



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT CHUKA**

**CHUKA ELC CASE NO 223 OF 2017**

**PROF. MICHENI MUCHAI**

**ISAAC MUGUNA**

**MURITHI MUCHUNGU**

**RHODA NJAGI**

**FRANCIS KABURU**

**GIBSON NJERU NTWIGA**

**ALL SUING AS OFFICIALS OF NTUNENI SELF HELP GROUP.....PLAINTIFFS**

**VERSUS**

**NTUNENI IRRIGATION FARMERS CO-OPERATIVE SOCIETY LIMITED....DEFENDANT**

**RULING**

1. This ruling relates to an application dated 23<sup>rd</sup> March, 2017 filed by the plaintiff and to a Notice of Preliminary Objection dated 18<sup>th</sup> May, 2017 filed by the defendant.

2. The plaintiff's application dated 23<sup>rd</sup> March, 2017 seeks orders:

1. THAT this Honourable court be pleased to certify this application urgent and proceed to hear the same ex-parte at the first instance.

2. THAT this Honourable court be pleased to issue a temporary order of injunction restraining the defendant / applicant, its agents, servants and / or employees, or whomsoever else acting on the defendant / respondent's behalf or instructions from taking over, grabbing, attempting to manage, control, run or purport to operate, or in any other manner whatsoever dealing with or interfering with the plaintiff / applicant's management, running, controlling and / or operating of that water project known and / or described as NTUNENI SELF HELP GROUP WATER PROJECT, pending the interparties hearing of this application and thereafter as the court shall order.

3. THAT this Honourable court be pleased to issue an order of injunction restraining the defendant / respondent, its agents, servants and / or employees or whomsoever else acting on the defendant / respondent's behalf or instructions from taking over, grabbing, attempting to manage, control, run, or purport to operate, or in any other manner whatsoever or however dealing with or interfering

with the plaintiff / applicant's management, running, controlling and / or operating of that water project known and / or described as NTUNENI SELF HELP GROUP WATER PROJECT, pending the hearing and determination of this suit.

4. THAT the order being sought for herein once issued, be served upon the respondent and also upon the O.C.S. NTUMU POLICE STATION for purposes of ensuring and supervising enforcement and compliance thereof.

5. THAT the costs of this application be costs in the cause.

3. The defendant's Preliminary Objection dated 18<sup>th</sup> May, 2017 states as follows:

**NOTICE OF PRELIMINARY OBJECTION**

1. That this court lacks jurisdiction to hear and determine this matter.

2. That the dispute in this case is one which should be dealt with by the Co-operative Tribunal pursuant to the provisions of Section 76 of the Co-operative Societies Act.

3. That the provisions includes (sic) all matters between a co-operative society and a member, a past member and a deceased member.

4. The legislature intended that the Co-operative Tribunal be the first level of dispute resolution with appeal lying in the High Court.

5. That if parties are permitted to lodge claims covered by Section 76 of the Act to the High Court, this will deny them their day in the High Court at the appellant level.

4. On 10<sup>th</sup> October, 2017, the parties proffered a consent which is in the following terms.

**CONSENT**

"By consent of the parties and their respective advocates

**1.The** Notice of Preliminary Objection dated 18.5.2017 be and is hereby marked as withdrawn with no order as to costs.

**2.The** Notice of Motion application dated 23.3.2017 be disposed of in the terms that status quo in terms of the interim orders granted on 27.3.2017 be maintained pending the hearing and determination of the suit AND parties to maintain peace.

**3.The** parties to fully comply with order 11 C.P.R. within 14 days.

**4.The** matter be mentioned to confirm compliance and taking of a hearing date."

5. The consent is properly signed by the advocates representing the parties.

6. This consent is adopted as an order of this court.

7. The plaintiff is ordered to fully comply with order 11, CPR, within 7 days of today.

8. The defendant is to fully comply with order 11, CPR after receipt of the plaintiff's compliance documents.

9. Directions are to be issued on 31.10.2017

Delivered in open court at Chuka this **10<sup>th</sup> day of October, 2017** in the presence of:

CA: Ndegwa

Manasses Kariuki present for plaintiff

Nyakwara present for the defendant

**P. M. NJOROGI**

**JUDGE**