



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC NO. 97 OF 2003**

**LUIS MUTHINI KITONYI (suing as personal representatives of**

**JOHN KITONYI MUTHINI (Deceased).....PLAINTIFF**

**VERSUS**

**KONZA RANCHING & COOPERATIVE SOCIETY LTD.....DEFENDANT**

**RULING**

What is before Court is a Preliminary Objection dated 12th May, 2017 by the Defendant against the Plaintiff on the following grounds:

1. That the suit herein is fatally and incurably Defective in law and as such cannot stand or be ventilated before this Honourable Court.
2. That the suit contravenes the mandatory provisions of the Cooperative Societies Act Cap 490, in particular Section 76, which clearly stipulates that disputes of this nature are to be referred to a Tribunal.
3. That by dint of Section 76 of the Cooperative Societies Act this Honourable Court lacks the jurisdiction to adjudicate this matter.
4. That the suit is fatally incurably defective and cannot stand in law.
5. That the continued pendency of the suit is an abuse of the process of this Honourable Court.
6. That the Application dated 6th August, 2016 is an abuse of the process of this court.

Both the Plaintiff and the Defendant filed their respective submissions which I have considered.

Upon perusal of the Preliminary Objection, the written submissions and the pleadings filed herein, I find that the main issue in the Preliminary Objection is whether the Court has jurisdiction to handle the dispute at hand.

I note that the Defendant is a Cooperative Society governed by Cooperative Societies Act. The claim as pleaded within the Plaint revolves around ownership of land that had initially been allocated to a member of the Defendant Sacco who is since deceased. The claim does not revolve around a member of the Sacco but for specific performance in relation to land purchased by a third party from a Sacco Member.

Section 13 of the Environment and Land Court Act provides as follows:

(1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—

(a) relating to environmental planning and protection, climate issues,

land use planning, title, tenure, boundaries, rates, rents, valuations,

mining, minerals and other natural resources;

(b) relating to compulsory acquisition of land;

(c) relating to land administration and management;

(d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and

(e) any other dispute relating to environment and land.

These provisions are couched in mandatory terms and give exclusive jurisdiction to the Environment and Land Court to handle all disputes relating to land and environment.

Section 76 of the Cooperatives Societies Act provides as follows:

1. 'If any dispute concerning the business of a cooperative 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 cooperative society,

it shall be referred to the Tribunal.

(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.

I note from the above provisions it is clear on which disputes are to be referred to the Tribunal. In the claim at hand I note the deceased was not a member of the Defendant but had purchased land from a member of the Sacco who has since died, but the Sacco failed to register the deceased as the proprietor of the land and instead registered its late member. The deceased legal representative is claiming for specific performance that the land the deceased had purchased should form part of his estate. A question of claim for title to land is the jurisdiction of the Environment and Land Court as stipulated by Section 3 of the Environment and Land Court Act.

I am persuaded by the case of Republic Vs Gathaite Farmers Cooperative Society Ltd & Anor Exparte Richard Nganga Kamiro [2013] e KLR where the court held that: '*From the evidence placed before this court, it clearly emerges that the applicant has never been a member of the Society. He did not therefore file any claim through a member of the Society. He did not therefore fall under the jurisdiction of the Tribunal. He was out of the reach of the Tribunal and any claim the Society or any member of the Society had against him ought to have been litigated before a court with pecuniary jurisdiction to hear it.*'

The jurisdiction of the Environment and Land Court to handle Land matters is clearly stipulated within the Constitution and the Environment and Land Court Act. Even if a dispute relating to land is instituted through a Petition, the exclusive jurisdiction of the said Court to hear land disputes cannot be wished away.

The Court finds that the Defendant seeks to rely on technicalities and this offends the provisions of section 19(1) of the Environment and Land Court Act which stipulates that 'in any proceedings to which this Act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure and shall not be strictly bound by rules of evidence. Further article 159 (2) (d) of the Constitution states that ' in exercising judicial authority, the courts and tribunals shall be guided by the following principles ..... (d) justice shall be administered without undue regard to procedural technicalities.'

In the circumstances I find that the Plaintiff filed herein raises triable issues that ought to be heard and determined at a full trial.

I dismiss the Preliminary Objection and decline to strike out the Plaintiff. Costs will be in the cause.

Parties are urged to comply with order 11 and set the suit down for hearing to enable the court determine the issues once and for all.

**Dated signed and delivered in open court at Kajiado this 5th day of October, 2017.**

**CHRISTINE OCHIENG**

**JUDGE**

**REPRESENTATION**

M/s Kadimbu holding brief for F.M. Mulwa for plaintiff

No appearance for Makau for defendant

Court assistant Mpoye