot No 699, 528 & 763 which he paid for and acquired title deeds and where he had no title deed the land was registered in the name of Glencorrie Estate to which he ought to have liaised with other co-shareholders for a title deed. DW 1 further clarified that when liquidation commenced, there were two splinter groups Mukiira & Nkando and



that glencorrie estate was a shareholding of the society which was not part of the property put under liquidation as confirmed by the liquidators statutory declaration produced as exhibit by the plaintiff. He said glencorrie estate was privately owned and its members had over 60 title deeds which was taken care of as per the trust deed he had produced as exhibit which estate he was still its chairman.

C. Written submissions

32. The plaintiff submitted he was one of the shareholders of the defunct society the owner of LR No 7143 for and on behalf of its members where he owned Parcel No's 283, 578, 613, 614, 625, 626, 628 & 699 a subdivision of LR No Timau/Timau/Block 7/1-763 and in which the defendant was a chairman until May 13, 1999 when the society was put under liquidation. He submitted the defendant allegedly continued to interfere with the society affairs and renamed his Parcel No 699 as 624 and continued to receive money, sign transfer forms and cause the issuance of title deed to third parties.
33. The plaintiff submitted the issues for determination are: whether the society went into liquidation; if the defendant continued to act as chairman of the society, if the defendant actions were illegal, null and void; if he has locus standi to sue and if he is entitled to the prayers sought plus costs.
34. On the 1st and 2nd issue, the plaintiff submitted his shareholding was not disputed going by P Exh (10), the register for members at paragraph 14, the receipts of payments produced as P Exh (9), and the gazettment notice produced as P Exh (8). Reliance is placed on *Mexhack Kirimi M'Mwithimbu and 7 others v Liquidator Nkuene Farmer's Cooperative Society Ltd and 16 others* (2016) eKLR.
35. On the 3rd issue the plaintiff submitted after the dissolution of the society, the defendant continued to act as evidenced by P Exh (4) and (6) by signing transfer forms instead of the liquidator.
36. Regarding the 4th issue, the plaintiff submits by signing the transfer forms, which is also admitted in the defence witness statements and in cross examination, the defendant purported to be acting for glencorrie estate without any authority save the same was also a mere shareholder of the society as per P Exh (10).
37. As concerns issue number (5), the plaintiff submitted the defendant actions were illegal since a liquidator is the one legally mandated to take up the affairs of the society and all documents signed after 1999 including P Exh (10) and (3) are nullities.
38. As to the locus standi, the plaintiff submitted he has not brought the suit in a representative capacity but individually for his rights to own the suit parcels have been violated by the actions of the defendant hiding under the umbrella of glencorre estate when he was not a liquidator which averments have been admitted by defendant in his own exhibits namely the trust deed for glencorre estate, statutory declaration by the liquidator, contracts with the surveyors, title deed issued after the dissolution and the transfers signed by the defendant. The plaintiff therefore urges the court to grant him the reliefs sought with costs.
39. As regards the interested party, the plaintiff submitted the 1st interested party merely adopted his statements and produced no documents while the 2nd interested party did not appear in court.
40. Further the plaintiff submits the suit is against the defendant as an individual who continued to act without authority of the liquidator or the society.
41. The defendant submits the society came into existence with effect from 1975 comprising mainly coffee farmers and he was a member up to liquidation. As regards the society assets, the defendant submitted members owned them in form of shares who were 7554 in number and had contributed in the buying



LR No 7143. However, but only 1670 members had paid up shares of kshs 100/- which land was approximately 1418 acres.

42. The defendant submitted that resolutions were made to have a committee to come up with the modalities of sharing the land and as at June 23, 2003, they had approved the subdivision of the land and a surveyor was contracted to undertake the process.
43. It is submitted upon the dissolution of the society, the liquidator took over the affairs of the society that save the suit land which never formed part of the assets of the society given that not all members had contributed to its purchase and given it was at an advanced stage of mapping, sharing and distribution on the ground and others settled therein the activities continueD
44. Therefore, each member contributed kshs 132/= per share to cater for the surveyors' fees and a trust deed was signed to hold the land in trust and transfer the same to its rightful members upon payment of prescribed survey fees and title deed processing fees.
45. The defendant submitted the plaintiff was not a member of the society but a splinter group formed during the liquidation where he bought shares from original members totaling 586 in number and later on two shares making it to 588 shares after he approached the defendant and the secretary of the society gave out a cheque of kshs 71400/= as survey fees for his 586 shares and title deed which catered for Parcel No's 628, 699 and 625 and the management noted his 586shares titled in Parcel No 628 and 699. Therefore, the defendant submits the plaintiff hence was not entitled to Parcel No 625 when he was notified about but declined to pick the balance.
46. The defendant submitted the plaintiff later on paid survey fees for Parcel No 614 & 578 which had only two shares. Later on the society established in Parcel No 614 the plaintiff had only 20 shares which he had bought without involving the officer in charge since there were 60 other members. Likewise, in Parcel No 578 it was established there were other shareholders hence in the two cases titles could not be issued until the issue of the purchase of shares from the other members was sorted out, which two plots are registered under glencorrie estate trust.
47. The defendant submitted the subdivisions were done in 1997 and members had obtained title deed prior to the liquidation hence the plaintiff has obtained title deed save for those he owns jointly with third parties.
48. The defendant therefore submitted he has not interfered with the affairs of the society as alleged hence the suit lacks merit, is in a representative capacity, it did not join the liquidator, is a non-starter, it is overtaken by events, it has not joined current owners of the suit parcels and it seeks orders tantamount to cancelling title deed in his own custody.

D Determination

49. The issues falling for my determination are:-
 - i. If the plaintiff has locus standi to bring the suit against the defendant
 - ii. If the court has jurisdiction to entertain the instant suit.
 - iii. If the plaintiff was a member of the society and owner of shares entitling him to the suit lanD
 - iv. If the suit land belonged to the society.
 - v. If the suit is bad in law for not joining the liquidator of the society.
 - vi. Whether the plaintiff is entitled to the prayers sought.



50. By an amended plaint dated August 6, 2004 the plaintiff describes himself as a member of Nkando Farmers' Cooperative Society Ltd which placed under liquidation on May 13, 1999 and an allottee of Parcels No's 283, 578, 613, 625, 628 and 629 which are subdivisions of LR No 7143 presently known as LR No Timau/Timau/Block 71-763. He sued the defendant a former chairman of the society up to the time it was liquidated purporting to unlawfully allocate the suit land, particularly part of Parcel No 699, renaming it as Parcel No 624 and eventually awarding it to Alexander Miriti Manyara hence depriving him his ownership rights.
51. The plaintiff averred that the defendant purported to usurp the powers of the liquidator and went on to personally direct the land registrar Meru central to register parcel No 624 to a third party.
52. The plaintiff therefore urged this court to issue a permanent order of injunction restraining the defendant from interfering with the affairs of the society under liquidation, or keeping its property and or directing the allocation and registration of LR No 7143 now LR No Timau/Timau/Block 7/1-763. The plaintiff also sought for the nullification of all actions and directives of the defendant with effect from May 13, 1999 relating to the society and its assets.
53. In his defence dated September 21, 2004, the defendant admitted that the plaintiff was a member of the society, but denied that he had been allocated and or owned the suit parcels of land
54. On the issue of liquidation, the defendant denied that the suit parcels of land fell under the mandate of the liquidator and maintained no cause of action could arise against him. Further, the defendant averred the suit property belonged to Alexander Manyara hence the suit was defective for misjoinder of parties. The defendant averred the plaintiff lacked capacity to file the suit for he was not privy to the matters pleaded, it disclosed no cause of action against him, it was resjudicata, and was untenable in law.
55. Regarding the interested parties by a defence dated August 1, 2012, it was averred that LR No's. Timau/Timau/Block 7/Nkando 701 & 702 were absolutely owned by them and alluded to similar preliminary grounds of objection to the suit as those raised in the defence by the defendant.
56. Further, both the defendant and the interested parties filed preliminary objections dated September 21, 2004 and October 14, 2013 respectively on account of lack of capacity, untenable suit, or contrary to the land laws and the Constitution, bad in law, disclosing no cause of action and for lack of locus standi to sue.
57. In his testimony, PW 1 produced Kenya Gazette Notice No 2771 of 1999 dated September 13, 1999 which placed the society under a liquidator, register of members of the society confirmation letter by the liquidator; resignation letter of the liquidator; statutory declaration, Gazette Notice on appointment of a new liquidator by a letter dated August 21, 2007; Gazette Notices No's 8946 and 13148 dated 21.8.2007 and November 20, 2009 as P Exh No 8, 10, 17, 18, 20, 22, 25, 26, 27 & 28 respectively.
58. The said gazette notices clearly refer to an order dated October 10, 1999 which placed the society under the liquidator with the mandate to take into custody all the property of the said society including such books and documents as are deemed necessary for the completion of the liquidation process.
59. Exh No 3 relates to a surrender letter in which the surrender is the society dated June 20, 2003 which is made extended by the officials of the society among them the defendant who describes himself as the chairman. It is drawn by the senior registrar of titles as registered on June 23, 2003. It surrenders its land which is described as a subdivision scheme so as to be issued with title deeds under the registered Land Act Cap 300.



60. Exh No 64 is a copy of records regarding Parcel No LR Timau/Timau/Block 7/613 and 283 opened on August 30, 2004 in the name of the society.
61. During his testimony, the defendant produced D exh 1, which is a the Gazette Notice No 2771 dated May 13, 1999, copy of register of members as D Exh (3); share certificate as D Exh (4) & 7; copy of green card as D Exh (6) for LR No 613, 283, trust deed as D Exh (8), surrender letter D Exh (9), report and valuation for the assets of the society as D Exh (10) and a sketch map for the property as D Exh (12).
62. D Exh No (9), the trust deed dated August 10, 2000 involves the defendant and relates to LR No 7143, and the shareholders of the former cooperative societies who are not defined to hold the said property in trust.
63. The 1st interested party produced IP Exh No 4 being copy of the records for LR No Timau/Timau/Block 7 Nkando/702 opened on December 16, 2009 by the liquidator of the society.
64. Looking at the totality of pleadings and the exhibits by the parties, what comes out clearly is that the issue of the society being in liquidation is not in dispute. What is disputed is firstly whether as at May 13, 1999, the suit parcels of land formed part of the assets of the society or not. Secondly is if the plaintiff was a member of the society and the defendant as the chairman and thirdly if the defendant could legally continue to execute his chairmanship duties particularly by dealing with and or transferring the properties of the society despite the existence of a liquidation order and a notice.
65. The power to determine the membership and officials of a cooperative society is bestowed upon the cooperative Tribunal by dint of section 76 of the Cooperative Societies Act Cap 490. The issue raised by the plaintiff against the defendant is an alleged illegal holding of the office of the chairmanship while the society is under liquidation. The plaintiff prays for a permanent injunction and the invalidation of the acts and directives of the defendant done contrary to the law on liquidation.
66. In my considered view the dispute is beyond the powers of the tribunal as set out under section 76, 77 and 80 of the Cooperative Societies Act.
67. In *Gatunga Coffee Growers v Gitau* (1970) E.A 361 and *Murata Farmers Sacco Society Ltd v Cooperative Bank of Kenya Ltd* (2001) eKLR, it was held the business of the society is not confined to the internal management of the society but covers every activity of the society within the ambits of its by-laws and rules. In *Rep v Matbeka Kitbome and 4 others* (2011) eKLR the court held the business of the society also means a dispute connected to the performance of the profession, trade, operations and promotion of the members welfare and economic interests.
68. In *Bernard Mugo & 4 others v Kagaari South Farmer's Cooperative Society & 4 others* (2015) eKLR the court held a suit challenging the legality of the decision of the society infringing on the rights of the plaintiffs was outside the ambit of section 76 (1) & (2) of the aforesaid Act.
69. In *Universal Traders Sacco v Margaret Mwikali Mbithi* (2015) eKLR the court found a dispute over a claim for payment of a debt or demand due to it fell under the Tribunal. In *Mathew Mutuku Muli & 5 others v Peter Wanjobi Kiama Official Liquidator Drumvale Farmers' Cooperative Society Ltd and 14 others* (2022) eKLR a dispute touching and seeking for a permanent injunction on land interference, rendering of true accounts of the disposal of the suit parcels and the invalidation of transfers was held by the court to be outside, the ambit of the Tribunal and falling under the ELC court by dint of article 162 (b) of the Constitution, section 80 of the Land Registration Act and section 13 of the Environment and Land Court Act.



70. The issues in this suit revolves on not only the membership of the society, the illegal usurpation of powers but also the legality of the subsequent acts of the defendant as regards the suit properties in light of a liquidation order and gazettment.
71. The next issue is whether the plaintiff has the capacity to sue and if the defendant could be sued There is no dispute that the society was placed under liquidation on May 13, 1999. The questions over what properties and who is a bonafide beneficiary of the properties and whether the defendant had powers to deal with the properties cannot be answered and or determined without the participation of the liquidator.
72. In *Rep v Gathaita Farmers' cooperative Ltd exparte Richard Nganga Kamiro Kamiro* (2016) eKLR, Korir J as he then was held an issue on whether the applicant was a member of the society or not fell beyond the tribunal and on lanD The same position was taken in *Kennedy Kimani Ndarwa v Methi and Swani Farmers' Cooperative society Ltd and another* (2019) eKLR.
73. In *New Kamwangi Gumba Co. Ltd v Kiambu Coffee Growers Cooperative Union and 2 others* (2015) eKLR the court held upon deregistration of a cooperative, it ceased to exist as a corporate body with any privileges and attributes attached to it to hold movable and immovable property, enter into contracts, sue or be sued in its name. The court stated under the repealed sections 65, 66, 67 & 69 now sections 63 & 65 of the new Act, all the property of a society vests with the liquidator upon the order of cancellation taking place through gazettment of a liquidation order.
74. The court held it was only the liquidator who had the powers to sell the movable and immovable property bestowed with the rights of action of the society to carry on with the business of the society so far as may be necessary, for the proper liquidation of the affairs of the society.
75. In this suit none of the parties have joined the liquidator or called it to testify on their behalf yet the transfers relate to the property of the society during the period it is admitted, a liquidator was in office upon the gazettment up to and including August 2007. The defendant did not file before the court any approvals by the liquidator of the transfer made in 2004.
76. The surrender of the letter was done by the society officials among them, the defendant as the chairman. This happened after the society was put under liquidation. There was no consent attached from the liquidator or the commissioner of cooperatives authorizing the surrender and the subsequent subdivision so as to remove the affairs, books of account and assets of the society as at May 13, 1999 from the mandate of the liquidator.
77. The change of ownership of the property of the society in my view was not only illegal but also irregular and was aimed at defeating the very essence of the liquidation process.
78. The same case obtains with the trust deed already registered on September 11, 2002. It not only lacks the imprimatur of the liquidator, but is also allegedly signed by the defendant without defining his capacity at the time.
79. In *Kagaa Farmer's Cooperative Society v Daniel Gathiora Garuba & another* (2019) eKLR the court in determining sections 63 & 65 of the Cooperative *Societies Act* held the management committee ceases to exist once a liquidation order is made and members can only sue as such.
80. Similarly, in *John Kamangu & 2 others v Annah Njeri Kamau & 2 others* (2018) eKLR the court held under section 65 & 66 (1) (b) of Cap 490, once a liquidation order is made and a gazettment made, past members can only sue through the liquidator and individuals can only be allowed to sue in their personal capacity by virtue of section 69 thereof. The court held that can occur when a party is aggrieved by the commissioner's decision or that of a liquidator.



81. In this suit the plaintiff has brought the suit as a former member of the society suing its former chairman who has allegedly been in office illegally and has interfered with his land rights by purporting to exercise powers which he does not possess in law. None of the parties herein has sought for and obtained a consent from the liquidator to advance their claims as I have found the property herein belonged to the society as at May 13, 1999.
82. That notwithstanding, the matter revolves around the infringement of personal rights to property of the plaintiff. In cross-examination, the plaintiff admitted that the liquidator has signed for and he awaits the collection of his title deed to some of the suit properties.
83. In my considered view, the plaintiff per se is not advancing the interests of the defunct society but is pointing out that the defendant is arrogating to himself powers he does not possess in law and in the process infringing on his right to land ownership. On the other hand, the defendant has not denied exercising such powers and directives. Instead he claims the suit properties did not form part of the society's property.
84. It is a principal of law that a court should not be used to perpetuate an illegality and or to confirm illegalities. Instead of asserting its mandate, the liquidator as evidenced by his own statutory declaration and statements in this suit, perpetuated the illegalities and failed to stamp its authority by allowing the defendant to act as if he was the liquidator.
85. Unlike in *Mbugua Nganga and Co Advocates v KPCU Ltd (2021) eKLR* and *Kaaga Farmers (supra)*, the suit herein is not against the society or for the society or against the liquidator.
86. The plaintiff has produced exhibits herein to show that his rights to land have been infringed by the illegal acts of the defendant. The defendant has admitted in his exhibits before court he continues to discharge his duties as the chairman even after the society was placed under liquidation.
87. Therefore, I find there exists a right which have been infringed by the defendant as regards parcel of land named herein calling for redress, for there can be no wrong in law without a remedy.
88. The suit is allowed to the extent that LR No 7143 now LR No Timau/Timau/Block 71-763 belonged to the society and fell within the mandate of the liquidator with effect May 13, 1999 and that the defendant lacked powers to deal with the said parcels of land otherwise as a former chairman from the said date. Therefore, any acts undertaken thereafter without the involvement of the liquidator were illegal, invalid, null and void, ab initio.
89. The plaintiff has however failed to avail any evidence on the registered owners of the suit parcels for this court to find him deserving a permanent injunction over registered land. Costs to the plaintiff.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 28TH DAY OF SEPTEMBER, 2022

In presence of:

C/A: Kananu

Kiraithe present in person

No appearance for the rest of the parties or their advocates

HON. C.K. NZILI

ELC JUDGE

