



Odera (Suing in her capacity as the legal representative and administrator of the Estate of Gladys Betty Odera - Deceased) v Balozi Housing Co-operative Society Limited (Land Case E058 of 2025) [2025] KEELC 6047 (KLR) (18 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6047 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E058 OF 2025
CA OCHIENG, J
SEPTEMBER 18, 2025**

BETWEEN

LAVENDER ACHIENG ODERA (SUING IN HER CAPACITY AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF GLADYS BETTY ODERA - DECEASED) PLAINTIFF

AND

BALOZI HOUSING CO-OPERATIVE SOCIETY LIMITED DEFENDANT

RULING

1. What is before Court for determination is the Defendant’s Preliminary Objection raised at paragraph 18 of the amended Statement of Defence dated 25th August 2022 in which the Defendant avers that:

“The jurisdiction of this Honourable court is denied as the matter is a dispute between a co-operative society and its member and the Defendant shall raise a preliminary objection thereof.”
2. The Preliminary objection was canvassed by way of written submissions.
3. The Defendant submits that from the Plaintiff’s further amended Plaintiff, it is not in dispute that the original Plaintiff (Gladys Betty Odera-deceased) was a member of the Defendant. Further, that the shareholding /contributions of the deceased are central to the dispute and the costings of the houses being constructed by the Defendant, also feature in a significant way in this dispute thus the matters in question are in the nature of the business of the society.
4. It submits that under Section 76 of the *Co-operative Societies Act*, the instant dispute falls within the jurisdiction of the Co-operative Tribunal and contends that the inbuilt dispute resolution mechanisms provided under the Act should be recognized and deployed as intended.



5. To buttress its averments, the Defendant relied on the following decisions: *Gatanga Coffee Growers v Gitau* 119701 EA Speaker of the National Assembly v *Karume* (Civil Application 92 of 1992) [1992]1 KECA 42 (KLR) (29 May 1992) (Ruling), *Owners of the Motor vessel "Lillian S" v Caltex Oil (Kenya) Ltd* (1989) KLR 1 and *Phoenix of EA Assurance Company Limited v SM Thiga t/a Newspaper Service* [2019] eKLR.
6. On her part, the Plaintiff submits that the gravamen of the dispute is the ownership of the suit property and whether the Defendant's transfer of title to a third party was lawful, amongst other issues, which this Court has jurisdiction to determine pursuant to Article 162 (2) of *the Constitution* as read together with Section 13 of the *Environment and Land Court Act*. She argues that the Co-operative Tribunal does not have jurisdiction to entertain the dispute herein.
7. She contends that Section 76 of the *Co-operative Societies Act* is inapplicable as the Plaintiff does not seek relief as a "member" entitled to internal SACCO rights, but as the legal successor to a deceased member, asserting rights arising from contract and land ownership.
8. She further submits that for a period of over sixteen (16) years, the Defendant submitted to the jurisdiction of the High Court and voluntarily participated in the proceedings without any objection thus attempting to challenge the jurisdiction of the Court, sixteen (16) years post the filing of the suit, has contravened the cardinal principle of law which dictates that jurisdictional challenges be raised at earliest opportunity.
9. She also submits that under Section 7 of the *Limitation of Actions Act*, actions for the recovery of land may be brought within twelve (12) years and the original suit was filed in 2006, one year after the cause of action in 2005, and well within the 12-year limitation period thus the defence of limitation does not arise.
10. To buttress her averments, the Plaintiff relied on the following decisions: *Mathew Mutuku Muli & 4 Others v Peter Wanjohi Kiama, Official Liquidator Drumvale Farmers & 14 Others* [2022] eKLR, High Court in Civil Appeal No. 226 of 2004: *Toratio Nyang'au & 4 Others v Lietego FCS* [2011] eKLR, *Freizer Mumo v Jonah Kavithi Daniel & Magdalene Wayua Daniel* (Sued as the representatives of the Estate of Daniel Mulwa Kavithi & 3 Others [2020] KEELC 3504 (KLR), High Court in Civil Suit No. 438 of 2012, *Paul Mutua Mutiwa v Kimeu Kyumbu & 2 Others* [2014] eKLR and *R v Gathaige Farmers' Cooperative Society Ltd & Another Ex-parte Richard Nganga Kamiro* [2013] eKLR.

Analysis and Determination

11. Having considered the instant Preliminary Objection as pleaded in paragraph 18 of the Amended Defence including the rivalling submissions, the sole issue for determination is whether Section 76 of the *Co-operative Societies Act* ousts the jurisdiction of this Court to determine the dispute herein.
12. The Defendant claims this Court is devoid of jurisdiction to determine this suit, by dint of section 76 of the Cooperative *Societies Act*, which fact is disputed by the Plaintiff. The Defendant insists that the dispute relates to a claim by its member who is now deceased and that Section 76 of the *Co-operative Societies Act* establishes the procedure for redress of a dispute arising between a Co-operative Society and its member, which is that such a dispute must be referred to the Co-operative Tribunal.
13. On her part, the Plaintiff contends that the dispute concerns ownership, title, and transfer of land, a domain reserved for the Environment and Land Court.



14. Section 76 of the *Co-operative Societies Act* provides 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.
- (2) 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.
 - c. A claim by a Sacco society against a refusal to grant or a revocation of license or any other due, from the Authority.”

15. In *Freizer Mumo v Jonah Kavithi Daniel & Magdalene Wayua Daniel* (Sued as the representatives of the Estate of Daniel Mulwa Kavithi & 3 Others [2020] KEELC 3504 (KLR) the Judge stated that:

“The jurisdiction of the Tribunal under Section 76(1) of the Co-operative Tribunal Act is confined to matters pertaining to the “business of a Co-operative Society” and not a dispute on ownership of land, be it between members of the Society or otherwise. Indeed, the issue of which court has the jurisdiction to determine disputes concerning the use, occupation and title to land have been exhaustively captured in *the Constitution* (Article 162(2) (b)) and the *Environment and Land Court Act*. In addition, the *Land Registration Act* provides the manner in which a Title Deed may be cancelled, and by which court.” Emphasis Mine

16. While in *Toratio Nyang’au & 4 Others v Lietego FCS Limited* [2011] KEHC 1215 (KLR) the Court held that:

“The Cooperative *Societies Act* does not define the term “business”. But we know that cooperative societies are business organizations owned and operated by a group of individuals for their own mutual benefit. Although we are not told what the respondent society was established to do, I am, however, certain that resolving its land disputes with third parties whether or not they are its members cannot have been one of the businesses of the respondent society. In the circumstances the land ownership dispute in this case did not fall within the purview of Section 76 of the *Societies Act* and the Tribunal had therefore no jurisdiction to entertain the matter.”



17. I note the Plaintiff in the further amended Plaint dated the 2nd August, 2022 sought for the following Orders:
- a. A declaration that the deceased acquired a legal and/or equitable interest in Plot No. 119 on LR No. 12422/400 together with the maisonette erected thereon.
 - b. A declaration that the Defendant's purported sale of the suit property to Judith E. Obam was null and void.
 - c. An order for the annulment, revocation and/or cancellation of any transfer and/or alienation of any interest in the suit property carried out between 1st March, 2022 and the date of delivery of the Court's judgment.
 - d. An order for specific performance compelling the sale and transfer of Plot No. 119 on LR No. 12422/400 together with the maisonette erected thereon to the Plaintiff, failure of which the Deputy Registrar of the Honourable Court do sign the transfer forms in favour of the Plaintiff.
18. From a reading of the aforementioned prayers sought by the Plaintiff, it is evident that they do not fall within the ambit of the Cooperative Societies Act as it is a claim for land which has since been registered in the name of a third party. Further, I note the Defendant had actually previously raised the issue herein in its replying affidavit challenging the jurisdiction of the court and contending that the proper forum to determine the dispute was the Cooperatives Tribunal, which application was determined by the Court. Insofar as the deceased was a member of the Defendant, I opine that since the suit property was transferred to a third party, this case metamorphosized from being a dispute between a member and a society, to a claim for land. Further, as per the initial Statement of Defence dated the 11th December, 2007, the Defendant had even admitted that the Court had jurisdiction to handle this matter.
19. Since the fulcrum of the dispute herein revolves around recovery of land and recovery of proceeds of sale of land; it is my considered view that the prayers sought in the further amended Plaint, which I have highlighted above require evidentiary proof and are not restricted to the ambit of the Cooperative Tribunal as they also touch on cancellation/rectification of title. Further, from a keen reading of section 76 of the Cooperative Societies Act, I opine that the provisions therein deal with disputes on other businesses within the cooperative society but not claim for land.
20. Based on the facts as presented while associating myself with the decisions cited above, I find that this court is seized with jurisdiction to determine the issues raised herein by dint of section 13 of the Environment and Land Court Act.
21. In the circumstance, I find the Defendant's Preliminary Objection raised at paragraph 18 of the amended Statement of Defence dated 25th August 2022 unmerited and will disallow it.

Costs will be in the cause

DATED SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18TH DAY OF SEPTEMBER 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

vincent Oloo for Plaintiff

Thiga for Defendant



Court Assistant: Joan

