



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

CIVIL CASE NO. 4 OF 2015

BERNARD MUGO & OTHERS.....PLAINTIFFS

VERSUS

KAGAARI SOUTH FARMERS

CO-OPERATIVE SOCIETY & 4 OTHERSDEFENDANTS

RULING

The defendant filed a notice of preliminary objection dated 29/4/2015 based on the ground that this court lacks jurisdiction to hear and determine this matter. The counsel for the defendant Mr. B.N. Mbutia & Company also filed a memorandum of appearance and statement of defence on the same date.

Mr. Mbutia submitted that the dispute in this case is one which should be dealt with by the Co-operative Tribunal pursuant to the provisions of Section 76 of the Co-operative Societies Act. He contended that the provisions includes all matters between a co-operative society and a member, a past member and a deceased member. The legislature intended that the Co-operative Tribunal be the first level of dispute resolution with appeal lying in the High Court. If parties were permitted to lodge claims covered by Section 76 of the Act to the High Court, this will deny them their day in the High Court at the appellant level.

The defendant relied on the case of *KINOGERANA FARMERS CO-OPERATIVE SOCIETY LTD VS MURATA FARMERS SACCO LIMITED [2006] eKLR* in support of its arguments. In that case, it was held that the High Court did not have jurisdiction to entertain the suit relating to a dispute between the two co-operative societies.

The plaintiff opposed the preliminary objection through its advocates on record Simiyu, Opondo, Kiranga & Company. Mr. Opondo argued that the court has jurisdiction in that the dispute does not involve the business of the co-operative society pursuant to the provisions of Section 76 of the Act. Before the court is a dispute which arose out of a disciplinary action against the plaintiffs by the society. The defendant did not refer the dispute to the Co-operative Tribunal but assumed quasi-judicial. The plaintiff argued that the questions for determination do not fall under the jurisdiction of the Tribunal. The counsel relied on *Mombasa High Court Misc. Civil Application No. 444 of 2010 MATHEKA KITHOME & 3 OTHERS VS AKAMBA HANDCRAFT INDUSTRY CO-OPERATIVE SOCIETY* in support of his submissions. In that judicial Review application, the applicant had been suspended as a member of a co-operative society. The court held that the Tribunal does not have jurisdiction to deal with disciplinary issues and that the matter fell within the ambit of the court.

The plaintiff further argued that their claim is one of disciplinary action taken against them by the defendant without following the rules of natural justice.

In determination whether this court has jurisdiction to hear the plaintiff's claim, this court must have regard to the provisions of Section 76 of the Act and to the nature of the claim and to the prayers sought in the plaint.

Section 76 of the Act stipulates that;

(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.

(2) *A dispute for the purpose of this section shall include—*

(a) 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 or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;

(c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.

The provision calls for all disputes falling within the section to be determined by the Co-operative Tribunal.

The issue of determination herein is whether the dispute before this court falls within the Section 76 of the Act. Is it a dispute concerning the business of the Co-operatives Society in the context of Section 76 (1) and (2)?

It is imperative to note that decisions of the Co-operatives Tribunal are appealable to the High Court which is the court of final resort on that category. Matters in which the court has jurisdiction other than those included in the Act may be heard in the High court and follow the laid down process for appeal. The need to seek justice in the right forum cannot therefore be overemphasized. The provisions of Section 76 (1) and (2) are very clear that not all matters relating to Co-operatives Societies and their members are within the jurisdiction of the Co-operative Tribunal has been held in several High Court decisions.

In the case of ***NAIROBI HCCC NO. 226 OF 2002 KIRINYAGA FARMERS SOCIETY VS KIRINYAGA CO-OPERATIVE UNION***, the court observed that the exercise of determining whether a dispute is one involving the business of the society is a novel one. It then proceeded to examining past decisions with a view of capturing the matters considered by the courts. However, the court held that since the High court is the final court in Co – operative matters; it is not right for the High court to assume both appellate and original jurisdictions.

The court defined the business of the Society in the case of ***GATANGA COFFEE GROWERS VS GITAU [1970] EA 361*** as:-

“...business of the society is not confined to the internal management of the society but covers every activity of the Society within the ambit of its by laws and rules.”

Section 4 defines the business of the society as that which has the object of promoting the welfare and economic interest of its members. The plaint in paragraph 5 indicates that the plaintiffs are farmers and registered members of the 1st defendant – Kagaari South Farmers Co -operative Society Ltd. It further states that during the Society's Annual General Meeting held on 25/02/2015 the 1st defendant suspended them for unexplained reasons and without notice as required by the law. The effect of the resolutions was that the plaintiffs cannot deliver their coffee beans at the societies factory for the three year period of suspension.

The plaintiff contend that they were not given a chance to be heard and that the rules of natural justice were not conformed with. They claim further that their rights as registered members of the society have been infringed. The prayers in the plaint named (a), (b), (c) and (d) challenges the decision of the society to suspend the plaintiff's from membership terming it as illegal, unjust, draconian and in blatant breach of the rules of natural justice. Prayer (e) seeks for reinstatement of the membership and an order against the defendant to take delivery of the coffee beans. The final prayer (f) seeks for punitive damages against the defendants jointly and severally for presiding over an illegality.

In the case of **ALEX MALIKHE WAFUBWA & 7 OTHERS VS ELIAS NAMBAKHA WAMITA & 4 OTHERS [2012] eKLR** the court held that disputes relating to election, illegal holding of office and failure to convene a general meeting by the management committee did concern the business of the society and did not therefore fall within the ambit of section 76 of the Act.

The **ALEX MALIKHE** case was a judicial review application which is a matter of different nature from this case. However, it serves to illustrate that not all matters concerning Co-operative societies; the members and the society; past members or deceased members and the society fall under the jurisdiction of the tribunal.

I have carefully analyzed the nature of the claim and the prayers sought. I come to the conclusion that the claim does not fall within the description of the business of the society. It is a suit challenging the legality of the decision of the society alleged to have the effect of infringing the rights of the plaintiffs. The matter is outside the ambit of Section 76 (1) and (2) of the Act and therefore falls squarely under the jurisdiction of this court.

The preliminary objection is therefore dismissed with costs.

DELIVERED, DATED AND SIGNED AT EMBU THIS 1ST DAY OF JULY, 2015.

F. MUCHEMI

JUDGE

In the presence of:-

Mr. Opondo for the Applicant