



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 465 OF 2017

JOYCE MUTHOKI MUOKI.....PLAINTIFF

VERSUS

JOHN MUOKI NGUI.....1ST DEFENDANT

MUKAA MUKUU FARMERS

CO-OPERATIVE SOCIETY.....2ND DEFENDANT

RULING

1. This Ruling is in respect to the Preliminary Objection dated 26th February, 2018 in which the 1st Defendant has averred that the Complaint and the Notice of Motion are ex-facie incompetent; that the court lacks jurisdiction to hear and determine the suit as the issues raised are *res judicata* and that the suit does not disclose a cause of action.
2. The Plaintiff filed Grounds of Opposition in which he averred that the Notice of Preliminary Objection does not raise pure points of law; that the issue raised in the Preliminary Objection can only be ventilated by way of a formal application and that the Preliminary Objection should be dismissed with costs.
3. The 1st Defendant's advocate submitted that the Plaintiff has not stated any particular act which was done by the 2nd Defendant that would raise a cause of action against the 2nd Defendant in relation to the suit land; that the 1st Defendant is a member of the 2nd Defendant and that pursuant to the provisions of section 76 of the Co-operative Societies Act, it is only the Co-operative Tribunal that has the requisite jurisdiction to entertain the dispute.
4. The Plaintiff's advocate submitted that the issues raised by the Defendants are not pure points of law and that under the provisions of Section 13 of the ELC Act, no restrictions are spelt out curtailing its powers in administering justice; that this court has jurisdiction to hear and determine any suit touching on land and that the Notice of Preliminary Objection should be dismissed.
5. In the Complaint, the Plaintiff averred that she is the estranged wife of the 1st Defendant; that the 1st Defendant was the registered owner of Plot No.6-184 which he is holding in trust for and on behalf of the Plaintiff and the Children of the Marriage and that she contributed towards acquiring Plot No. 6-184. The Plaintiff is seeking for a declaration that the 1st Defendant holds the suit land in trust for and on her behalf and for an order that the 2nd Defendant do register the suit land in their joint names.
6. The Defendant's case is that this Court does not have jurisdiction pursuant to the provisions of Section 76 of the Co-operative Societies Act which provides as follows:

“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.

(2) A dispute for the purpose of this section shall include—

(a) a claim by a co-operative society for any 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; or

(b) a claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether such debt or demand is admitted or not;

(c) a claim by a Sacco society against a refusal to grant or a revocation of licence or any other due, from the Authority.”

7. There is no evidence before me showing that the dispute herein concerns “*the business of a Co-operative Society*”. Indeed, the Plaintiff has not alleged anywhere that he was a member, a past member or a person claiming through a member of the society for the claim to fall under the purview of Section 76 of this Act.

8. And even if the Plaintiff is a member or former member or a person claiming through a member of society, the issue of such a status can only be settled upon filing of a formal application or after trial. As was held in the case of *Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd (1969) E.A 698*, a Preliminary Objection must be confined to pure points of law which may be argued before the court based on the assumption that all the facts are correct. Such a point must not be blurred with factual details liable to be contested or to be proved through the process of evidence.

9. The Plaintiff’s claim is that the 1st Defendant is holding the suit land in trust for her and their children. The issue of whether indeed the 1st Defendant is holding the suit land in trust can only be determined upon the Plaintiff and the Defendants adducing evidence on how the land was registered in favour of the 1st Defendant. The issue of trusteeship in land matters cannot be summarily dealt with before trial.

10. Considering that the Plaintiff is of the view that the 1st Defendant is holding the suit land in trust for her and the children of the marriage and the 1st Defendant having not declined that he was once married to the Plaintiff, the suit before the court cannot be said to be frivolous or an abuse of the Court process. The Plaintiff has raised triable issues which must be investigated by the Court for determination.

11. For those reasons, I dismiss the Notice of Preliminary Objection dated 9th April, 2018 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16TH DAY OF NOVEMBER, 2018.

O.A. ANGOTE

JUDGE