



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MURANG'A

PETITION NO. 4 OF 2016

[FORMERLY NAIROBI PETITION NO. 147 OF 2016]

JOHN WILLIAM NJANE.....PETITIONER

VERSUS

MURANG'A COUNTY CO-OPERATIVE

COMMISSIONER & 12 OTHERS.....RESPONDENTS

RULING

1. The 9th respondent filed a preliminary objection dated 3rd June 2016. The gist of the objection is that there is *multiplicity* of suits.
2. The petitioner is accused of lodging *three* other suits over the *same* subject matter: Nairobi High Court Civil Suit 524 of 2013; Nairobi Judicial Review 108 of 2014; and, Nairobi High Court Civil Suit 221 of 2014.
3. At the hearing of the matter, learned counsel for the 9th respondent also contended that the underlying dispute relates to the *management* of a co-operative society. Accordingly, the right forum is the Co-operative Tribunal formed under the **Co-operative Societies Act**.
4. I was urged to find that the action is poorly disguised as a *petition*.
5. The preliminary objection was opposed by the petitioner; and, the 1st to 8th respondents.
6. The petitioner's counsel submitted that Nairobi High Court Civil Suit 221 of 2014 was *withdrawn*. Counsel also submitted that Nairobi High Court Civil Suit 524 of 2013 and Nairobi Judicial Review 108 of 2014 were lodged by Mutithi Co-operative Society Limited and *not* by the petitioner. Lastly, it was contended that in the instant petition, the petitioner is claiming violation of his individual rights by the 9th respondent who "*is illegally in office*".
7. The 1st to 8th respondents on the other hand submitted that they are not parties to the other suits in Nairobi.
8. Paragraphs 14, 15 and 16 of the petition concede the existence of Nairobi Judicial Review 108 of 2014. The petitioner avers that the suit was *struck out* for want of a *practicing certificate* by the 12th

respondent.

9. From the ruling annexed to the replying affidavit marked *CMG6*, Nairobi High Court Civil Suit 524 of 2013 was also *struck out* in a considered ruling dated 13th February 2014. I agree with the petitioner that the suit was brought by *Mutithi Co-operative Society Limited* as a distinct legal entity.

10. But I am satisfied that Nairobi High Court Civil Suit 221 of 2014 was lodged by the present petitioner. He now asserts that he withdrew the suit. The 9th respondent contends that that is not the case.

11. In a synopsis, I am unable to state categorically about the nature of the suits or their true status without calling additional evidence. It is true that the *multiplicity of actions* may offend section 6 of the Civil Procedure Act. But it is a matter that can only be addressed by a full application to strike out the petition. It is not a pure point of law. See See *Mukisa Biscuit Manufacturing Company Vs West End Distributors Ltd* [1969] EA 696.

12. That limb of the preliminary objection fails.

13. I have studied the petition closely. Mutithi Farmers Co-operative Society Limited (hereafter *the society*) is *registered* under the **Co-operative Societies Act**. The petitioner contends that he was elected as a *committee member* of the society in a meeting held on 20th November 2013 and thereafter as the *chairman*.

14. The petitioner avers that the 1st respondent subsequently held *unlawful elections* on 20th March 2014 in which the 9th respondent was elected as *chairman*. The petitioner's case is that he remains the legitimate chairman.

15. The 1st to 8th respondents are all Sub-county Co-operative *offices*. A close scrutiny of the petition reveals that two factions of *members* or *officials* are fighting over the *control* of the society.

16. The *principal* reliefs sought the petition are as follows: a declaration that the *election* of the 9th respondent as chairman in the meeting convened on 20th March 2014 was *unlawful*. Secondly, that the 9th respondent and his committee be held liable for the *losses* of coffee beans, trees and assets of the society. Thirdly, that the 9th respondent be restrained from harassing or obstructing the petitioner from "*developing the society or preparing to issue titles to members for unsurveyed*" portions of land.

17. I cannot comment on the merits of the action at this stage. But it is clear to me that the *petition* and *reliefs* sought revolve around the *business* and *management* of the co-operative society. However the action is cloaked as a petition.

18. It is a dispute that, in the first instance, belongs to the **Co-operative Tribunal** formed under the **Co-operative Societies Act**. Any aggrieved party would then be entitled to an appeal to the High Court under section 81 of the Act.

19. Jurisdiction is everything. See *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1.

20. I thus *strike out* the petition. However, I grant *leave* to the petitioner to lodge the dispute in the **Co-operative Tribunal**.

21. In the interests of justice, I order that each party shall bear its own costs.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 2nd day of October 2018.

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

The petitioner in the absence of his counsel of record.

No appearance by counsel for the 1st to 8th respondents.

Mr. J. Kariuki for the 9th respondent instructed by Jesse Kariuki & Company Advocates.

No appearance by the 10th to 13th respondents.

Ms. Dorcas and Ms. Elizabeth, Court Clerks.