



REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
CIVIL CASE NO 413 OF 1989

GEORGE & 15 OTHERSPLAINTIFF

VERSUS

LIMURU PYRETHRUM GROWERS CO-OP LTD & 9 OTHERS..... DEFENDANTS

RULING

At the opening of the hearing *inter partes* of an application by the plaintiffs for an injunction, the counsel for the defendants took a preliminary objection to the proceedings on the ground that the Court has no jurisdiction to entertain the application. Accordingly, the objection was argued as a preliminary point the future course of the application before the Court was depending on the outcome of the objection.

This suit was filed on 30th January 1989 by sixteen plaintiffs against the first defendant, Co-operative Society and its nine members of the management committee, claiming that they are all members of the first defendant each having been issued with a share certificate. According to the plaintiff the first defendant decided between 1977 and 1985 to buy a farm known as Karanjee with a financial aid from the Agriculture Finance Corporation and the members were each to contribute Shs 1500/- towards repayment of the loan. In return each member was to be issued with 75 shares and a plot measuring 100ft by 50ft. It was this plaintiffs' claim that on 22nd June 1987 was set aside for allocation of plots to members but they were barred from being allocated plots by the defendants despite the fact that they are members of the first defendants. On the day they filed the suit the plaintiffs also filed an *ex parte* application for an injunction to restrain the defendants from disposing of the said plots. The order sought having been granted on the *ex parte* application a hearing *inter partes* of the same was fixed for 4th May 1989 when the preliminary objection was taken as stated above.

The first ground advanced by Mr Kirundi for the defendants in support of the preliminary objection is that the court has no jurisdiction to entertain this application as the dispute involved is between members of a cooperative society and the co-operative society and its committee which dispute should be referred to the Commissioner for Co-operative Development as stipulated under section 80 of the Co-operative Act. Mr Mwaura for the plaintiffs submitted that the Chairman of the 1st defendant has stated on oath that the plaintiffs were not members of the 1st defendant and on that ground the court should hear the dispute.

This objection is based on section 80 of the Co-operative Act (Cap 490 of Laws of Kenya). Sub-sections 1 of that section reads:

“(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 official of the society; or

(c) between the society or its committee and any registered society;

It shall be referred to the Commissioner.

It is clear from the above sub-section of section 80 of the Co-operative Societies Act that where there is a dispute between members of a society on one part and the society and / or its officials or management committee as would be the matter in the instant case it is mandatory that the dispute has to be referred to the Commissioner for Co-operatives Development. In paragraph 5 of the plaint and in two affidavits of Peter Ndungu Kimani the plaintiffs claim that they are all members of the 1st defendant society and have attached to those documents photostat copies of share certificates and receipts issued to them allegedly by the 1st defendant. The first defendant however denies this and in his affidavits of 9th February and 29th March 1989 the Chairman of the 1st defendant it is claimed that the share certificates and the numbers the plaintiffs claimed to have been issued to them, were all fraudulently procured and without the authority of the 1st defendant. The membership of the plaintiffs in the first defendant is itself in dispute in this case. The question is, does the court have jurisdiction to determine this?

The by-laws of the first defendant were not produced by the parties in this case to assist this court to decide this question. However reading part (IV) of the Co-operative Societies Act (Cap 490) and especially sections 14, 16 and 18 it becomes very clear that the determination of a party as a member of a co-operative society is the province of the Commissioner for Co-operative Commissioner. In any event if there is a dispute as to whether a party is a member of a co operative society and the co-operative society disputes that the matter becomes a dispute within the provision of section 80(1) of the Co-operative Societies Act and consequently the matter has to be referred to the Commissioner. I therefore find that the dispute between the parties in this case relating to the question as to whether or not the plaintiffs are members of the 1st defendant is not a matter which this court has jurisdiction to determine.

The next ground submitted by Mr Mwaura that the matter in issue in this case does not concern the business of the 1st defendant co-operative society as laid down in section 80 of the said Act. It is true that the dispute in this case appears to be over plots in Karanjee farm allegedly bought by the 1st defendant and had agreed to allocate each member one such plot. This dispute does not seem on the face of it to relate to pyrethrum which may be the main activities of the 1st defendant. Subsection 2 of section 80 of the said Act provides:-

“A claim by a registered society for a 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 is a dispute for the purpose of this section.”

In the case of *Gatanga Coffee Growers vs Gitau* [1970] EA 361 the respondent sued the appellant society of which he was a member for money due to him in respect of coffee sold by him to the appellant. The appellant pleaded that the court had no jurisdiction to try the case but he was overruled by the resident magistrate. The appellant appealed to the High Court, and the case was heard by Simpson J (as he then was) and Harris J.

The court held that the business of the society was not confined to the Internal management of the society but it covers every activity of the society permitted by the by-laws and the rules.

In this instant case the 1st defendant society bought Karanjee farm and presumably had jurisdiction to subdivide it and allocate the resultant plots to its members. If a dispute arises then such a dispute is within the provisions of section 80 of the Act. In my view the issues in this case are disputes within section 80 of the said Act and this court has no jurisdiction. It is also noted from a document filed by Peter N Kimani that the disputes in this case have been adjudicated upon by an arbitrator. If this is so the same should

have been filed in court for purposes of execution.

Dated and Delivered at Nairobi this 4th July4, 1989,

B.K. TANUI

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JUDGE