



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO. 130 OF 2017

MADLINE NDETE MULWA BROWN.....1ST PLAINTIFF

ROBIN VIVIANNE BROWN.....2ND PLAINTIFF

VERSUS

KATELEMBO ATHIANI MUPUTI FARMING & RANCHING

CO-OPERATIVE SOCIETY LTD.....1ST DEFENDANT

THE COUNTY LAND REGISTRAR, MACHAKOS.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

1. In the Notice of Preliminary Objection dated 30th August, 2018, the 1st Defendant has averred that this court lacks jurisdiction to hear and determine this suit in view of the provisions of the Co-operative Societies Act.
2. The Preliminary Objection proceeded by way of written submissions. In her submissions, the 1st Defendant's advocate submitted that the 1st Defendant is a Co-operative Society whose operations are governed by the Co-operative Societies Act; that the Plaintiffs are members of the 1st Defendant and that a dispute has arisen as to whether the plots purchased by the Plaintiffs were all located in the same area.
3. Counsel submitted that under Section 76 (1) of the Co-operative Societies Act, any dispute concerning the business or operations of a Co-operative Society should be referred to the Co-operative Tribunal; that the "*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 that this dispute should have been filed in the Tribunal. Counsel relied on numerous authorities including the cases of *Gatanga Coffee Growers Co-operative Society Limited vs. Gitau (1970) 1 EA 361* and *Murata Farmers Sacco Society Limited vs. Co-operative Bank of Kenya (2001) eKLR*, amongst others.
4. The Plaintiffs' advocate submitted that the Plaintiffs approach to the seat of justice is strictly concerning land; that this court has the original and appellate jurisdiction to hear and determine all disputes concerning land and that the Preliminary Objection should be dismissed.
5. In the Plaint dated 10th May, 2016, the Plaintiffs averred that the 1st Defendant is a registered Co-operative Society duly registered under the Co-operative Societies Act; that they (*the Plaintiffs*) are joint proprietors of plot numbers 825 -832 and 570 and 1101 measuring five (5) acres which they purchased and that the 1st Defendant has stopped the registration of titles for "*various members land parcels including that of the Plaintiffs.*"
6. It is the Plaintiffs' case that the 1st Defendant has been threatening to unlawfully relocate them from their physical location and that the said threat is unlawful. In the Plaint, the Plaintiffs have prayed for an order to issue compelling the 1st Defendant to expeditiously register and issue a Certificate of Title in the names of the Plaintiffs in respect of the suit land.
7. In its Defence, the 1st Defendant averred that the Plaintiffs are illegally occupying other members' parcels of land and that the registration of the suit land in the Plaintiffs' names cannot proceed until all complaints are resolved. The 1st Defendant denied that this court has jurisdiction.

8. The Plaintiffs have not denied that they are members of the 1st Defendant. Indeed, in her Affidavit sworn on 10th May, 2016, the 1st Plaintiff deponed that on diverse dates between the years 2005 and 2007, they purchased two shares in the 1st Defendant and thereby acquired membership number 158 and identity card number 740094975.

9. According to the Plaintiffs, after acquiring membership in the 1st Defendant, they purchased the suit plots from their fellow members within the Society which they later consolidated into a single five (5) acres of land.

10. The deposition by the Plaintiffs clearly shows that the dispute herein is between them and the 1st Defendant and other members of the Society. Section 76(1) of the Co-operative Societies Act provides as follows:

“(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.”

11. The Plaintiffs have not denied that the main objective or business of the 1st Defendant is to buy and sell land to its members. Indeed, from the Plaintiff, it is only the 1st Defendant who can authorize the purchase of land by a member, either from itself or from any of its members. The acquisition, alienation and transfer of land is therefore the “business” of the 1st Defendant within the meaning of Section 76 of the Act.

12. The term “business of the Society” used in Section 76 of the Co-operative Societies Act in defining a dispute that should be referred to a Tribunal was considered in the case of *Gatanga Coffee Growers Co-operative Society Ltd vs. Gitau (1970) 1 EA 361* as follows;

“‘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-law and rules.”

13. To the extent that the Plaintiffs have not denied that the 1st Defendant’s by-laws and rules allows it to sell land to its members, and to consent to the sell of land among members, I find and hold that the dispute herein should have been filed in the Co-operative Tribunal as a court of first instance.

14. Even though the Constitution gives this court the mandate to hear all disputes relating to the environment and the use and occupation of, and title to land, which jurisdiction is comprehensive, the said jurisdiction is not centralized. That explains why the court also has an appellate jurisdiction pursuant to the provisions of Section 13(1) of the Environment and Land Court Act.

15. As was held in the case of the *Speaker of the National Assembly vs. Hon. James Njenga Karume (2008) 1 KLR 425*, 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. Consequently, this suit should have been filed in the Co-operative Tribunal in the first instance and not in this court.

16. For those reasons, the Plaintiffs’ suit is struck out with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31ST DAY OF JULY, 2019.

O.A. ANGOTE

JUDGE