



**Maraga v Commissioner of Co-operative Development & another (Civil Case E003 of 2022) [2025] KEHC 8623 (KLR) (19 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8623 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CIVIL CASE E003 OF 2022  
WA OKWANY, J  
JUNE 19, 2025**

**BETWEEN**

**JAMES OCHENGO MARAGA ..... PLAINTIFF**

**AND**

**COMMISSIONER OF CO-OPERATIVE DEVELOPMENT ..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein sued the Defendants *vide* Plaint dated 28<sup>th</sup> September 2022 seeking the following reliefs: -
  1. An Order of mandatory injunction directing the defendants, its agents, servants and/or employees to hold elections after reading the budget of Sironga Farmers' Co-operative Society Limited.
  2. Costs of the Suit
  3. Interests at Court rates.
2. The Plaintiff's case was that he is one of the members of Sironga Farmers' Co-operative Society Ltd (the Society) having been elected for a specified period of time which had expired a long time ago. He demanded that an election be scheduled urgently by an Order of the Court against the 1<sup>st</sup> Defendant and further, that an order be issued that the budget be read out to members before the Annual General Meeting or Special General Meeting as the case may be. He further sought orders directing the 1<sup>st</sup> Defendant to call for a Special General Meeting for the reading of the budget to members and for the election of the new officials of the said Co-operative Society.
3. The Defendants filed their Statement of Defence dated 24<sup>th</sup> March 2023 in which they averred that the reliefs sought by the Plaintiff are misconceived, untenable and an abuse of the court's process. They



also averred that the suit is fatally defective and incurably bad in law because the Plaintiff lacks the locus standi to institute the suit. They further state that Plaintiff does not also disclose any reasonable cause of action against them and further, that the mandatory order of injunction sought is in the nature of an Application for Judicial Review filed contrary to the provisions of Order 53 of the [Civil Procedure Rules 2010](#).

### **The Plaintiff's Case**

4. The Plaintiff, James Ochengo Maraga, testified as PW1 and called one witness. PW1 adopted his Statement dated 29<sup>th</sup> September 2022 as his evidence-in-chief and testified that that he is a member and the Chairman of the Society's supervisory committee and that the Society were supposed to conduct elections every year. He stated that the Defendants had not conducted election for about eight (8) years and that he wrote to the 1st Defendant (the Commissioner) over the issue to no avail. He produced the Society's By-Laws and a Report from the Probe Committee his exhibits.
5. PW2, Joseph Onserio, testified that he was a member of Sironga Farmers Association (Member No. 1991). He adopted his witness statement dated 29<sup>th</sup> September 2022 as his evidence-in-chief and stated that they had not conducted elections in 8 years. He sought orders to be allowed to conduct elections because the Commissioner had refused to allow them to conduct the elections.

### **The Defendants' Case**

6. The Defendants did not call any witnesses in support of their case.
7. Parties were directed to file and exchange written submissions which I have considered.

### **Issues for Determination**

8. The issues for my determination are as follows: -
  - i. Whether the Court has the jurisdiction to determine this matter in the first instance.
  - ii. Whether the Petitioner has locus standi to institute the present suit.
  - iii. Whether the suit is competent and raises a valid cause of action for determination by the Court.
  - iv. Whether the prayers sought can be granted.

### **Analysis and Determination**

#### **i. Whether the Court has the jurisdiction to determine the matter in the first instance.**

9. Jurisdiction refers to the court's authority or power to hear and determine a matter. Words and Phrases Legally Defined Vol. 3, John Beecroft Saunders defines jurisdiction as follows:-

“By jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter or commission under which the Court is constituted, and may be extended or restricted by like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular Court has cognisance or as to the area over which the jurisdiction shall extend, or it may partake both these characteristics....



Where a Court takes upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.”

10. Jurisdiction stands at the core of any suit before a court of law. This means that any court which determines a matter without the requisite authority would be acting in vain. In the oft-cited case of *Owners of Motor Vessel ‘Lillian S’ v Caltex Oil (Kenya) Limited* [1989] KLR 1 Nyarangi JA held thus: -

“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...”

11. A court’s jurisdiction flows from either the *Constitution* or Statute. In *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & others* (2012) eKLR the Supreme Court of Kenya succinctly expressed itself as follows in this regard: -

“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. We agree with counsels for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality, it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings ... where the *Constitution* exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a Court of law beyond the scope defined by the *Constitution*. Where the *Constitution* confers power upon Parliament to set the jurisdiction of a Court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law.”

12. As a preliminary issue, this Court must determine whether it has the appropriate jurisdiction to hear and determine the merits of this suit. I note that this Court’s jurisdiction is founded on Article 165 of the *Constitution* and Section 5 of the *High Court (Organization and Administration) Act* Cap. 8C. Article 165 provides thus: -

3. Subject to clause (5), the High Court shall have—
- a. unlimited original jurisdiction in criminal and civil matters;
  - b. jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened;
  - c. jurisdiction to hear an appeal from a decision of a tribunal appointed under this Constitution to consider the removal of a person from office, other than a tribunal appointed under Article 144;
  - d. jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of—
    - i. the question whether any law is inconsistent with or in contravention of this Constitution;
    - ii. the question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;



- iii. any matter relating to constitutional powers of State organs in respect of county governments and any matter relating to the constitutional relationship between the levels of government; and
- iv. a question relating to conflict of laws under Article 191; and
- e. any other jurisdiction, original or appellate, conferred on it by legislation.

13. The matter before the Court is premised on the issue of elections of Sironga Farmers' Co-operative Society Ltd. I note that Co-operative Societies are governed by the [Co-operative Societies Act](#) Cap 490. In particular, Section 76 provides for a mechanism of dispute resolution. It states in part: -

76. Disputes

- 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.

14. Section 77 further provides for the establishment of the Tribunal and Section 81 outlines the High Court's jurisdiction over Co-operative Societies. It states: -

81. Appeal to High Court

- (1) Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court:

Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.

15. Having regard to the above cited provisions, I find that the Plaintiff herein should have instituted this matter before the Tribunal and not the High Court as the court of first instance. This Court is alive to the doctrine of exhaustion and the provisions of Article 159 of the [Constitution](#) which provides for alternative forms of dispute resolution thus: -

159. Judicial Authority

- (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles—
  - a. justice shall be done to all, irrespective of status;
  - b. justice shall not be delayed;
  - c. alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3);



16. I find that it was necessary for the Plaintiff to seek the intervention of the Co-operative Societies Tribunal first before moving the Court through the present suit. I find guidance in the decision in the case of *Geoffrey Muthinja Kabiru & Others v Samuel Muguna Henry & 1756 others* ([2015] KECA 304 (KLR), where the Court of Appeal held thus:-

“It is imperative that where a dispute resolution mechanism exists outside Courts, the same be exhausted before the jurisdiction of the Courts is invoked. Courts ought to be fora of last resort and not the first port of call the moment a storm brews...The exhaustion doctrine is a sound one and serves the purpose of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanisms in place for resolution outside the Courts. The Ex Parte Applicants argue that this accords with Article 159 of the *Constitution* which commands Courts to encourage alternative means of dispute resolution.”

17. It is therefore my finding that this Court lacks jurisdiction over the matter as it relates to a Co-operative Society for which a Tribunal is the first port of call in the adjudication of disputes.

## **ii. Whether the Petitioner has locus standi to institute the present suit.**

18. Having established that the Court lacks jurisdiction, I am required to down my tools and strike out the matter at this point. I am however still minded to consider the issue of whether the Plaintiff has the locus standi to institute the suit in the first place.

19. Locus standi refers to a party’s right to be heard. In the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229, the Court held that: -

“The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

See also the case of *BV Narayana Reddy v State of Kamataka AIR (1985) KAN 99, 106* (the *Constitution* of India, ARD 226).

20. For a party to have locus standi, he must demonstrate that he has an interest in the matter and that that interest is about to be prejudiced or has been prejudiced. In this case, the Plaintiff testified that he is a member and the chairman of the supervisory committee of Sironga Farmers’ Cooperative Society Ltd. I have perused the documents produced by the Plaintiff and I note that he did not tender any documentary evidence to support his membership claim or to demonstrate that he was indeed the chairman of the supervisory committee as he alleged. The Plaintiff merely stated, on cross-examination, that he was Member No. 1339 but admitted that he did not have his registration documents.

21. PW2, Joseph Aunya Onserio, also stated that he was Member No. 1991 but did not produce any document to support his alleged membership. He instead directed the Court to peruse the company’s Membership book to establish his membership. I have perused the entire Record and I note that the Plaintiff did not produce the Members Register for Sironga Farmers’ Co-operative Society Limited.

22. Section 107 -109 of the *Evidence Act* provide thus:-

107. Burden of proof.

(1). Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



(2). When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. Incidence of burden.

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

109. Proof of particular fact.

The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

23. In this case, the Plaintiff's claim failed the moment he did to present evidence to prove that he was a member of Sironga Farmers' Co-operative Society. It is also noteworthy that the Plaintiff opted to sue the Commissioner of Cooperatives and the Attorney General but left out the Co-operative Society which was the main subject of the issue of failure to hold elections for eight years.

24. In the circumstances of this case, I find that the Plaintiff has not demonstrated, on a balance of probabilities, that he has the locus standi to institute the suit.

25. The above findings on jurisdiction and locus standi are sufficient to dispose of this suit and I find no reason to belabour the other issues listed for determination which are now moot. For the reasons that I have stated in this judgment I find that the instant suit is misconceived. I therefore strike it out with costs to the Defendants.

26. It is so ordered.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 19<sup>TH</sup> JUNE 2025.**

**W. A. OKWANY**

**JUDGE**

