

JOHN AYUGA & 30 OTHERS PLAINTIFFS

VS.

GARO SACCO LIMITED DEFENDANT

RULING

By a Notice of Motion dated 17th and filed on 18th March, 2009 the Plaintiffs moved the court for the substantive order that the ruling and Award contained in the Court Order issued in High Court Miscellaneous Application No.620 of 2001 on 23rd January, 2002 be adopted as a court order.

The grounds upon which such order is sought are set out on the face of the application and an affidavit sworn by one John Ayuga is annexed thereto.

The Defendant Garo Sacco Limited opposed the application. A notice of Preliminary Objection has been lodged essentially to the effect that this court has no jurisdiction to hear and determine the issues raised in the application.

From the material before me, I shall confine myself to issues of law and only one issue of fact.

Unless and until the High Court is seized of a matter between a member or members of a co-operative society on one hand and the co-operative society on the other, it has no jurisdiction to adjudicate in the matter. This is because the Co-operative Societies Act of 1997 has express and explicit provisions addressing the internal mechanisms available to resolve the internal or domestic issues in co-operative societies.

Under Sections 76 and 77 of the said Co-operative Societies Act are specific that, only a Co-operative Tribunal established thereunder has jurisdiction to address issues of this nature. The High Court has appellate jurisdiction under section 81 of the same Act. This is not such an appeal and I must hold, as I hereby do, this court lacks jurisdiction to entertain the matter at hand.

Having so held, I have no reason to consider the merits attributed thereto but, on the issue of fact I alluded to earlier, the order sought to be registered provides that **“the intended sale of investment project be stopped until a new co-operative society to take over the management of the project is formed and which will be bonafide body to decide on the fate of the project.”**

I am informed from the bar and also the averment appears in the Notice of Preliminary Objection that, that society has been formed. It is known as Ofafa Maringo Housing Co-operative Society Limited. This is to the advantage of the Plaintiffs who sought the registration of the said order.

Be that as it may, I uphold the Preliminary Objection and hold that I have no jurisdiction to entertain the Notice of Motion dated 17th March, 2009.

The upshot is that the same is hereby dismissed. Each party shall bear own costs.

Orders accordingly.

Dated, signed and delivered at Nairobi this 23rd day of October, 2009.

A. MBOGHOLI MSAGHA

JUDGE