



**Kishushe Ranching Co-operative Society Limited v Devki Steel Limited & another (Environment and Land Case E013 of 2025) [2025] KEELC 7277 (KLR) (Environment and Land) (23 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7277 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND  
ENVIRONMENT AND LAND CASE E013 OF 2025  
EK WABWOTO, J  
OCTOBER 23, 2025**

**BETWEEN**

**KISHUSHE RANCHING CO-OPERATIVE SOCIETY LIMITED ..... PLAINTIFF**

**AND**

**DEVKI STEEL LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DANSON KIDAI MWANDOTO ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect to the 2<sup>nd</sup> Defendant's application dated 18<sup>th</sup> July 2025 which seeks the following orders:-
  - i. Spent...
  - ii. That this Honourable Court be pleased to stay further proceedings pending the hearing and determination of this application.
  - iii. That the firm of B. N. Mbuthia & Associates Advocates be and are hereby restrained from purporting to act on behalf of the Plaintiff in this matter.
  - iv. That the suit be struck out on the ground that it has been instigated and filed by a person (Matilda Walegwa) without the knowledge and authority of the Plaintiff.
  - v. That the suit be dismissed for being filed in court without jurisdiction to hear and determine the suit.
  - vi. That the costs of this application and the suit be borne by Matilda Walegwa.



2. The application was premised on the grounds that the Plaintiff is in the business of leasing out land to mining companies such as the 1<sup>st</sup> Defendant in exchange for royalties, fees and other related benefits accruing to its members.
3. The Plaintiff is a legal entity with its own management structure and legal actions are typically pursued by the committee or through the committee's authorization.
4. Though disguised as a suit by the Society, this suit has been instigated, Counsel appointed and suit filed by a disgruntled person claiming to be an interim chair of the Society, without due knowledge or authorization by the committee of the Society.
5. It was averred that the Committee of the Plaintiff has not delegated its powers to Matilda Walegwa pursuant to Section 28(6) of the Cooperative Societies Act, to either instruct Counsel or file suit on behalf of the Society.
6. It was also averred that Matilda Walegwa has clothed herself a title of Interim Chairperson of the society and disguised her grievances as those of the society and used the name of the society to escape the provisions of Section 76(1)(b) of the Cooperative Act.
7. Though disguised as a land matter, the suit's primary underlying issue is the impugment of the actions of the Society's governing body (committee) to pass a resolution in its ordinary course of business, by a disgruntled member of the society.
8. The suit invites this Court to interrogate the inner workings of the Plaintiff's committees in execution of their mandate as the governing body of the Plaintiff.
9. It was contended that this court lacks jurisdiction to address a dispute between a member and the committee of a cooperative society.
10. Under Section 76(1)(b) of the Cooperatives Act, if any dispute concerning the business of a cooperative society arises between members, past members of deceased members and the society, its Committee or any officer of the society is required to raise such issues for determination before the Cooperative Tribunal.
11. The issues raised by the Plaintiff (but essentially raised by Matilda Walegwa) are matters that fall within the purview of the Cooperatives Tribunal which has powers including but not limited to issuance of injunctive reliefs related to the business of the Society.
12. The 2<sup>nd</sup> Defendant is wary that in the event that this Court issues adverse orders against the Plaintiff, the Plaintiff shall be exposed to orders emanating from a suit it has not authorized to be filed.
13. The suit is a classic example of abuse of the court process and is a total waste of the precious time of this Honourable Court because the deponent's (Matilda Walegwa) intention is to mount a coup against the current officials, through the Court!
14. The suit is defective for want of locus and ought to be struck out with costs to be borne by Matilda Walegwa.
15. The application was also supported by the affidavit sworn by Danson Kidai Mwandoto on the 18<sup>th</sup> July 2025.
16. The application was opposed vide a Replying Affidavit sworn on 14<sup>th</sup> August 2025 by Matilda Walegwa. It was averred that the application is meant to divert the court's attention from the misdoings



- of the 2<sup>nd</sup> Defendant which border on criminality because he received Kshs. 10,000,000/= on behalf of the Plaintiff but has not divulged the said details to the court.
17. It was also averred that Section 28(4) (n) and (o) of the Cooperatives *Societies Act* expressly bar from office any person who owns the society money or against whom a decree is pending and the 2<sup>nd</sup> Defendant falls in the said category vide a decree by the Cooperative Tribunal in CTC No. 12 of 2011, Danson Kidai Mwandoto =Versus= Kishushe Cooperative Society Ltd.
  18. It was also averred that there was Special General Meeting held on 25<sup>th</sup> April 2025 which led to the election of the Interim Committee Members. The notice of the said meeting had been circulated on 7<sup>th</sup> April 2025.
  19. Parties also filed written submissions in respect to the said application. The 2<sup>nd</sup> Defendant filed written submissions dated 11<sup>th</sup> September 2025. The Plaintiff filed written submissions dated 3<sup>rd</sup> September 2025.
  20. The 2<sup>nd</sup> Defendant argued that the suit has been brought through an application under certificate dated 25<sup>th</sup> June 2025 where the Plaintiff seeks injunctive orders against the Defendants, in the interim.
  21. The 2<sup>nd</sup> Defendant being the Chairman of the management committee of the Plaintiff was taken by surprise as he was not aware of any special general meeting or sitting of the management committee where it was resolved that the suit be filed.
  22. Upon perusing the supporting affidavit to the application under certificate dated 25<sup>th</sup> June 2025 and the verifying affidavit accompanying the Plaintiff dated 25<sup>th</sup> June 2025, he noticed the said affidavits had been sworn by Matilda Walegwa who claims to be the interim chairlady of the Plaintiff.
  23. The 2<sup>nd</sup> Defendant recognized the said Matilda Walegwa as a former member of the immediate former management committee of the Plaintiff.
  24. Notably, her affidavits stated that she was the interim chairlady of the Plaintiff (note: not the chairlady of the management committee of the Plaintiff) and therefore competent to swear the affidavits (note: nothing on being authorized to swear the affidavits).
  25. The 2<sup>nd</sup> Defendant also noticed that the firm of B. N. Mbutia & Co. Advocates had filed the court documents seemingly assuming authority and instruction of the Plaintiff to do so.
  26. With all these anomalies, the 2<sup>nd</sup> Defendant opted to file the instant application dated 18<sup>th</sup> July 2025 through which he raises the issue of locus standi which we submit, goes to the jurisdiction of the court.
  27. It was further submitted that the 2<sup>nd</sup> Defendant is cognizant that the issue whether or not a party has locus standi is a pure point of law that would generally be raised by way of a notice of preliminary objection. However, the 2<sup>nd</sup> Defendant has opted to file the application to also allow the persons who have filed the suit on behalf of the Plaintiff a chance to rebut the allegation that they lack capacity to do so and to also allow the Honourable Court to conclusively make a finding on the issue of locus standi.
  28. Through the said application, the 2<sup>nd</sup> Defendant has adduced evidence that calls for rebuttal by the deponent through evidential material that she and the law firm indeed had authority of the society to bring this suit.
  29. The 2<sup>nd</sup> Defendant has adduced evidence to demonstrate that he is the recognized chairman of the management committee of the Plaintiff by annexing a letter from the County Commissioner of Cooperatives, who is the custodian of records of the co-operative societies at the county level.



30. The 2<sup>nd</sup> Defendant has also adduced resolutions of the management committee appointing messrs Kihiko N & M Law Advocates LLP as the legal representative of the society.
31. Notably, the deponent has not rebutted with credible evidence that she is not a member of the management committee or that she is not duly authorized to make averments and seek reliefs on behalf of the society or that the law firm is duly authorized to file the instant suit on behalf of the society.
32. There is no material before this Honourable Court to demonstrate that Matilda Walegwa was elected on 25<sup>th</sup> April 2025 as alleged. If anything, the agenda items appearing on the annexed minutes do not include elections as alleged at paragraph 7 of her replying affidavit. What is more, the letter dated 9<sup>th</sup> July 2025 from the County Commissioner of Co-operatives postdates any of the actions alleged to have happened on 25<sup>th</sup> April 2025.
33. There is no material before this Honourable Court to demonstrate that messrs B. N. Mbuthia & Company Advocates were instructed to file the instant suit on behalf of the society or to generally act on its behalf.
34. These issues are so intertwined with the issue of locus standi (and locus standi is equally intertwined with the issue of jurisdiction of the court) that if left unrebutted, the competency of the suit becomes wanting.
35. It was argued that under the Cooperative *Societies Act* no person other than the management committee of the society can file a suit on behalf of the Society. The Act does not allow for filing a derivative action on behalf of the society.
36. On whether the court has jurisdiction, it was submitted that Section 28(4) (k) of the Cooperative *Societies Act* provides that no person shall be a member of a committee if he has been adversely moved by the Commission in an inquiry report adopted by a general meeting for mismanagement or corrupt practices while a member of the committee.
37. It was contended that the name of Matilda Walegwa features prominently in the list of committee members who were surcharged for receipt of unapproved honoraria and Christmas token payments.
38. It was further contended that there is no material presented before this court to support the allegation that Matilda Walegwa was elected as an Interim Chairlady of the Society as alleged. The minutes of 25<sup>th</sup> April 2025 do not indicate whether any elections took place.
39. The Court was urged to strike out the suit with costs.
40. The Plaintiff filed written submissions dated 3<sup>rd</sup> September 2025. It was submitted that the 2<sup>nd</sup> Defendant pleadings be struck out for having filed a Notice of Appointment instead of a Memorandum of Appearance.
41. It was also submitted that the issues raised by the Plaintiff as to whether the Plaintiff's Committee had not instructed and or authorized the institution of the suit together with the authority the firm of B. N. Mbuthia to act on their behalf and further as to whether Matilda Walegwa is its Chairlady are issues that cannot be controverted in an application, evidence needs to be adduced to disprove the said allegations.
42. It was also submitted that Section 28(4)(n) and (o) of the Cooperative *Societies Act* bars the 2<sup>nd</sup> Defendant from being the Plaintiff's Chairman and further pursuant to the case of CTC No. 12 of 2011 Danson Kidai Mwandoto =Versus= Kishushe Cooperative Society Ltd and as such the said objection should fail.



43. It was also submitted that the dispute herein is a land issue which is properly before court. The court was urged to dismiss the application with costs.
44. Having considered the application and the submissions made together with the existing legal framework, the salient issue for determination is whether the jurisdiction of this Court has been invoked prematurely.
45. It is now a well-founded principle that jurisdiction is the most crucial component of a suit. The Supreme Court in the case of Samuel Kamau Macharia -vs- Kenya Commercial Bank & 2 Others, Civil Appl. No. 2 of 2011, observed that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. ...Where the Constitution exhaustively provides for the jurisdiction of a Court of law, the Court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation.”

46. The broad jurisdiction of this court is donated by Article 162 (2) (b) of the Constitution. Broadly, the court is vested with jurisdiction to hear and determine disputes relating to: (i) environment; and (ii) occupation, use and title to land. the Constitution empowered Parliament to elaborate further the jurisdiction of the court in more details through legislation. Indeed, Section 13 of the Environment and Land Court Act elaborates the jurisdiction of the court as follows:

- “(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (b) relating to compulsory acquisition of land;
  - (c) relating to land administration and management;
  - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.



- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) Deleted by Act No. 12 of 2012, Sch.
47. Besides the *Environment and Land Court Act*, Parliament has enacted various statutes which vest primary jurisdiction over specific disputes in different Tribunals while reserving for this court appellate jurisdiction over the same disputes. Kenya's superior courts have accepted this architecture and have, in a line of decisions, held that where the primary jurisdiction of a court is not exclusive and Parliament has created other primary adjudicatory bodies, claimants must exhaust the primary adjudication mechanism provided by the statute before moving to the superior courts that are vested with both original and appellate jurisdiction.
48. Indeed, in *Njenga Karume v Speaker of the National Assembly* [1992] eKLR the Court of Appeal stated as follows:
- “...In our view, there is considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the *Constitution* or an Act of Parliament, that procedure should be strictly followed. We observed without expressing a concluded view that Order 53 of the Civil Procedure Rules cannot oust clear constitutional and statutory provisions....”
49. It was the 2<sup>nd</sup> Defendant's contention that the suit though guised as a land matter, the suit's primary underlying issue is the impugment of the actions of the society's governing body (Committee) to pass a resolution in its ordinary course of business by a disgruntled member of the society. It was also contended that Section 76 (1)(b) of the Cooperative *Societies Act* stipulates that if any dispute concerning the business of a Cooperative Society arises between members, past members or deceased members, and the society, its committee or any officer of the society is required to raise such issues for determination before the Cooperative Tribunal.
50. It was further contended that the issues raised by the Plaintiff (but essentially raised by Matilda Walegwa) are matters that fall within the purview of the Cooperatives Tribunal which has powers including but not limited to issuance of injunction reliefs related to the business of the society.
51. The Plaintiff on the other hand argued that the 2<sup>nd</sup> Defendant has no locus claiming to be the Plaintiff's Chairman pursuant to the provisions of Section 28(4)(n) and (o) of the Cooperatives Society Act since he owes the Plaintiff Kshs. 247,704/= arising from a decree of the Cooperative Tribunal and further that he received Kshs. 10,000,000/= on behalf of the Plaintiff and converted the same into his own property.
52. From the perusal of the Amended Plaintiff dated 4<sup>th</sup> June 2025, it is evident that the dispute herein is in respect to the resolutions made towards the leasing of the Plaintiff's portion of the land to the 1<sup>st</sup> Defendant. The Plaintiff contends that the 2<sup>nd</sup> Defendant never sought the approval of the Plaintiff's Supervisory Committee and the Management Committee and as such the said resolutions are null and void contrary to Section 28(3) and 28(6) of the Cooperative Society Act. They also seek an injunction barring the Defendants from accessing their land.
53. It is worth noting that in determining this dispute, the court would need to be satisfied that the 2<sup>nd</sup> Defendant had the authority to transact and undertake any activities on behalf of the Plaintiff and the



court will also have to determine whether Matilda Walegwa the interim Chair had the requisite locus and was authorised on behalf of the Plaintiff to institute the suit herein.

54. It therefore follows that the dispute herein equally relates to the status/membership of the 2<sup>nd</sup> Defendant as a member of the Plaintiff.
55. Section 76 of the Cooperative *Societies Act* stipulates that any dispute concerning the business of a Cooperative Society arises among members, past members or present then the same shall be referred to the Tribunal as a first port of call. The Tribunal is the best placed organ to resolve the dispute as to whether the 2<sup>nd</sup> Defendant and Matilda Walegwa the Interim Chair of the Plaintiff had the required locus or were legitimately authorised to act on behalf of Kishushe Ranching Cooperative Society Ltd.
56. It therefore follows that there is a dispute as to who are the bonafide officials of the Plaintiff and that is a dispute which can only be resolved in another forum. Given the above judiciary architecture, it is clear that the jurisdiction of this court has been invoked prematurely. This dispute has been brought before the Environment and Land court prematurely. For this reason, this suit stands to be struck out. The suit stands to be struck out because the jurisdiction of the court has been invoked prematurely. For clarity, this suit is hereby struck out as opposed to being dismissed.
57. Consequently, it is the finding of this Court that the 2<sup>nd</sup> Defendant's application is merited and the same is hereby determined as follows: -
- a. The Plaintiff's suit be and is hereby struck out.
  - b. Each party to bear own costs of the suit.

It is so ordered.

**SIGNED, DATED AND DELIVERED VIRTUALLY AT VOI THIS 23<sup>RD</sup> OCTOBER 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of: -

Mr. Mbuthia for the Plaintiff.

Ms. Indesia h/b for Mr. Bwire for the 1<sup>st</sup> Defendant.

Mr. Mutugi for the 2<sup>nd</sup> Defendant.

Court Assistant: Mary Ngoira.

