



**Alloys v Stima Sacco Society Ltd (Civil Suit E117 of 2019)
[2023] KEHC 23221 (KLR) (Commercial and Tax) (6 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
COMMERCIAL AND TAX
CIVIL SUIT E117 OF 2019
FG MUGAMBI, J
OCTOBER 6, 2023**

BETWEEN

NELSON OTIENO ALLOYS APPLICANT

AND

STIMA SACCO SOCIETY LTD RESPONDENT

RULING

Background

1. The dispute between the parties arises from a loan facility advanced to the applicant by the respondent. It is not denied that the respondent is a co-operative society registered under the [Cooperative Societies Act](#) and that the applicant is a member of the respondent society.
2. Following the alleged default by the applicant, the respondent sent out statutory notices and it is on this basis that the applicant filed the suit seeking judgment against the respondent, vide a plaint dated 29th April 2019.
3. The respondent raised a preliminary objection to the plaint on the ground that this Court lacks jurisdiction to hear and determine the suit which has been filed in disregard and incurable violation of section 76 of the [Cooperative Societies Act](#) cap 490.

Analysis

4. I have carefully considered the pleadings, evidence, authorities and rival submissions filed by the parties herein. The preliminary objection rests on the provisions of section 76(1) of the [Cooperative Societies Act](#) which provides as follows:

“(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.”
5. For the avoidance of doubt, the term dispute is defined in subsection (2) of the *Act* as:
- “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 of personal representative of a deceased member whether such debt or demand is admitted or not”
6. At the heart of the preliminary objection is whether a dispute relating to the collection of a debt is one that falls within the realm of section 76(1) of the *Act* and more specifically whether it is a dispute that concerns the business of the society. Parties have referred this Court to various authorities in support of their cases. I am therefore alive to the divergent schools of thought that have been expressed over this question.
7. I am particularly persuaded by the view that where there are clear procedures for the redress of any particular grievances under the Constitution or Acts of Parliament, the processes ought to be strictly followed. I say this on the strength of article 159 of the *Constitution* that recognizes judicial authority exercised by Courts and Tribunals as a vehicle of ensuring that justice is delivered expeditiously. This view was espoused in *Speaker of the National assembly v James Njenga Karume*, [1992] eKLR by the Court of Appeal.
8. This position is also supported by judicial pronouncements including *Gatanga Coffee Growers Co-operative Society v Gitau*, [1970] EA 361. Although this was a suit filed in the Uganda High Court, the provisions in question, being sections 80 (1) and (2) of the *Uganda Co-operative Societies* are similar to the *Kenyan Act*. The Court held the claim, brought by a member against the society for unpaid coffee proceeds to be a claim by a member against his society where the Court had no jurisdiction.
9. In *Ernest Muiruri Njoroge & 28 Others v Kabira Karanja & 4 Others*, C/A 114 of 1997 the Court again held that a dispute brought by members against the office bearers of a co-operative society relating to allotment of plots should be heard by the Tribunal. The rationale was that the members could not shed their status as members in connection with the plots. Other decisions that have held that the High Court has no jurisdiction to preside over disputes of the kind discussed here include *Adero Adero & Another v Ulinzi Sacco Society Ltd*, [2002] eKLR, per Ringera J.
10. Section 81 of the *Act* further provides that a party who is dissatisfied by the award of the Tribunal may appeal to the High Court and such an appeal is final. Being the final court in cooperative matters, my view is that it would not be ideal for the Court to assume both appellate and original jurisdictions. This is a view that has been expressed in decisions including *Charles Keragita Arwenya v Nyakoe Farmers Co-operative Society Ltd*, [2016] eKLR where the Court recognized that:
- “...under S.81 (1) of the *Act*, any party aggrieved by the order of the tribunal may appeal to the High Court. It would therefore appear that S.76 of the *Act* ousts the jurisdiction of the High Court in exercising original jurisdiction in disputes involving Co-operative Societies



and its members. The only jurisdiction open to the High Court in such matter would be the appellate jurisdiction only.”

11. In my opinion, the business of the Society is to be discerned from Constitution or the by-laws of the society which indicates the objects for which the Society is established. The words ‘the business of the society’ appearing in section 76 is therefore wide enough to include even the business of banking and the provision of financial services.
12. By the applicant’s own admission as contained in the plaint, the respondent is a deposit taking savings and credit society licensed by the Central Bank of Kenya to undertake banking and finance business. In its submissions the applicant acknowledges that the respondent is licensed to undertake commercial lending services and such kind of commercial loan services under the Sacco by-laws and rules. This submission is uncontroverted.

Determination

13. For all the foregoing reasons I find that this suit should not have been filed in the High Court by dint of the provision of section 76 of the *Cooperative Societies Act*, 1997. The forum with jurisdiction is the Co-operative Tribunal. In the circumstances, my finding is that the preliminary objection has merits. I, therefore, uphold it and proceed to strike out the applicant’s suit with costs to the respondents.

DATED, SIGNED AND DELIVERED IN NAIROBI THIS 6TH DAY OF OCTOBER 2023.

F. MUGAMBI

JUDGE

