



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA

AT NAIROBI

Civil Appeal 114 of 1997

ERNEST MUIRURI NJOROGE & 28 OTHERS
APPELLANTS

AND

KABIRU KARANJA

LUCAS WAWERU MWAURA

MWANGI MAINA

THUNGU MIAKO

KURIA GATHU
RESPONDENTS

(From the ruling and order of the High Court of Kenya

at Nairobi (Juma, J) dated 6th February, 1996

in

HCCC No 543 of 190)

JUDGMENT OF THE COURT

Section 80(1) of the Co-operative Societies Act, chapter 490 of the Laws of Kenya, hereinafter called the Act, is in the following terms:

“80. (1) If any dispute concerning the business of registered 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 or its committee and any other registered society**

It shall be referred to the commissioner.”

By an amended plaint dated 30th March, 1990 and filed in the superior court on 26th April, 1990 the appellants sued the respondents in their capacity as chairman, secretary, treasurer, vice-chairman and acting secretary respectively of Naivasha Kikuyu Farmers Co-operative Society Limited and averred in paragraph 3, 4 and 5 of the said plaint that:

“3. The plaintiffs on 29th January, 1983 balloted and were allotted the plots shown here below of land parcel Gilgil/Karunga/Block 6 together with other members of the Naivasha Kikuyu Farmers Co-operative Society Limited all comprising 439 members and by reason thereof the individual plots vested in the individual members were no longer the property of the Naivasha Kikuyu Farmers Co-operative Society Limited.

4. The allottees took possession of their said parcels of land and have mostly undertaken major developments including fencing, building of houses and cultivation.

5. On or about 13th May, 1988, the defendants acting ultra vires and in contravention of the constitutional rights of the plaintiffs to property, repossessed some of the plots of the plaintiffs as shown herebelow and thinned the others from the original acreage.”

The plots referred to in the foregoing paragraphs were set out in the appellants’ amended plaint in respect of which they sought restoration as originally allotted to them on 29th January, 1983 besides praying for a permanent injunction from the superior court restraining the respondents and their agents from interfering with their (appellants’) user of the said plots. The appellants also sought general damages against the respondents.

The respondents’ answer in their defence to the appellants’ amended plaint as articulated in paragraphs 3, 4 and 5 of that defence was as follows:

“3. The defendants content that this court has no jurisdiction to entertain this suit.

4. The defendants deny that the plaintiffs were owners of the said plots and shall contend that the land was at all material times the property of Naivasha Kikuyu Farmers Co-operative Society Limited.

5. The defendants shall contend that if the plots were taken from the plaintiffs this was done by the Co-operative Society itself and for lawful reasons to be adduced at the hearing and or which are within the plaintiffs’ knowledge.

By a notice of motion dated 16th February, 1995 and filed in the superior court on 17th February, 1995 the respondents inter alia sought the dismissal of the appellants’ suit against them for want of jurisdiction under the relevant provisions of section 80 of the Act. In their supporting affidavit to that notice of motion, the respondents deponed that the appellants in their capacity as members of Naivasha Kikuyu Farmers Co-operative Society Limited had sued them in their capacity as the office bearers of the said society. The appellants’ suit being a dispute between members and office bearers of a registered co-operative society should not have been therefore filed in the superior court but ought to have been referred to the Commissioner for Co-operative Development for determination in accordance with the relevant provisions of the Co-operative Societies Act.

The response of the appellants to the respondents notice of motion was that the dispute between them and the respondents was not between members of Naivasha Kikuyu Farmers Co-operative Society Limited and the office bearers of that society and therefore the said dispute was not encompassed by the relevant provisions of section 80 of the Act.

In his ruling dated and delivered on 6th February, 1996, Juma, J granted the respondent’s notice of motion holding that the appellants were members of Naivasha Kikuyu Farmers Co-operative Society Limited and

the respondents were sued by them in their capacity as the officials of the said society. That being so, the dispute in question was between members and the officials of their society and for that reason the provisions of section 80 of the Act were applicable to the dispute.

At the hearing of this appeal on 24th November, 1997, counsel for the appellant, Mr Mutiso, abandoned grounds 4 and 5 of the appellants' five grounds of appeal and urged grounds 1, 2 and 3 together submitting that the provisions of section 80 of the Act were inapplicable to the dispute before the superior court since on allotment of the plots the subject-matter of that dispute the appellants' membership to Naivasha Kikuyu Farmers Co-operative Society Limited was no longer in connection with the said plots but in regard to other businesses of the Society. On that account, therefore, the granting of the respondents' notice of motion by the superior court was wrong.

According to counsel for the respondent, however, land parcel No Gilgil/Karunga/Block 6 out of which the plots in question were allotted to the appellants was and still remained the property of Naivasha Kikuyu Farmers Co-operative Society Limited the allotment of the said plots notwithstanding. The dispute between the appellants and the respondents over these plots therefore concerned the business of their co-operative society in respect of which section 80 of the Act applied.

There were no serious efforts made by the appellants to disprove that the ownership of the property No Gilgil/Karunga/Block 6 out of which the plots the subject-matter of the dispute between them and the respondents were allotted to them still remained with their co-operative society. That being so, and the appellants being members of that society, then their dispute with the officers of the said society over the plots allotted to them (appellants) as is mentioned above must have concerned the business of that society. The appellants cannot therefore be permitted to shed their status as members of their society in connection with those plots so as to deny their society the protection conferred upon it by section 80 of the Act in relation to the determination of such dispute. In the result, we think that the relevant provisions of the aforesaid section are applicable to the dispute in question and uphold the decision of the superior court that it has no jurisdiction to adjudicate upon that dispute. Accordingly, we dismiss the appellants' appeal with costs and order that their suit in the superior court be struck out instead of being dismissed as was ordered by that court for the reason that if the said court had no jurisdiction over the dispute between the appellants and the respondents, then, there never was any suit before it for dismissal.

Dated and delivered at Nairobi this 5th day of December, 1997.

JE GICHERU

JUDGE OF APPEAL

AB SHAH

JUDGE OF APPEAL

GS PALL

JUDGE OF APPEAL