



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CIVIL SUIT NO. 2 OF 2019

NINETEEN NINETY-TWO SQUARTERS SAVINGS

AND CREDIT CO-OPERATIVE SOCIETY LIMITED.....1ST PLAINTIFF
JOSAMU WASIKE WANJALA.....2ND PLAINTIFF
ALEXANDER AMUKUNE.....3RD PLAINTIFF
JACKSON NAMUNYU OKUMU.....4TH PLAINTIFF

VERSUS

SERAH SUBA.....1ST DEFENDANT
BOAZ MUSONJE.....2ND DEFENDANT
REUBEN MUTHAMBWE.....3RD DEFENDANT
PETER ALULU TUWEI.....4TH DEFENDANT

JUDGMENT

1. The suit herein was commenced by way of a plaint dated 25th February 2019, by a cooperative society, duly registered under the Cooperative Societies Act, Cap 490, Laws of Kenya, to be referred to hereafter as the society, and its officials, against persons that the society avers are not members of the society.
2. The principal case by the plaintiffs is that defendants have on diverse dates disrupted meetings of the society. That happened on 22nd June 2018, 27th June 2018, 9th July 2018, 25th September 2018, 26th September 2018, 29th September 2018 and 6th February 2019. On all those occasions, it is averred, the defendants disrupted the plaintiffs' meetings with no just cause or court order. The orders that the plaintiffs seek are for declarations that the defendants were not members of the society, and their continued disruption of the meetings, operations and business was unlawful, illegal, null and void, and a prohibitory injunction to restrain them from interfering with the business and affairs of the society.
3. Upon being served, the defendants filed a statement of defence, dated 21st March 2019, which largely comprised of mere denials of the allegations made against them in the plaint. They deny knowledge of the meetings and existence of the plaintiffs. They further aver that the plaintiffs were only suspicious that the defendants may invade or probe their suspected fraudulent acts, and the suit was intended to prevent that exposure. They expressly admit that they were not members of the society.
4. Contemporaneously filed with the plaint, was a Motion dated 25 February 2019, wherein the defendants sought temporary injunctive orders with respect to a meeting that was scheduled for 27th February 2019, pending the hearing of the Motion, and also pending the hearing of the suit. The response to the Motion was vide a replying affidavit by the 1st defendant, Sera M. Suba, sworn on 21st March 2019. She avers that she and her co-defendants were not members of the society, and they were not interested in its meetings. On 9th May 2019, the court found that the application had been overtaken by events, and directed the parties to move to the next stage, of the hearing of the suit itself.
5. Before the hearing of the main suit, a Motion, dated 16th September 2019, was lodged by the plaintiffs, seeking that the defendants' defence be struck out and judgment entered in their favour, on grounds that the defence statement had been signed by an unqualified person. There was evidence of service of the Motion, but no reply was filed. When the matter came up on 11th November 2019 no one appeared for

the defendants. I allowed the application dated 16th September 2019, and directed that the matter proceed by way of formal proof.

6. The formal proof happened on 18th February 2020. Two of the plaintiffs testified. Josamu Wanjala Wasike, the 3rd plaintiff, was the first on the witness stand. He stated that the defendants were not members of the society, yet they were troubling them by trying to get into their meetings. Alexander Amukune, the 3rd plaintiff, testified next. He was the secretary of the society. He averred that whenever he called meetings as secretary of the society, the defendants attended and disrupt the meetings. He stated that reports had been made to the police, before the society came to court. Their desire was that the defendants be stopped from disrupting their meetings. Both witnesses asked for costs.

7. The matter is fairly straightforward. The defence was struck out, so the suit is unopposed. The averments made in the plaint, as well as the testimonies given in open court by the two plaintiffs who testified, are uncontroverted. In any event, in the defence that was struck out, the defendants conceded that they were not members of the society.

8. In view of what I have stated above, I shall allow the suit, and grant the prayers as sought, save that the plaintiffs shall bear their own costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 7TH DAY OF MAY, 2021

W. MUSYOKA

JUDGE