



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET

CIVIL SUIT NO. 26 OF 2006

1. JOHN SEGUTON CHELIMO)
 2. SIMON KANGOGO CHEBORE)
 3. MICHAEL RUTO)
 4. STANLEY SEGUTON)
 5. JEREMIAH CHEBURET)
 6. SILAS BUIGUT)
 7. PHILEMON CHEBURET)
- PLAINTIFFS**
8. GIDEON CHELIMO)
 9. JOEL CHEPCHIENG)
 10. KIPKALYA RICHARD)
 11. HARON YATOR)
 12. GEORGE CHEPYEGON)
 13. FLORENCE SUMUKWO)

VERSUS

1. NGOBITWA FARMERS CO-OP. SOCIETY LTD)
 2. GABRIEL CHEMWENO)
 3. BERNARD KWAMBAI)
- DEFENDANTS**
4. JOSEPH CHESIRE)
 5. DANIEL TUITOEK)

RULING

John Seguton Chelimo, Simon Kangogo Chebore, Michael Ruto and ten others who appear as the plaintiffs in this suit, have moved this court by way of a Chamber Summons, in which they seek an order to restrain Ngobitwa Farmers Co-operative Society and four others, who are the defendants herein, from wasting, selling, alienating, subdividing, transferring, charging or in any way dealing with parcel number Soy/Soy/Block 10 (Navillus)/139 (“subject property”) whose proprietorship the plaintiffs claim. They also pray for an order of prohibition, inhibiting the registration of any dealing in respect of the subject property. They pray that the said orders remain in place until the hearing and determination of their suit against the said defendant.

The plaintiffs who are members of Kapropita Farmers Society which is a member of Ngobitwa Farmers Co-operative Society claim to have acquired the subject property in 1998, after which it was registered in the name of Ngobitwa Farmers Co-operative Society Ltd (“the Society”), which therefore holds the land in trust for them. They now claim that the 2nd to the 5th defendants have been reducing the acreages of their share of the farm and that they are now in the further process of reducing the said acreages to their detriment. It is also their ground that the Society has charged the subject property to secure a loan, which they were not aware of.

The defendants, who filed their combined grounds of opposition claim that this court lacks the relevant jurisdiction to handle the matter or the suit for that matter, as it was filed in breach of provisions of part XIV and/or section 76 to 78 of the Co-operative Societies Act No. 12 of 1997(‘the Act’).

I have taken the submissions of both counsel into account and I must point out at the outset, that contrary to Mr. Obudho’s belief, the Chairman of the Co-operative Tribunal, or his deputy shall have the jurisdiction as empowered under Section 80 (4) of the Act to deal with issues of temporary injunctions in matters which fall within the ambit of the Act.

Be that as it may, section 76 of the Act which the defendants plead stipulates that:

(1) If any dispute concerning the business of a co-operative society arises:-

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between members, past members or deceased members, and the society, its Committee or any officer of the society; or

(c) between the society and any other co-operative Society; it shall be referred to the Tribunal.

The above provisions are clear in that the types of actions which can be handled by the Tribunal are spelt out in sub section (2) thereto which stipulates that:

“A dispute for the purpose of this section shall include -

(a) a claim by a co-operative society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not.

The claim in this suit revolves around land and the mode of its distribution.

In my humble opinion that is not one of the issues, which was envisaged by the promulgators of the Act, and on that ground alone I find that the objection by the defendant has no merit, and in the circumstances, I do allow this application which is not otherwise opposed. I grant the plaintiffs the two orders which they seek.

Costs shall however be in the cause.

Dated and delivered at Eldoret this 8th day of March 2006.

JEANNE GACHECHE

JUDGE

Delivered in the presence of: