



REPUBLIC OF KENYA



KENYA LAW
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Mwangi v Tower Savings and Credit Co-operative Society (Commercial Case E011 of 2023) [2025] KEHC 2718 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEHC 2718 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
COMMERCIAL CASE E011 OF 2023
DO CHEPKWONY, J
FEBRUARY 6, 2025**

BETWEEN

TONY KINYUA MWANGI APPLICANT

AND

TOWER SAVINGS AND CREDIT CO-OPERATIVE SOCIETY ... RESPONDENT

RULING

1. For determination is the Notice of Motion application dated 27th June, 2023, which was filed under a Certificate of Urgency seeking the following orders:-
 - a. Spent.
 - b. Spent.
 - c. That a temporary injunction do issue restraining the Respondent, its servants, auctioneers, licensees, agents or other persons acting on its behalf from howsoever advertising for sale, selling, auctioning, alienating, transferring, disposing, further charging, dealing, dispossessing or in any way interfering with the Plaintiff's right of ownership and proprietorship to title No.Ruiru East Block 1/6156, pending the hearing and determination of the suit.
 - d. That an order do issue compelling the Defendant to provide a full account statement for the loan account and loan repayment schedule.
 - e. That the costs of this application be provided for.
2. The application is based on the grounds as set out on its face and the Supporting Affidavit of Tony Kinyua Mwangi sworn on the instant date. It is the deponents case that the Applicant's obtained a loan facility from the Respondent for a sum of Kshs.21,600,000/= which was secured by a legal charge over the subject property. That the Respondent has threatened to exercise its rights by repossessing and selling by public auction the security property which was done unlawfully so as to recover the



outstanding loan. The Applicant is thus seeking orders to stop the said sale which he prays that the court will grant.

3. The Respondent opposed the application through a Notice of Preliminary Objection dated 26th September, 2023 on the basis that this Court does not have jurisdiction to handle the suit pursuant to the provision of Section 76 of the Co-operative Societies Act, 2012 where jurisdiction is bestowed upon the Co-operative Tribunal established under Section 77 of the said Act and the High Court can only exercise Appellate jurisdiction under Section 81 of the said Act.
4. The court directed that the Notice of Preliminary Objection to be addressed first in view of the holding in the case of Mukisa Biscuits Manufacturing Ltd –vs- West End Distributors [1969]EA 696 where a ‘Preliminary Objection’ was defined as:-

“ ... a Preliminary Objection consist of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which is argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:-

“ a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on accession, confuse the issue, and this improper practice should stop”.

5. From the holding in the above cited case, it has become trite that the starting point in any court is to establish whether or not it has jurisdiction. This is because, without it, a court has to down its tools. This was stated in the classic case of The Owners of the Motor Vessel ‘Lilian S’ –vs- Caltex Oil (Kenya) Ltd [1989]KLR1 where Nyarangi J. A. held as follows:-

“I think that it is reasonable plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

6. It is also trite that a court derives its jurisdiction ether from the Constitution or statute or both. This was the holding by the Supreme Court of Kenya in the case of Samual Kamau Macharia –vs- KCB & 2 Others, Civil Applicatin No.2 of 2011 wherein it was stated thus:-

“ A court’s jurisdiction flows from either the Constitution or Legislation or both. Thus a court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law”.



7. It is worth noting that the dispute herein revolves around the Applicant. Section 76 of the Co-operative Society Act provides for the settlement of disputes in respect to a Co-operative Society as set out hereunder:-

- “(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 C-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 of 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.

8. In the instant case, the nature of dispute involves a claim by a member for a debt due from a Co-operative Society, which dispute falls under the ambit of Section 76(2)(b) of the Act. It is trite that where there is a clear procedure for redress, the same must be followed. In the case of the Speaker of the National Assembly –vs- The Hon. James Njenga Karume, Civil Application No.92 of 1992, the Court observed as follows:-

“Where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament that procedure should be strictly followed”.

9. By virtue of this, this Court finds that the Notice of Preliminary Objection by the Respondent has been raised on a point of law and therefore it has merit.

10. In the upshot, the effect of the Notice of Preliminary Objection dated 26th September, 2023 is that the Notice of Motion application and the entire suit are hereby struck out for want of jurisdiction. The costs of the application to be borne by the Defendant/Respondent.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6TH DAY OF FEBRUARY, 2025.

D. O. CHEPKWONY
JUDGE



In the presence of:

Mr. Ndaiga counsel for Defendant/Respondent

No appearance by and for Applicant

Court Assistant - Martin

