



**Mwiki PSV Sacco Society v Karangu & 3 others (Civil Appeal  
E148 of 2021) [2024] KEHC 7897 (KLR) (Civ) (2 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 7897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL APPEAL E148 OF 2021**

**DAS MAJANJA, J**

**JULY 2, 2024**

**BETWEEN**

**MWIKI PSV SACCO SOCIETY ..... APPELLANT**

**AND**

**SIMON KARANGU ..... 1<sup>ST</sup> RESPONDENT**

**WILSON GITAU GAKUBU ..... 2<sup>ND</sup> RESPONDENT**

**MARGARET WANGARI MWANGI ..... 3<sup>RD</sup> RESPONDENT**

**PETER MAINA WAMBUGU ..... 4<sup>TH</sup> RESPONDENT**

*(Being an appeal against the Ruling and Order of E.M. Kagoni, PM dated 11th August  
2020 at the Magistrates Court at Nairobi, Milimani in Civil Case No. 1078 of 2020)*

**JUDGMENT**

**Introduction and Background**

1. On 21.02.2020, the Respondents filed suit against the Appellant (“the Sacco”) in the Subordinate Court claiming that as members and shareholders of the Sacco, they had entered into an asset financing agreement with it. That under Clause 3.3 of this agreement, once a member has completed paying all instalments, the Sacco should cause the transfer of the logbooks in the names of the borrowers. The Respondents claimed that they had cleared all the facilities as at December 2019 but that the Sacco had refused to release the logbooks of their motor vehicles in its custody which were used as security. The Respondents advanced that the continued holding of the logbooks was illegal and without any reasonable cause and that this greatly prejudiced the Respondents’ interests as their operations had been greatly affected.



2. The Respondents averred that they were expected to pay advance tax on the motor vehicles which was due and had been demanded but that the said payments could only be done if the logbooks were transferred. The Respondents stated that failure to make these payments would result in severe, substantial and irreparable loss if the Sacco continued to retain the logbooks. As such, the Respondents sought a mandatory injunction compelling the Sacco to release the logbooks and to prepare and execute discharges and transfers in respect of their motor vehicles, interest at a rate of 12% from 31.12.2018 until when the amounts are fully paid and costs of the suit.
3. Together with the suit, the Respondents also filed an application dated 21.02.2020 seeking the mandatory injunction it had sought above or that the Sacco facilitate the Respondents' tax obligations due and demanded for the motor vehicles but that the logbooks be retained by the subordinate court pending the final determination of the suit.
4. In response to the application, the Sacco filed grounds of objection and a deposition stating that those orders sought by the Respondents could not be granted at an interlocutory stage and that there was no evidence that they had cleared their respective loans. It further averred that the Subordinate Court lacked jurisdiction to entertain the suit and application as it relates to members of a cooperative society and the Sacco and thus it ought to have been handled by the Cooperative Tribunal.
5. The Subordinate Court allowed the Respondent's application and granted the mandatory injunction. The Sacco is dissatisfied with this ruling and has now appealed to the court through the memorandum of appeal dated 22.03.2021. The appeal has been canvassed by way of written submissions which are on record and I will make relevant references to in my analysis and determination below.

### **Analysis and Determination**

6. The Sacco's main grievance is that the Subordinate Court failed to consider the issue of jurisdiction. My perusal of the record indicates that the Sacco indeed raised this issue of jurisdiction which was canvassed by both parties but the Subordinate Court never resolved it. This was an error of principle and the law as a court ought to determine all pertinent issues raised before it more so if it is a question of jurisdiction.
7. I agree with the Sacco's submission on the primacy of the jurisdiction and the duty of a court to determine it as a preliminary point. Nyarangi JA., in *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1 simply but memorably put it that "jurisdiction is everything". The Supreme Court in *Samuel Kamau Macharia v Kenya Commercial Bank and Others* [2012] eKLR explained that:
 

A court's jurisdiction flows from either the Constitution or Legislation or both. Thus a court 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 .... the Court must operate within the constitutional limits. It cannot expand jurisdiction craft or innovation.
8. More recently, the Supreme Court in *Dina Management Limited v County Government of Mombasa & 5 others* [2023] KESC 30 (KLR) has since held that an appellate court has inherent jurisdiction to right jurisdictional wrongs and that this court can assume jurisdiction and interrogate those alleged wrongs.



9. The Sacco had argued that the Subordinate Court lacked jurisdiction to determine the dispute between it and the Respondents as it fell within the purview of section 76 of the *Co-operatives Societies Act* (Chapter 490 of the Laws of Kenya) which provides 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 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

- a. 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.
- b. a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

10. The Respondents have not denied that they are members of the Sacco. They do not deny that the parties are in a dispute that involves the Respondents, as members, who are claiming their logbooks and payment of tax arrears from the Sacco. Such a dispute falls squarely within section 76(1) (b) and (2)(b) aforesaid. Further, the dispute involves a claim of indebtedness by the Sacco against the Respondents within section 76(1)(b) and (2)(a) of the *Act* above. I therefore hold that the dispute being one between members of the Sacco and the Sacco where both parties were demanding something from the other, it follows that it ought to be determined by the Co-operative Tribunal. Had the Subordinate Court interrogated this jurisdictional issue and found as this court has, it could have downed its tools immediately and divested itself of the jurisdiction it thought it had.

11. Since I have found the trial court did not have jurisdiction, it is not necessary to determine the other issues regarding the granting of the application as the Tribunal will soon be seized of those matters.

### **Disposition**

12. For the reasons I have set out, I allow the appeal and hold that the Subordinate Court was not clothed with the requisite jurisdiction to determine the matter before it. The Subordinate Court's ruling dated 11.08.2020 is set aside and the Respondents' suit is struck out with costs to the Appellant. The Respondent shall pay costs of this appeal assessed at Kshs. 30,000.00.

**DATED AND DELIVERED AT NAIROBI THIS 2<sup>ND</sup> DAY OF JULY 2024.**

**D. S. MAJANJA**

**JUDGE**

