



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

CORAM: GACHUHI, OMOLO AND TUNOI, J.J.A.)

CIVIL APPEAL NO. 174 OF 1992

BETWEEN

DAVID KAMAU NJOROGE ..... APPELLANT

AND

EDGEWOOD FARMERS CO-OPERATIVE SOCIETY ..... FIRST

RESPONDENT

SAMUEL M. NJOROGE ..... SECOND

RESPONDENT

DAVID KIMUYA MUTHOMI ..... THIRD RESPONDENT

(Appeal from a decree of the High Court of Kenya at  
Nakuru (Mr. Justice Barbara Tanui) dated 1st July,  
1992

in

H.C.C.C. NO. 61 OF 1992)

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JUDGMENT OF THE COURT

We are satisfied there is no merit in the appeal before us. The appellant is and was a member of Edgewood Farmers Cooperative Society, the 1st Respondent herein. The appellant alleged that he had entered into an agreement with the 1st Respondent over some piece of land which the 1st Respondent had agreed to sell him. The 1st Respondent then changed and allegedly sold the same piece of land to David Kimuya Muthomi, the 3rd Respondent. The 3rd Respondent was also a member of the 1st Respondent. The 2nd Respondent, Samuel Njoroge, was The Chairman of the 1st Respondent. The Appellant purported to sue the three Respondents and the Respondents moved the High Court to strike out the suit on the ground that the Appellant was not entitled to bring the matter to the High Court but should have pursued his rights as set out in section 80 (1) of the Co-operative Societies Act. The judge agreed with the Respondents and struck out the suit. The dispute was clearly one among members of the Co-operative Society and according to Section 80 (1) "any dispute concerning the business of a registered society," must be dealt with in the manner set out in the Act. The 1st Respondent was a farming society and selling

or allocating land to its members was clearly among its business. Mr. Otachi Omwana for the Appellant contends that the High Court has jurisdiction because under the Constitution, that court has unlimited original civil and criminal jurisdiction and accordingly section 80 of Cap 490 could not deprive the High Court of its jurisdiction conferred on it by the constitution.

With respect we can find nothing in the constitution which would debar parliament from legislating on the manner in which the jurisdiction of the High Court is to be exercised. In Cap 490, that jurisdiction is to be exercised on appeal as provided in section 81 (2) of the Act and we can find nothing unconstitutional in this. The dispute here squarely fell within the provisions of section 80 (1) of Cap 490 and the learned judge was, with respect, right in ordering that the plaint be struck out with costs. This appeal fails and we order it to be dismissed with costs.

Dated and delivered at Nakuru this 25th day of February, 1994.

J. M. GACHUHI

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

DEPUTY REGISTRAR