



**Ngokonyo & another v Liquidators, Kagaa Farmers Co-operative Society Limited
(Environment & Land Case E026 of 2024) [2025] KEELC 3942 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3942 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E026 OF 2024**

MN GICHERU, J

MAY 19, 2025

BETWEEN

FRANCIS WAITHAKA NGOKONYO 1ST PLAINTIFF

SUSAN WAMBUI NGOKONYO 2ND PLAINTIFF

AND

**THE LIQUIDATORS, KAGAA FARMERS CO-OPERATIVE SOCIETY
LIMITED DEFENDANT**

RULING

1. This ruling is on the notice of preliminary objection dated 22-11-2024. The said objection which is by the Defendant reads as follows.

“The suit herein is brought without leave of this Court as required by law and a plain reading of Section 64(1), Section 66 of the *Co-operative Societies Act* (Cap 490) as read together with Section 228 of the *Companies Act*.”

Section 64(1) of the said Act provides as follows.

“The sections of the *Companies Act* (Cap 486) specified in Part 1 of the schedule to this Act, modified in accordance with Part II of schedule, shall apply Mutatis Mutandis in relation to the winding up of a Cooperative society as they apply to that of a Company registered under that Act.”

Section 66 enumerates many powers of liquidator (15 to be precise) but the relevant one here is to be found under (b) as follows,



- (b) “ to institute and defend suits and other legal proceedings by, and on behalf of, the society in his own name or office, and to appear before the Tribunal as litigant in person on behalf of the society”.

Section 228 of the [Companies Act](#) provides as follows.

“A person who, while subject to a disqualification order or disqualification undertaking, contravenes the order or undertaking commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding five years, or to both.

2. Vide a plaint dated 29-8-25 the Plaintiffs seek four (4) reliefs against the Defendant. All these reliefs can be summarized as a declaration, an order of specific performance, a permanent injunction and costs regarding ownership of L.R. Nos. Makuyu/Kimorori/BLK 3/4621 and 4624 in favour of the Plaintiffs against the Defendant. The Plaintiffs claim to have bought the two parcels of land on 19-5-2016 and 23-3-2017 respectively.
3. The Defendant denies the Plaintiffs’ claim on several grounds. One, the Defendant did not receive any money from the Plaintiffs. Two, there can be no specific performance. Three, the sale agreements are unenforceable by way of specific performance. Four, since the Plaintiffs admit being members of the Defendant, the proper forum to file the suit is the co-operative Tribunal and not this court. Five, the suit is defective in form and substance for failure to name the gazetted liquidators by name and provide evidence of their gazette particulars. Six, the Plaintiffs did not seek leave of this Court before filing this suit. Seven, since the suit land was not sold by the gazetted liquidator, the said liquidator has no power to transfer the land and this should be a claim under Section 66(1) (e) of the [Co-operative Societies Act](#). Eight, the suit parcels are currently in use as public land where a community borehole for the entire neighbourhood is located and there is also a police post. Nine, the Defendant is ready to refund any money proved to have been paid to it by the Plaintiffs. Finally, the jurisdiction of this court is denied.
4. Counsel for the parties filed written submissions dated 27-3-2025. Only the Plaintiffs’ counsel identified one issue for determination as follows.

“whether section 64(1) and 66 of the [Co-operative Societies Act](#) together with Section 228 of the [Companies Act](#) require that a suit be instituted subject to obtaining ‘leave’ from this Court.”

5. I have carefully considered the preliminary objection in its entirety and I find that all the issues raised in the written statement of defence should also be treated as issues for determination primarily because the jurisdiction of this court to deal with this suit is questioned by the Defendant. I will however only deal with the issues of law because the issues of fact are subject to evidence because they are not yet proved or disproved by trial. I identify the issues as follows.
 - i. Whether the dispute should be heard by this court or the Co-operative Tribunal.
 - ii. Whether leave of this court was necessary before the Plaintiffs could file this suit.
 - iii. Whether the court can order specific performance.
 - iv. Whether this is the lowest court to institute the suit in view of section 11 of the [Civil Procedure Act](#).



6. On the first issue, I find that this dispute should be heard by the Co-operative Tribunal. Under Section 76(1) (b) of the [Co-operative Societies Act](#), it is provided as follows.

- “(1) (1) If any dispute concerning the business of a Co-operative Society arises-
- (a)
 - (b) between members, past members or deceased members, and the society, its committee or any officer of the society;
 - (c)
- it shall be referred to the Tribunal.”

In my finding, this is a dispute that concerns the business of the Defendant and it is between the Defendant and the Plaintiffs who are members of the Defendant. This puts the dispute squarely within the purview of the Co-operative Tribunal.

7. Regarding the second issue, I am unable to find that the Plaintiffs need leave of this Court to file the suit against the Defendant. They are not under any disability. They do not lack capacity to sue. In paragraph 1 of this ruling, I have replicated Section 228 of the [Companies Act](#) (Cap 486). It does not say that a person seeking to sue a company under liquidation must obtain the leave of the Court. It says that a person who is under a disqualification or a disqualification order and contravenes it commits an offence. It says nothing about leave before filing and who should obtain it.

8. Coming to the third issue, I find that specific performance is an equitable remedy where the wrongdoer is compelled to carry out its contractual obligations. Thus, it can be compelled to complete the transfer of land rather than offer damages. It will only be granted when the Plaintiff can convince the court that damages are not adequate in the circumstances. The Plaintiff must prove that subject matter of the contract is rare or unique and it is the object rather than its value that the Plaintiff desires. See the case of *Gathuthi Hotel v. Fazal Ilahi* (1957) E.A 17. In addition to the above, the Plaintiff must approach the court free from any blame on his part. There must be no laches or delay on the part of the Plaintiff as was held in the case of *Mzee Bin Ali Vs. Allibhoy Nurboy* 1 KLR 58. Finally the court will reject the Plaintiff's claim if it will cause undue hardship to the Defendant.

In this case, the pleadings by the Plaintiff have not brought out special circumstances to warrant the grant of the order of specific performance.

Apart from the Plaintiffs' list of documents dated 29-8-2024, the documents themselves are not on record.

This is beside the point anyway because as we have found, this court has no jurisdiction and if it had, the Plaintiffs could amend their pleadings to bring themselves within the ambit of specific performance.

9. Finally on the 4th issue, I find that the suit should have been filed in the Magistrates Court because the value of the subject matter has not been shown to be in excess of Kshs 20 million which would put the claim outside the pecuniary jurisdiction of the Magistrates court.

Section 11 of the [Civil Procedure Act](#) provides as follows.

Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate Courts than one with jurisdiction in the same district competent to try it, a suit may...”



For the above state reasons, I find merit in the preliminary objection and I strike out the Plaintiffs' suit with costs to the Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19TH DAY OF MAY, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs' Counsel – Mr Karuga

Defendant's Counsel – Miss Mwirichia

