



**REPUBLIC OF KENYA**  
**ENVIRONMENT AND LAND COURT**  
**AT MACHAKOS**

**ELC. CASE NO. 135 OF 2011**

**FREDRICK NZIOKI KAMUNZU.....1<sup>ST</sup> PLAINTIFF**

**LYDIA WANJIRU WARUGURU.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MARK MBUVI MAUNDU.....1<sup>ST</sup> DEFENDANT**

**FRANCISCA SYOMBUA MAUNDU.....2<sup>ND</sup> DEFENDANT**

**ISAAC MUTHAMA KIMILU.....3<sup>RD</sup> DEFENDANT**

**RULING**

1. This Ruling is in respect to the Defendants' Notice of Preliminary Objection dated 15<sup>th</sup> March, 2016.
2. In the said Notice of Preliminary Objection, the Defendants have averred that this court lacks jurisdiction to hear this matter in view of the provisions of part XIV of the Co-operative Societies Act and that the suit should be dismissed.
3. The Notice of Preliminary Objection proceeded by way of written submissions.
4. The Defendants' advocate submitted that Section 77 of the Co-operative Societies Act, (the Act) establishes a Tribunal known as the Co-operative Tribunal in which all disputes concerning the business of a Co-operative Society should be referred.
5. The Defendants' counsel submitted that the suit land is a sub-division of land owned by Aimi Ma Kilungu Limited Farm, a company registered under the Co-operative Societies Act and that the said land was allocated to the late Josiah Maundu Munua who was a member of the said company.
6. The Defendants' advocate submitted that the Defendants are disputing the allegations by the Plaintiffs that they purchased the suit land from the late Josiah Maundu; that the dispute herein falls within the ambit and jurisdiction of the Tribunal and that this court does not have the requisite jurisdiction to deal with the dispute.
7. The Plaintiffs did not file their submissions.

8. In the Complaint dated 10<sup>th</sup> June, 2011, the Plaintiffs averred that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants are the administrators of the Estate of the late Josiah Maundu; that prior to his death, the deceased was a member of the Aimi Ma Kilungu Limited Farm, a company registered under the Co-operatives Society Act and that the deceased was allocated plot number 933 by the said company.

9. The Plaintiffs have averred that the deceased sold to them the land that was allocated to him vide an agreement of 1<sup>st</sup> August, 2007 for KShs. 1,000,000; that they paid the entire purchase price and that instead of transferring the suit property to them, the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, being the Administrators of the Estate of the late Josiah, purported to sell the same land to the 3<sup>rd</sup> Defendant for KShs. 2,100,000.

10. The Plaintiffs are seeking for a declaration that the sale of the land by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants to the 3<sup>rd</sup> Defendant was fraudulent and illegal.

11. The Defendants have objected to the jurisdiction of this court on the ground that Sections 76 and 77 of the Co-operative Societies Act bestows on the Tribunal the jurisdiction to handle all disputes concerning the business of a Co-operative Society.

12. Section 76(1) of the Co-operative Societies Act provides as follows:

***“76(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.”***

13. It is obvious from the above provision that a dispute can only be referred to the Tribunal established under section 77 of the Co-operative Societies Act involving members or past and the Co-operative Society or between Co-operative Societies.

14. There is no evidence before me to show that the Plaintiffs herein are members or are past members of Aimi Ma Kilungu Limited Farm.

15. All the Plaintiffs are saying is that they purchased the suit property from the past member of Aimi Ma Kilungu Limited and that they are entitled to the said.

16. Considering that there is no evidence to show that the dispute herein relates to members or past members of the society per se, I find that the Tribunal established under the Co-operative Societies Act does not have jurisdiction to handle the dispute.

17. For those reasons, I dismiss the Defendants' Notice of Preliminary objection dated 15<sup>th</sup> March, 2016 with costs.

**DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19<sup>TH</sup> DAY OF MAY, 2017.**

**O. A. ANGOTE,**

**JUDGE.**