



REPUBLIC OF KENYA



**Kutsishi v Olodi & 2 others (Civil Appeal E001 of 2024)
[2024] KEHC 12808 (KLR) (25 October 2024) (Judgment)**

Neutral citation: [2024] KEHC 12808 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CIVIL APPEAL E001 OF 2024
S MBUNGI, J
OCTOBER 25, 2024**

BETWEEN

ZEBEDEE KUTSISHI APPELLANT

AND

EZRA OKOTH OLODI 1ST RESPONDENT

IBRAHIM JUMA 2ND RESPONDENT

STEPHEN WALUBI 3RD RESPONDENT

*(Being an appeal arising from the ruling of the Honorable R. S Kipngeno PM
delivered on 20th December 2023 at Butali in Civil Case No. E204 of 2023)*

JUDGMENT

Brief facts of the case.

1. The Appellant filed an Application dated 30th August 2023 under Certificate of Urgency and supported by the Appellant's Affidavit seeking orders against the Respondents from interfering with the Elections of the Kenya National Federation of Sugarcane Farmers, which orders were granted.
2. The Appellant further filed an Application under Certificate of Urgency dated 26h September 2023 seeking Orders to compel the Registrar of Societies to be ordered to record the returns of the Kenya National Federation of Sugarcane Farmers officials elected on 31.08.2023 and no other, which orders were granted on 05.10.2023.
3. The Respondents opposed the Application vide Grounds of Opposition and the 3rd Respondent's Replying Affidavit both dated 13.10.2023 whose substance was that the Applicant is not a member of the Kenya National Federation of Sugarcane Farmers and thus lacked locus standi to file the case and further that the Applicant failed to make full disclosure that the Kenya National Federation of



Sugarcane Farmers had conducted its elections on 29.08.2023 and that the elections that held on 31.08.2023 were those of the Small Holder Sugarcane Farmers Association.

4. The Respondent, filed an Application dated 13.10.2023 seeking to review and/or stay/vacate orders made on 5.10.2023, and consequently the court vacated its orders and stayed the status quo occasioning the Registrar of Societies not record the returns of the Kenya National Federation of Sugarcane Farmers officials allegedly elected on 31.08.2023.
5. The Appellant filed a Replying Affidavit dated 16.10.2023 to respond to the Respondent's Application to stay/vacate the orders.
6. The Respondent's proceeded to file a Further Replying Affidavit dated 20.11.2023 in opposition to the Application dated 26.09.2023.
7. The Court delivered its ruling on 20.12.2023, dismissing the Appellant's Applications dated 30.08.2023 and 26.09.2023 with costs and proceeded to allow the Respondent's Application dated 13.10.2023 thereby directing the Registrar of Societies to recognize the returns of the elections held on 29.08.2023 as those of the bona fide KNFSF elections.
8. The Appellant herein being dissatisfied with the said ruling, preferred the instant appeal vide a memorandum of appeal dated 08.01.2024 on the following grounds: -
 - a. The Court erred in law and fact after holding itself to have no jurisdiction, it went further to make a finding in respect of the application which is bad in law.
 - b. The trial Magistrate erred in law and fact in making findings in respect of the application before him when he said that he lacks jurisdiction.
 - c. The judgment is against the weight of evidence on record.
9. The appellant prayed that the appeal be allowed and the ruling of the trial court set aside.
10. The appeal was canvassed by way of written submissions.

Appellant's Case.

11. The appellant filed submissions dated 18.04.2024 and submitted that the main issue for determination was whether the trial court had or lacked jurisdiction to determine the issues that were before it.
12. It was the appellant's submission that there is no law that bars the trial court from hearing a dispute involving the elections of the Kenya National Federation of Sugarcane Farmers.
13. The applicant further submitted that despite declaring itself res judicata, the court made several findings regarding the case, which it ought not to have done, and concluded that the matter should not proceed any further.
14. The appellant prayed that the appeal be allowed and that this court find that the trial court had jurisdiction to hear the matter before it. In the alternative, the appellant prayed that the appeal be allowed to the extent that the trial court erred in making findings and the same be reversed expunged from the court's ruling.

Respondents' Case.

15. Vide submissions dated 08.08.2024, the respondents identified three issues for determination: -



- i. Whether there subsists an appeal where the record of appeal as filed is defective and/or incomplete.
 - ii. Whether the trial court had jurisdiction to determine the matter.
 - iii. Whether the ruling entered on 20.01.2024 was against the weight of evidence on record.
16. The respondents submitted that crucial documents from the trial court were missing in the record of appeal filed by the appellant contrary to the dictates of Order 42 Rule 13(4) of the Civil Procedure Rules and cited *Petition-No.-E013-of-2023-Erdemann-Property-Ltd-vs-Safaricom-Staff-Pension-Scheme-3-Others* where a five bench Judge while dismissing an Appeal because of a defective Record of Appeal and Notice of Appeal held as follows:
- “...contents of a Record of Appeal from the Court of Appeal must include, one of which is “relevant pleadings required to determine the appeal”; and looking at the nine documents which were introduced in the Court of Appeal by a Supplementary Record of Appeal, there cannot be any doubt that they were presented before that court because the Appellant believed they were important for the just determination of the first appeal. That being the case, by necessary implication, they would equally be relevant for the determination of this appeal NOTING that the nine documents contained in the Supplementary Record are minutes, sketches, drawings, approvals, affidavits, and other pleadings from the Environment and Land Court, we find that the same ought to have been included in the record before this Court; and ultimately the inevitable conclusion we must draw is that the notice of appeal dated 23rd March 2023 is defective for failing to comply with Section 37(1) of the Supreme Court Rules; and further that the Record of Appeal in this Court is incomplete...and consequently is struck out...”
17. On whether the trial court had jurisdiction to determine the matter, the respondents submitted that the appellant in his plaint admitted the jurisdiction of the trial court.
 18. Moreover, the respondents averred that vide their replying affidavit sworn on 13.10.2024 they submitted that the jurisdiction of the court was wrongly invoked since the matter concerned the Federation and fell within the purview of disputes to be referred to the Registrar of Societies as per section 18 of the *Societies Act*.
 19. On whether the ruling delivered on 20.01.2024 was against the weight of evidence on record, the respondents further submitted that the burden of proof lied and still lies on the appellant, as per the provisions in Section 107 of the *Evidence Act*.
 20. The respondents further averred that the appellant lacks locus standi to move the Honorable Court as well as the trial court and lacked the capacity to participate in voting of the leaders since he ceased to be a member of the Federation in 2017.
 21. It was also averred by the respondents that the appellant herein has failed to show his registration as a member of Manda Branch where he alleges to come from, or any other branch at all of the Federation as is required by *the Constitution* of the Federation, or any evidence of being a sugarcane farmer like weigh bridge tickets or statement of harvesting sugarcane, as opposed to the Respondents who in their further affidavit have not only shown their membership, legitimate letter heads and elections held, but also the statements of harvesting sugarcane and weigh bridge tickets.



Analysis and Determination.

22. This being a first appeal, this Court has the duty to analyse and re-examine the evidence adduced in the lower Court and reach its own conclusion but bear in mind that it neither saw nor heard the witnesses testify and make due allowance for the said fact. In *Abok James Odera T/A A.J Odera & Associates v John Patrick Machira T/A Machira & Co. Advocates* [2013] eKLR, the Court stated as follows-

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

23. I have looked at the ruling by the lower court and also the proceedings. The issue of determination is whether the lower court had jurisdiction to entertain the suit and the applications made which resulted to the ruling appealed against.

24. Section 18 of the *Societies Act* states as follows: -

“Disputes as to officers

- (1) If the Registrar is of the opinion that a dispute has occurred among the members or officers of a registered society as a result of which the Registrar is not satisfied as to the identity of the persons who have been properly constituted as officers of the society, the Registrar may, by order in writing, require the society to produce to him, within one month of the service of the order, evidence of the settlement of the dispute and of the proper appointment of the lawful officers of the society or of the institution of proceedings for the settlement of such dispute.
- (2) If an order under subsection (1) of this section is not complied with to the satisfaction of the Registrar within the period of one month or any longer period which the Registrar may allow, the Registrar may cancel the registration of the society.
- (3) A society aggrieved by the cancellation of its registration under subsection (2) may appeal to the High Court within thirty days of such cancellation.”

25. The above provision clearly shows that any dispute of any nature in an organization registered under the *Societies Act* like the Kenya National Federation of Sugarcane Farmers whose elections of its officials is at the center of the dispute any aggrieved party as to the manner the elections were conducted had first to invoke the provision of Section 18 of the *Societies Act* for the registrar to deal.

26. Therefore, the trial magistrate was right to find that he had no jurisdiction to handle the matter but erred when he proceeded to dismiss the appellant’s application and to allow the respondents’ application.

27. The law is very clear. When a court has no jurisdiction it downs its tools there and then and does not proceed otherwise, other than dismissing the suit for want of jurisdiction.

28. I find the appeal has merit, it is allowed. Since the suit was filed in the wrong court without jurisdiction and the magistrate did not dismiss the suit for want of jurisdiction in his ruling, I hereby dismiss that suit Butali PMCC E204 of 2023 with the costs of the suit to the respondents.



29. It is the appellant who invoked the wrong jurisdiction therefore I also order that he pays the respondents the costs of the appeal.
30. Right of appeal 30 days.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 25TH DAY OF OCTOBER, 2024.

S.N MBUNGI

JUDGE

In the presence of:

Appellant and his counsel – absent

Mr. Maoga for the respondents – present.

Court Assistant – Elizabeth Angong'a

