



Sabatia Farmers Cooperative Society v Baringo Distrist Co-operative Society (Civil Appeal E104 of 2023) [2024] KEHC 13744 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEHC 13744 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL E104 OF 2023
HI ONG'UDI, J
NOVEMBER 7, 2024**

BETWEEN

SABATIA FARMERS COOPERATIVE SOCIETY APPELLANT

AND

BARINGO DISTRICT CO-OPERATIVE SOCIETY RESPONDENT

RULING

1. By the Notice of Motion dated 18th April, 2024 the applicant prays for the following orders;
 - i. -
 - ii. Spent.
 - iii. That pending the hearing and determination of the applicant's appeal herein, this honourable court be pleased to stay further proceedings in Cooperative Tribunal Case No. 367/EA004 of 2022- Baringo District Co-operative Union v Sabatia Farmers Co-operative Society.
 - iv. That costs of this application be provided for.
2. The application is premised on the grounds on its face as well as the affidavit of the applicant's chairman. He deponed that the applicant filed an application dated 18th August, 2022 seeking to strike out the respondent's statement of claim and all other accompanying documents for the lack of jurisdiction by the tribunal to adjudicate the dispute as pleaded in the statement of claim.
3. Further, that the tribunal delivered a ruling on 27th April, 2023 dismissing the said application and directed parties to file witness statements and documents to be used at the trial within thirty (30) days thereof. That the applicant being dissatisfied and aggrieved by the Tribunal's ruling filed the memorandum of appeal dated 22nd May 2023 on 29th May, 2023. He added that the applicant has an arguable appeal with high chances of success.



4. He deponed further that though the respondent's claim at the tribunal had not been set down for hearing, the applicant was apprehensive that it may be set down for hearing any time from now greatly prejudicing it since the tribunal had no jurisdiction to adjudicate the dispute before it. He added that if the orders sought herein are not granted the appellant's/applicant's appeal rendered nugatory.
5. The respondent in response filed a replying affidavit sworn on 3rd May, 2024 by the respondent's chairman who averred that by an application dated 18th August 2022 at the Cooperative Tribunal, the applicant sought to have the statement of claim dated 9th June 2022 and all accompanying documents struck out with costs.
6. He further averred that the Tribunal later dismissed its application hence the appeal herein. That with the advice of its advocate he believed that any appeal from the decision of the Cooperative Tribunal dated 27th April, 2023 lay with the Environment and Land Court and not to the High Court. Thus, this court lacked jurisdiction to hear this matter. He added that the appeal herein is incompetent and a nullity and the applicant will not suffer any prejudice if the suit before the Tribunal proceeds to its logical conclusion.
7. The application was canvassed by way of written submissions

Applicant's submissions

8. These were filed by Elizabeth Wangari and Company Advocates and are dated 3rd June, 2024. Counsel identified three issues for determination.
9. The first issue is whether this court has jurisdiction to hear and determine the instant appeal. She submitted in the affirmative and cited section 81(1) of the Cooperative *Societies Act* which provides as follows;

“Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days so 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.”
10. She also relied on several decisions among them Republic v Kenya School of Law [2019] eKLR where the court held as follows;

“In interpreting the provisions of a statute, the court should apply the golden rule of construction. The plain meaning of the language in a statute is the safest guide to follow in construing the statute. According to the golden or general rule of construction, the words of a statute must be given their ordinary literal and grammatical meaning. If by so doing it is ascertained that the words are clear and unambiguous then effect should be given to their ordinary meaning unless it is apparent that such a literal construction falls within one of those exceptional cases in which it would be permissible for a court of law to depart from such a literal construction. Examples include where it leads to a manifest absurdity, inconsistency hardship or a result contrary to the legislative intent.”



11. She submitted that the Co-operative Tribunal did not have jurisdiction to hear and determine disputes relating to the ownership of land. She relied on the case of *Paul Mutua Mutwiwa v Kimeu Kyumba & 2 others Machakos HCCC No. 438 of 2012* where the court held as follows;

“...The provisions of Section 76 of the Cooperative *Societies Act* No.12 of 1997 do not contemplate the Cooperative Tribunal to determine the ownership of land even if the dispute is between members, present, past deceased and even if it was, the same has been superseded by the enactment of article 162 (2) (b) of the *Constitution* and the creation of the Environment and Land Court...”
12. She further submitted that the Cooperative Tribunal had no jurisdiction over matters specifically reserved for the ELC and the ELRC. It is her submission that this court has jurisdiction to hear and determine appeals from the Cooperative Tribunal.
13. The second issue is whether the applicant is entitled to an order of stay of further proceedings in Co-operative Tribunal case No. 367/E004 of 2022. Counsel submitted in the affirmative and cited several cases among them *Chris Munga N. Bichange v Richard Nyagaka Tongi & 2 Others* [2013] eKLR where the court held as follows;

“The law as regards applications or stay of execution, stay of proceedings or injunction is now well settled. The Applicant who would succeed upon such an application must persuade the court on two limbs which are first, that his appeal or intended appeal is arguable that is to say it is not frivolous. Secondly, that if the application is not granted the success of the appeal were it to succeed would be rendered nugatory. These two limbs must both be demonstrated and it would not be enough that only one is demonstrated.”
14. Lastly on who should bear the costs of the application, she relied on section 27 of the *Civil Procedure Act* and urged the court to award costs to the applicant.

Respondent’s submissions

15. These were filed by F. M. Ratemo and Company Advocates and are dated 8th May, 2024. Counsel identified one issue for determination which is whether further proceedings in Cooperative Tribunal Case No. 367/E004 of 2022 Baringo District Co-operative Union v Sabatia Farmers Co-operative Society should be stayed pending the hearing and determination of this appeal.
16. Counsel submitted in the negative while relying section 76 of the Cooperative *Societies Act* 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.
 87. 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.

17. Counsel further submitted that a suit filed in a court without jurisdiction was incompetent and could not be transferred to a court with jurisdiction. He placed reliance on the decisions in *Karisa Chengo, Jefferson Kalama Kengha & Kitsao Charo Ngati v Republic* [2015] eKLR, *Lolwe Housing Cooperative Society Ltd v Emily Omole* [2019] eKLR, *Geoffrey M. Asanyo & 3 others v Attorney General* [2020] eKLR, *West Kenya Sugar Co. Limited v Matayo Ingoshe & Others* [2021] eKLR and *Osano & Another v Miyogo (Miscellaneous Application E019 of 2023)* [2023] KEELC 19981 (KLR).
18. In conclusion, he urged the court strike out the appeal and application and award costs to the respondent.

Analysis and determination

19. I have considered the application, the submissions by both parties including the cited authorities. The only issue I find falling for determination is whether this court should stay further proceedings in Co-operative Tribunal Case No. 367/E004 of 2022 pending the hearing and determination of the Appeal herein.
20. It is the applicant's case that the Co-operative Tribunal has no jurisdiction to hear the matter filed before it by the respondent, hence the Appeal herein. Further, that if the orders sought herein are not granted the applicant's appeal would be rendered nugatory.
21. On the other hand, the respondent contends that this court has no jurisdiction to hear and determine the instant application. Further, that the applicant has not demonstrated any arguable appeal or the prejudice it would suffer if the suit before the Tribunal proceeds to its logical conclusion.
22. This court has powers to stay proceedings under its inherent jurisdiction reserved in section 3A of the *Civil Procedure Act* which provides as follows: -

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”
23. The court in *Kenya Wildlife Service vs. James Mutembei* [2019] eKLR cited with approval the case of *Re Global Tours & Travel Ltd HCWC No. 43 of 2000* where Ringera, J (as he then was) held that:

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice...the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of case.....and whether the application has been brought expeditiously.”



24. The said court further held that:

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent.”

The court also cited Halbury’s Law of England, 4th Edition Vol. 37 page 330 and 332

25. It is not disputed that the respondent herein commenced Cooperative Tribunal Case No. 367/E004 of 2022 against the applicant. It is further not disputed that the applicant’s application seeking to have the respondent’s statement of claim and accompanying documents struck out for lack of jurisdiction by the Cooperative tribunal was dismissed vide the ruling dated 24th April 2023.

26. In light of the law and the authority cited above, the grant of stay of execution is discretionary and the court will exercise this discretion on a case by case basis depending on the circumstances of each case. Further, the court must balance the parties’ rights to ensure that justice is served. The appeal herein challenges the ruling by the Cooperative Tribunal and particularly the issue of jurisdiction which is crucial and must be dispensed with at the earliest opportunity. In Owners of the Motor Vessel “Lillian S” (supra) it was held that:

“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 pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

27. The applicant herein challenged the Cooperative Tribunal’s jurisdiction to hear the matter but was over-ruled hence this Appeal. In other words, the applicant is seeking for a second opinion on whether the said Tribunal indeed has jurisdiction to hear the matter. On the other hand, the respondent argues that the Appeal should have been filed in the Environment and Land Court (ELC) and not the High Court. Why the ELC and not the High Court? That is an issue to be addressed by this court during the hearing of the Appeal.

28. After considering the circumstances of this case and weighing the pros and cons, I find that it is only fair and in the interest of justice that an order of stay of proceedings in Cooperative Tribunal Case No. 367/E004 OF 2022 be issued pending the hearing and determination of the appeal filed herein.

29. The upshot is that the application dated 18th April 2024 is merited and the same is allowed. Prayer no. (iii) staying the proceedings at the Co-operative Tribunal is granted as prayed.

30. Costs to be in the cause.

31. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 7TH DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

