



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI**

**CIVIL CASE NO 548 OF 2001**

**MURATA FARMERS SACCO SOCIETY LTD..... APPLICANT**

**VERSUS**

**CO-OPERATIVE BANK OF KENYA LTD..... RESPONDENT**

**RULING**

When this matter came up for hearing before me on 17.4.2001, learned counsel for the respondent Mr Ohaga raised a preliminary objection. His contention was that the plaint shows that the plaintiff is a Co-operative Society duly registered under the Co-operative Societies Act (Cap 490 of the Laws of Kenya) while at paragraph 2 of the same plaint the defendant is shown as a statutory body established under the Co-operative Societies Act and licensed to carry on the business of a bank and financial institution under the Banking Act. Given that position, Mr Ohaga submitted that any dispute between the plaintiff and the defendant, being a dispute concerning the business of a co-operative society within the meaning of section 76 1(c) of the Societies Act, must be referred to the Tribunal established pursuant to s 77(1) of the Act. He further contended that because of that requirement, the plaintiff was wrong to institute a suit arising from the dispute between it and the defendant in this Court and the same ought to be struck out.

Mr Ohaga also submitted that there was no limitation as to the nature of the matters that fall within the term “business of the society” and that the jurisdiction of the High Court arose only on appeals from the Tribunal. In that regard he referred to the case of *Gatanga Coffee Growers Cooperative Society v Gitau* (1970) EA 361 in which the High Court at Nairobi interpreted the meaning of the term ‘business of the society’ in the Co-operative Societies Act. At page 363 of the report, it is stated:- “I can see no justification for adopting so restricted an interpretation. In *Wakiro and Another v Committee of Bugisu Co-operative Union*, (1968) EA 523 at p 527 RUSSELL, J, considered this expression:-

‘It appears, however, to be generally accepted,’ he said, ‘that even though the words must be strictly construed as s 68 of the Act ousts the jurisdiction of the Courts the word ‘disputes’ includes all matters which could form the subject of civil litigation and ‘touching the business of the society’ is not confined to disputes regarding the internal management of the affairs of the society or disputes in regard to the principles which would regulate the conduct of business.’

Section 68 of the Act refers to s 68 of the Co-operative Societies Act (Cap 93) of Uganda, sub-s (1) and (2) of which are substantially the same as sub-s, (1) and (2) of s 80 of the Kenya Act. The expression ‘business of the society’ in my opinion covers every activity of the society within the ambit of its by-laws and rules.”

The business of the plaintiff according to the plaint is the provision of financial services to its members and depositors while that of the defendant is as described in paragraph 2 of the plaint “to carry on the business of banking and financial services under the Banking Act.” As to the business of the plaintiff, it must be clear from the very wide interpretation given to the phrase “business of a co-operative society” by Simpson J in the case of *Gatanga Coffee Farmers Growers v Gitau* that the term must include “every activity of the society within the ambit of its by-laws and rules”. In my view the dispute about the defendant’s alleged failure to honour the plaintiff’s cheques is one which squarely falls within the business of both parties.

Mr Njenga who represented the applicant in this matter submitted that the business of the defendant is banking and that the matter complained of is between a bank and its customer, the complaint being that the defendant had breached that relationship. According to him the matter did not therefore fall within section 76 of the Co-operative Societies Act.

I do not however agree with Mr Njenga's views. In my opinion, the words 'the business of the society' appearing in section 76 is as aforesaid wide enough to include the business of banking and the provision of financial services. By the plaintiff's own admission as contained in the plaint, the plaintiff's basic business is the provision of financial services while that of the defendant again according to the plaintiff's own description in paragraph 2 of the plaint, is 'the carrying on the business of a bank and financial institution'. The functions of the two institutions are therefore similar and they fall within the ambit of "the business of a Co-operative Society". In any case the registration of the defendant under the Cooperative Societies Act and not under the Banking Act clearly indicates that the intention of the Legislature was to bring the defendant within the provisions of the Co-operative Societies Act and more particularly section 76 thereof. Clearly the Companies Act does not apply.

For the above reasons, I am of the view that section 76 of the Co-operative Societies Act applies and this suit ought not to have been filed in this Court in the first instance. Accordingly, the objection is upheld and the suit struck out with costs.

Dated and delivered at Nairobi this 25<sup>th</sup> day of April, 2001

**T. MBALUTO**

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**JUDGE**