



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

E & LC NO. 278 OF 2015

RWAIKABA FARMERS COOPERATIVE SOCIETY LIMITED.....PLAINTIFF

-VERSUS-

NGUTU KAHURIA FARMERS COMPANY LIMITED.....DEFENDANT

JUDGMENT

1. On 16th November, 2015 the plaintiff herein, Rwaikaba Farmers Cooperative Society Limited, brought this suit seeking judgment against the defendant, Ngutu Kahuria Farmers Company Limited for:

- a. A declaration that it is the lawful and registered owner of Title No. Loc 13/Karunge/1428.**
- b. An order of permanent injunction restraining the defendant, its agents, servants and assigns and anyone claiming under them from continuing to occupy or to do anything which will interfere with any portion of land which is known as Title No. Loc 13/Karunge/1428.**
- c. Costs incidental to the suit.**
- d. Interest at court rates.**

2. The plaintiff's case is premised on the allegation that it is the registered owner of the subject matter of the suit to wit all that parcel of land known as Title No. **Loc.13/Karunge/1428** measuring 8.6 acres (hereinafter referred to as the suit property).

3. According to the plaintiff, the suit property hosts one of its coffee factories, Ngutu Coffee Factory, hereinafter referred to as the factory.

4. The plaintiff accuses the defendant, through its members of having invaded the factory, evicted its employees and began conducting its business on the suit property.

5. Terming the invasion of occupation of the suit property by the members of the defendant illegal and unwarranted interference with its quiet enjoyment of the suit property, the plaintiff avers that the conduct of the members of the defendant has not only interfered with performance of its duties but also occasioned it great financial loss.

6. The conduct of the defendant is said to have exposed the plaintiff's assets, machinery and the parchment coffee delivered by farmers within the factory to risk of being damaged, destroyed, misused

and wasted as the factory has been left unguarded.

7. Through its statement of defence filed on **19th January 2016**, the defendant admitted that the suit property belongs to the plaintiff and that it hosts the defendant's factory but denies the allegation that its members are occupying the suit property.

8. The defendant contends that it is merely running the affairs of the factory by receiving coffee from farmers and processing it.

9. According to the defendant, the dispute between it and the plaintiff is not about ownership and occupation of the suit property but management of the factory.

10. Explaining that there is a dispute between the plaintiff and the defendant pending before the Commissioner for Cooperatives, the defendant urges the court to dismiss the suit with costs to it.

EVIDENCE

The Plaintiff's case

11. When the matter came up for hearing, the chairman of the plaintiff, **Wilson Mwangi Githere** reiterated the contention that the suit property belongs to the plaintiff and that the defendant through its members had invaded it thus denying the plaintiff the use and enjoyment of the suit property and denied the defendant's contention that the dispute between the plaintiff and the defendant is over management of the factory. He also denied the defendant's contention that there is a dispute pending before the office of the Commissioner of Cooperative concerning the subject matter of this suit.

12. Mr. Githere informed the court that the office of the Commissioner of Cooperatives had refused to entertain the dispute preferred before it on grounds that it lacked jurisdiction to entertain matters touching on limited liability Companies.

The Defence case

13. **Eliud Ngau Paul** who testified on behalf of the defendant, reiterated the defendant's contention that the defendant is merely running the affairs of the factory and maintained that there is an unresolved dispute between the plaintiff and the defendant concerning the management of the factory.

14. Concerning the testimony by Githere to the effect that the ministry of cooperatives had declined to adjudicate over the dispute preferred by the defendant before it, Mr. Ngau denied having knowledge of the letter from the Ministry of Cooperative indicating that the Ministry has no mandate to deal with companies.

15. At the close of hearing, parties to this dispute filed submissions which I have read and considered.

The Plaintiff's submissions

16. On behalf of the plaintiff a brief overview of the cases of the respective parties is given and submitted that the defendant is in illegal occupation of the suit property and ought to be evicted.

17. Concerning the defendant's contention that the dispute between it and the plaintiff is over management of the factory as opposed to occupation or ownership of the suit property, it is pointed out that the defendant did not adduce any evidence capable of showing that it is entitled to run the affairs of the plaintiff or run its affairs on the plaintiff's property (the suit property).

18. With regard to the defendant's contention that there is a dispute pending before the Commissioner of Cooperatives between itself and the plaintiff over the management of the factory, it is submitted that no evidence was adduced capable of proving that allegation. According to the plaintiff, the evidence adduced

in this matter namely the letters from the Chief Officer Cooperative Development, Muranga County Government dated 30th December, 2015 and 21st January 2016, that office declined to adjudicate over the matter on grounds that it had no jurisdiction over the dispute preferred to it; thus there is no dispute pending before that office or the office of the County Commissioner for Cooperatives or even the Cooperatives Tribunal.

19. Based on the provisions of **Section 76** of the Cooperatives Societies Act, it is submitted that the Commissioner of Cooperatives lacks jurisdiction to entertain a dispute between a cooperative society and a limited liability company like the current one.

20. Maintaining that the actions of the defendant are illegal, the plaintiff submits that there is no law which allows the running of the affairs of a cooperative society by a limited liability company as the defendant is purporting to do.

The Defendant's submissions

21. On behalf of the defendant, reference is made to the pleadings filed in this matter and in particular the admission that the suit property belongs to the plaintiff and submitted that the prayer for declaration that the plaintiff is the lawful registered owner of the suit property is not important as ownership of the suit property is not disputed.

22. The defendant maintains that the dispute between it and the plaintiff is over management of the factory herein and that there is a dispute pending before the Commissioner of Cooperative Societies concerning the management of the factory.

23. According to the defendant, all the properties on the suit property belong to the farmers of the factory and not the plaintiff (it is contended that the plaintiff is merely registered as a trustee of the farmers who deliver coffee to the factory).

24. Explaining that the defendant runs the affairs of the factory with the consent of the farmers, counsel for the defendant submits that the dispute between the plaintiff and the defendant ought to be resolved by the Commissioner of Cooperatives.

Analysis and determination

25. It is common ground that the suit property and the factory therein belong to the plaintiff. That being the case, the sole issue for determination is whether the defendant can lawfully run their affairs on the plaintiff's property without the permission or authority of the plaintiff.

26. The foregoing issues brings into focus the issue of the rights of a registered proprietor of land set out in **Section 25(1)** of the Land Registration Act, 2012 which provides:-

“The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –

a. To the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register and

b. to such liabilities, rights and interest as affect the same and are declared by Section 28 not to require noting on the register, unless the contrary is expressed in the register.”

27. Concerning the contention that the plaintiff holds the suit property in trust of the farmers who deliver their coffee to the factory, I find that contention to be a departure from the defendant's pleading contrary

to the provisions of **Order 2 Rule 6(1)** of the Civil Procedure Rules. In any event, no evidence was adduced capable of showing the nexus between the defendant and the shareholders of the plaintiff to warrant the defendant's contention that it is managing the factory situated on the suit property which admittedly belongs to the plaintiff.

28. Being of the view that the defendant has no right whatsoever to carry its affairs on a property belonging to the plaintiff without the permission or authority of the plaintiff, I find that the plaintiff as the registered proprietor of the suit property has made up a case for being granted the orders sought which orders I hereby issue in favour of the plaintiff.

Dated, Signed and Delivered in open court at Nyeri this 20th day of April, 2018.

L N WAITHAKA

JUDGE

Coram:

N/A for the plaintiffs

N/A for the defendants

Court assistant - Esther