



**REPUBLIC OF KENYA**

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

**E & L CASE NO. 173 OF 2017**

MURUGI KARUNDA.....1<sup>ST</sup> PLAINTIFF  
STEPHEN WAWERU MWANGI.....2<sup>ND</sup> PLAINTIFF  
ROBERT GITUMU NDIRANGU.....3<sup>RD</sup> PLAINTIFF  
JAMES KARANJA.....4<sup>TH</sup> PLAINTIFF  
STANLEY MACHARIA WAWERU.....5<sup>TH</sup> PLAINTIFF  
DAVID GITHUA KARU.....6<sup>TH</sup> PLAINTIFF  
PAUL MBURU MBUGUA.....7<sup>TH</sup> PLAINTIFF  
WAMBUI WAIGANJO.....8<sup>TH</sup> PLAINTIFF  
FRANCIS BIU KIMANI.....9<sup>TH</sup> PLAINTIFF  
GEORGE THUMBI KINYUA.....10<sup>TH</sup> PLAINTIFF  
SARAH WACHEKE KIMANI.....11<sup>TH</sup> PLAINTIFF  
SIMON KIMONDO.....12<sup>TH</sup> PLAINTIFF

**VERSUS**

PETER GITAU.....1<sup>ST</sup> DEFENDANT  
HARON NJOYA.....2<sup>ND</sup> DEFENDANT  
DANIEL NGIGI GUCHU.....3<sup>RD</sup> DEFENDANT  
UASIN GISHU COUNTY LAND REGISTRAR.....4<sup>TH</sup> DEFENDANT  
UASIN GISHU COUNTY PHYSICAL PLANNING OFFICER...5<sup>TH</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT

## RULING

Before this court, is a preliminary objection that this court has no jurisdiction to handle and determine this suit as the suit can only be heard by the Co-operative Tribunal pursuant to section 76 of the Co-operative Act, Cap. 490, Laws of Kenya.

Mr. Mathai learned counsel for the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> defendants submits that this court lacks jurisdiction to entertain the dispute at the first instance and that part XV that deals with the settlement of disputes within the Co-operative Societies was enacted prior to the Environment and Land Court Act No. 19 of 2011. According to Mr. Maathai, a dispute should first be referred to the Tribunal and that if a party is dissatisfied, then the same can be referred to the High Court. Mr. Maathai refers to the case of **Wakenya Pamoja S.A.C.C.O. Ltd Vs Stephen Ogamba (2008) eKLR** wherein the issue revolved on the election whereby the defendant was removed as chairman of the plaintiff Co-operative Sacco then known as Gusii Farmers Rural Sacco Society Ltd. The defendant continued to hold himself out as the Chairman and at one time broke into the offices of the plaintiff and announced to the officers that he was the rightful chairman of both the plaintiff and Nyaigwa Farmers' Co-operative Society. The plaintiff sought an order to restrain the defendant from gaining access to any of the plaintiff's premises in his assumed capacity as chairman of the plaintiff. A preliminary objection was subsequently raised that the court lacked jurisdiction to entertain the dispute as the applicants had not exhausted the set down mechanism under section 76 of the Co-operative Societies Act.

Justice Musinga, Judge of High Court as he then was upheld the preliminary objection, correctly so to find, as section 76(1) of the Act is clear that any dispute concerning the business of a co-operative Society that may arise, inter-alia between the Society and any of its members or present members or a past member should be referred to the Co-operative Tribunal. The Honourable Judge went further to find that section 76(2) should be interpreted in its inclusive nature but not exclusive nature.

Mr. Maathai further refers to **Muthui Wa Kariuki Vs Tembo Co-operative Savings and Credit Society**, wherein matters raised referred to the allocation of land and processing of title deeds to the suit property which matters **Hon. Justice J B Havelock** considered as the business of the co-operative society and therefore, upheld the objection that the court had no jurisdiction to entertain the dispute at first instance and that the matter was improperly before it and should have been filed in the cooperative tribunal.

Mr. Magut learned counsel for the plaintiffs opposed the preliminary objection as section 76 of the Co-operative Societies Act refers to any business of the society. According to Mr. Magut, section 76(2) refers to debts and therefore, the court should consider the *ejusden genesis* rule. The issue before court is the demolishing of buildings of buildings. Mr. Kuria learned counsel for the 4<sup>th</sup> to 6<sup>th</sup> defendants associates himself with Mr. Maathai as the suit involves members of the society and therefore, the dispute should be resolved by the Tribunal.

I have considered the rival submissions on the preliminary objection and do find that section 76(2) of the Co-operative Societies Act Cap 490 laws of Kenya should be interpreted applying the principle of inclusivity and extensity thus when a word is defined to include such and such, the definition is ***prima facie*** extensive. Section 76(1) (2) provide for **Disputes thus;**

***(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.***

***(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 agree with the interpretation by Justice Musinga in *the Wakenya Pamoja Case* that section 76(2) should be referred to by undertaking its inclusive nature as it is not exclusive. The section enlarges the meaning of a dispute to include and not to exclude. In the case of *Nutter V. Accrington Local Board, (1879) 4QB 375 pp.384, 385(CA)*, referring to the definition of “*street*” in an English statute where a street had been defined to include a turnpike road, Cotton, L.J., said “It does not say that the word street shall be confined to any highway not being a turnpike road, but shall apply to and include any highway not being a turnpike road.” This was enlarging and not restricting the meaning of a street. Mr. Magut argues the *ejusdem genesis* rule of interpretation should be applied which rule provides that when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to the things of the same kind as those specified. This court finds that the *ejusdem generis* rule is not applicable in this matter as the *inclusivity rule* is applicable.

The dispute in this matter revolves on the allocation and processing of title to properties known as *LAINGUSE/ KIPTENGA BLOCK2(KAMUYU/NoS. 85, 275 and 337* which was the business of the Kamuyu Co-operative Society and therefore, the allocation of the property and processing of title by the Co-operative Society began with the fact that Kamuyu Farmers’ Co-operative Society was the owner of the property whether beneficially or by registration. Any dispute relating to the whole process of allocation of the land relates to the business of the society and should be referred to the Tribunal. This dispute falls squarely with the ambit of section 76(1) and (2) of the Co-operative Societies Act and therefore should be referred to the Co-operative Tribunal. The upshot of the above is that the preliminary objection is upheld and therefore the suit is struck out with costs to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants. However, parties will maintain status quo for 30 days to pre-empt any destruction of property pending the filing of the reference before Tribunal. This decision applies to Eldoret Environment and Land Court cases numbers 277 and 278 of 2016. Orders accordingly.

**Dated and delivered at Eldoret this 14<sup>th</sup> day of December, 2017.**

**A. OMBWAYO**

**JUDGE**