



REPUBLIC OF KENYA



**Kishushe Ranching Cooperative Society Ltd v Mwandoto (Civil Case  
E004 of 2023) [2024] KEHC 6824 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6824 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CIVIL CASE E004 OF 2023  
GMA DULU, J  
MAY 8, 2024**

**BETWEEN**

**KISHUSHE RANCHING COOPERATIVE SOCIETY LTD ..... PLAINTIFF**

**AND**

**DANSON KIDAI MWANDOTO ..... DEFENDANT**

**RULING**

1. In this matter, a plaint dated 17<sup>th</sup> October 2023 was filed on 18<sup>th</sup> October 2023, seeking orders that:-
  - a. A declaration that the defendant is not a member of the board of management and the supervisory committee vide his suspension and his acts are thus unlawful and illegal.
  - b. A permanent injunction restraining the defendant by himself, his agents and/or servants from issuing notices convening a meeting whether special or general in nature and in any manner whatsoever, from acting on behalf of the plaintiff or in any other manner acting as a member and or secretary of the plaintiff.
  - c. Costs of this suit and interest.
  - d. Any other order the court may deem fit.
2. At the same time, the plaintiff filed a Notice of Motion dated same 17<sup>th</sup> October 2023 seeking temporary injunctive orders.
3. In response, the defendant through counsel Jengo Associates Advocates filed a Preliminary Objection dated 15<sup>th</sup> November 2023 in the following terms:-

That the court herein lacks the original jurisdiction to deal with the dispute herein under Section 76 and 77 of the [Cooperative Societies Act](#) (Cap.490) Laws of Kenya.



4. With the above Preliminary Objection, the defendant has asked this court to strike out the suit with costs.
5. The Preliminary Objection was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by Jengo Associates Advocates for the defendant as well as the submissions filed by Mutinda & Wambura Advocates for the plaintiff.
6. This being a preliminary objection, it has to be on a pure point of law – see *Mukhisa Biscuits Manufacturing Company Ltd =Versus= West End Distributors Ltd* (1969) EA 696. In my view the objection raised regarding the statutory jurisdiction of this court under the Cooperative Societies Act is such a proper preliminary objection. If I find that this court has no jurisdiction the case ends there, and I have to down my tools.
7. The issue turns on the interpretation of Sections 76 and 77 of the [Cooperative Societies Act](#), whose provisions are not contested.
8. The said provisions are as follows:-

#### 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.

- (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 licence or any other due, from the Authority. [Act No. 2 of 2004, s. 35, Act No. 14 of 2008, s. 71.]”

#### 77. Establishment of the Tribunal

- (1) There is hereby established a tribunal to be known as the Co-operative Tribunal which shall consist of the following members –
  - (a) a chairman and deputy chairman appointed by the Minister on the nomination of the Judicial Service Commission;
  - (b) an advocate of the High Court of Kenya appointed by the Minister on the nomination of the Law Society of Kenya;
  - (c) a lawyer with experience in co-operative law appointed by the Minister; and



(d) three persons with at least ten years experience in the field of cooperative management and practice appointed by the Minister in consultation with the apex society...

9. I note the dispute in the present case herein and the requests relate to the membership of the defendant in the board of management and supervisory committee. Thus the validity of his membership is challenged in this present case.
10. My strict reading of the provisions of Section 76 of the Act is that such disputes of genuine or valid membership either in the cooperative society or in the management or other committees of the cooperative society, are excluded from matters that go to the Tribunal.
11. This is because, in my view, the Section 76 presumes that disputes that go to the Tribunal will only relate to bona fide members or bona fide past members as between themselves and the society. Any dispute relating to the validity membership of a cooperative society or its management committees in my view, is not for the Tribunal and as such, can and may be dealt with by the High Court, since I have not been referred to any section of the Act or the written law which debars this court from handling such disputes.
12. In my view, none of the cases referred to by counsel on either of the parties, deals with disputes regarding validity membership. They are thus not applicable in the present case.
13. I thus find no merits in the Preliminary Objection. I dismiss the Preliminary Objection and hold that this court has jurisdiction to adjudicate this case or matter. Costs in the cause.

**DATED, SIGNED AND DELIVERED THIS 8<sup>TH</sup> DAY OF MAY 2024 IN OPEN COURT AT VOI VIRTUALLY.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistant

Ms. Wambura for the plaintiff

Mr. Kioko holding brief for Mr. Jengo for defendant

