



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**

**Civil Appeal 67 of 2004**

**OL'KALOU FARMERS SACCO**

**SAVINGS & CREDIT CO-OPERATIVE SOCIETY.....1<sup>ST</sup>  
APPELLANT**

**B. M. GATURUKU T/A BENSURE AUCTIONEERS.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**PIUS NJOROGE.....RESPONDENT**

*(Appeal from the Ruling and Order of the Principal Magistrate's Court at Nyahururu by Mr. D. Kathoka Ngomo – P. M. dated 8<sup>th</sup> July 2004)*

**J U D G M E N T**

The suit in the Lower Court was initiated by Pius Njoroge (the Respondent herein) who filed a plaint against the Appellants Ol Kalou Farmers Sacco Limited (hereinafter referred to as the 1<sup>st</sup> Appellant) and Bensure Auctioneers (hereinafter referred to as the 2<sup>nd</sup> Appellant). The prayers sought in the plaint were:

***(a) A permanent injunction restraining the Defendants by themselves, their agents, servants and or employee from interfering in any way with the Plaintiff's properties and to release the attached animals forthwith.***

***(b) Costs of the suit plus interest.***

***(c) Any other further relief that this Honourable Court may deem fit and just to grant.***

In their joint statement of defence the Appellants maintained that the Respondent was not entitled to the prayers sought in the plaint. Paragraph 6 of the defence stated as follows: -

*“The jurisdiction of this honourable court is denied as this is a matter between a current or past member of a co-operative society and the society that can only be heard by the Co-operative Tribunal. Consequently the Defendants hereby give notice that they shall at the very first opportunity raise a preliminary objection to the suit on this ground.”*

True to their word the Appellants did raise a preliminary objection. It was submitted on behalf of the Appellants that the Respondent having been a past member of the 1<sup>st</sup> Appellant which is a co-operative society and the dispute being one concerning the business of a co-operative society, the jurisdiction to determine such dispute is by section 76 of the Co-operative Societies Act vested in the Co-operative Tribunal established under section 77 of the same Act.

For the Respondent it was submitted that the matter was within the jurisdiction of the Lower Court as the Respondent was seeking an equitable remedy which the Co-operative Tribunal being a quasi judicial body had no power to grant. The Respondents further maintained that it was the Appellant’s who had acted *ultra vires* by attaching the Respondent’s goods instead of taking the dispute to the Co-operative Tribunal and the Respondent was therefore entitled to the protection of the law.

The Principal Magistrate having considered the arguments accepted the submissions of the Respondents’ advocate and overruled the preliminary objection maintaining that He had jurisdiction to determine the dispute. It is this ruling that is the subject of this appeal.

Section 76 of the Co-operative Societies Act No.12 of 1997 states as follows: -

***“76 (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.***

***2. 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 a debt or demand is admitted or not, is a dispute for the purposes of this section.***

It is evident from paragraph 5 of the plaint that the Respondent claims to have:

***“Paid the entire amount owing as at May 2001 and ceased to be a member of the 1<sup>st</sup> Defendant.”***

This means that the Respondent admits to being a former member of the 1<sup>st</sup> Appellant and the dispute relates to a debt allegedly due to the 1<sup>st</sup> Appellant which the Respondent disputes. The 1<sup>st</sup> Respondent being a Co-operative Society, this is a matter which falls within the provisions of section 76 of the Co-operative Societies Act as the dispute is between a Co-operative Society and a former member of the Co-

operative Society and the jurisdiction to determine the dispute should be vested upon the Co-operative Tribunal established under section 77 of the Co-operative Society's Act. The Respondent however maintains that the tribunal cannot deal with the matter. First because is a quasi judicial body having no powers to grant the equitable remedy which is sought, and secondly because the 1<sup>st</sup> Appellant opted not to pursue their claim in the tribunal but acted *ultra vires* in attaching the Respondent's goods.

Regarding the attachment the 1<sup>st</sup> Appellant purported to act under Section 33 of the Co-operative Societies Act. This section provides *inter alia* for a co-operative society to have a 1<sup>st</sup> charge over any agricultural produce, animals or articles produced or bought with the aid of money lent to any member or past member to enable the member or past member obtain the produce, animal or article. It is evident that where an issue arises (as has arisen herein) as to whether there is money owed to the society, or whether the society is entitled to attach any goods or animals pursuant to section 33 of the Co-operatives Act, that is a matter which would be within the jurisdiction of the Co-operative Tribunal. The fact that the co-operative society has not referred the matter to the Co-operative Tribunal does not in any way change the fact that the matter falls within the jurisdiction of the Co-operative Tribunal nor does it take away that jurisdiction or give any justification to the Respondent to ignore the authority of the Co-operative Tribunal.

A general statement was made that a quasi judicial body has no powers to grant an equitable remedy. That statement was not supported by any authority. In my view a quasi judicial body such as the Co-operative Tribunal is a creature of statute and its powers and limitations are defined by the statute. In this case Section 78 (2) of the Co-operative Societies Act 1977 gives the Co-operative Tribunal powers to hear any dispute referred to it and make an award thereon. There is no limitation on the extent of the awards that may be made by the Tribunal.

Moreover section 80 (4) of the same Act as amended by the Co-operative Societies (Amendment) Act Number 2 of 2004 specifically gives jurisdiction to the chairman of the Tribunal acting alone to deal with applications for temporary injunctions.

If the chairman acting alone can grant orders for temporary injunctions, the Tribunal must have powers to confirm or discharge the temporary injunction orders. In effect therefore the tribunal does have powers to grant equitable orders where the circumstances of the dispute justifies it. The Respondent herein could therefore have sought and obtained orders of injunction which He is seeking in this court from the tribunal. I find that the trial magistrate was wrong in assuming jurisdiction in this matter when the legislature's intention as evidenced by section 76 of the Co-operative Societies Act was that such disputes should go to the Co-operative Tribunal.

I do therefore allow this appeal, set aside the order made by the Principal Magistrate on 8<sup>th</sup> July 2004 and substitute it thereof, with an order upholding the preliminary objection and dismissing the Respondent's suit for want of jurisdiction.

I award costs of this appeal and costs in the Lower Court to the Appellant.

Orders accordingly.

*Dated, signed and delivered this 25<sup>th</sup> day of May 2006.*

H. M. OKWENGU

**JUDGE**