



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO.353 OF 2012

REDEMPTEE SYOMBUA MUSYOKI1ST PLAINTIFF

ROBERT WAMBUA MUSYOKI (*suing as the legal representative*

of the Estate of JOSEPH MUSYOKI KING'OO-Deceased).2ND PLAINTIFF

VERSUS

NGII NDAMBUKI1ST DEFENDANT

ROSEMARY NGII NICODEMUS KITAVI2ND DEFENDANT

RULING

- 1.This Ruling is in respect to the Defendants' Notice of Preliminary Objection dated 27th November, 2012.
2. In the said Notice of Preliminary Objection, the Defendants have averred that the court is divested of jurisdiction in view of the provisions of Section 76 of the Co-operative Societies Act and the directions of the Chief Justice of 20th September, 2012.
3. The Notice of Preliminary Objection proceeded by way of written submissions.
4. In his submissions, the Defendants' advocates submitted that the proper forum for adjudicating this matter should be the Co-operative Tribunal and not this court; that the suit land is registered under the share number 692 of Muka Mukuu Farmers Co-operative Society and that some of the parties in this suit are members of the Co-operative Society under which the suit land is registered.
5. The Plaintiffs' advocate submitted that the averments in the Plaint are not clear on whether the Plaintiffs, the Defendants or the late Joseph Musyoki King'oo are members of Muka Mukuu Farmers Co-operative Society Limited, and whether the dispute in issue concerns the business of a Co-operative Society.
6. Counsel submitted that not every dispute involving a Co-operative Society or its members is to be referred to the Co-operative Tribunal; that the claim herein involves land and that this court has unlimited jurisdiction on matters involving land.
7. The Plaintiffs herein have filed this suit as the legal representatives of the Estate of the late Joseph Musyoki King'oo.

8. In the Plaintiff, the Plaintiffs averred that the 1st Defendant was the registered proprietor of plot number 9-045; that the Plaintiffs were the beneficial users of the said land and that the late King'oo purchased the land from the 1st Defendant.

9. The Plaintiffs' complaint is that the 1st Defendant, instead of transferring the land to their late father, transferred it to the 2nd Defendant.

10. The orders that the Plaintiffs are seeking are: a declaration that the late Joseph Musyoki King'oo is a *bona fide* purchaser for value of plot number 9-045; a declaration that the transfer of the suit land to the 2nd Defendant is null and void and for a permanent injunction as against the Defendants.

11. It is obvious from the Plaintiff that the status of the Plaintiffs and the Defendants in Muka Mukuu Farmers Co-operative Society Limited has not been mentioned.

12. From the perusal of the Plaintiff, it would appear that it is the 1st Defendant who was the registered proprietor of the suit land, and was therefore entitled to transact with the suit land.

13. According to the provisions of Section 76(1) of the Co-operative Societies Act, a matter shall be referred to the Co-operative Tribunal if any dispute concerning the business of a Co-operative Society arises: among members, past members and persons claiming through members and deceased members; or between members, past members or deceased members and the Society, its Committee or any officer of the Society; or between the Society and other Co-operative Society.

14. The pleadings before me do not show that the Plaintiffs' late father was a member of Muka Mukuu Co-operative Society or that he purchased the suit land in that capacity.

15. Indeed, the pleadings before me do not show that the purported transaction between the Plaintiffs' father and the 1st Defendant or between the 1st Defendant and the 2nd Defendant in respect to the suit land can be categorized as "*the business of a Co-operative Society.*"

16. Considering that Muka Mukuu Farmers Co-operative Society is not a party to this suit, I decline to find that the dispute herein falls within the definition of "*a dispute concerning the business of a Co-operative Society*" envisioned by Section 76(1) of the Co-operative Societies Act.

17. For those reasons, I dismiss with costs the Defendants' Notice of Preliminary Objection dated 27th November, 2012.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE