



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 84 OF 2010

ISAAC WEPUKHULU KHAMALA:.....PLAINTIFF

VERSUS

ELIZABETH SIMIYU WALUNYWA:.....DEFENDANT

R U L I N G

1. The defendant filed a notice of preliminary objection on 24.5.2011 on the ground that this court lacks jurisdiction to entertain the dispute herein as the proper entity vested with jurisdiction is the Co-operative Tribunal.
2. The counsel for the plaintiff and defendant agreed to have the Preliminary Objection disposed by way of written submissions. This was on 28.10.2015. The matter was fixed for mention on 19.1.2016 to confirm filing of submissions. When the matter came up for mention on 19.1.2016, it turned out-that it is only the defendant who had filed her submissions. An attempt by the plaintiff to seek more time to file submissions was rejected on the ground that they had already had submissions was rejected on the ground that they had already had enough time to do so.
3. The Plaintiff had filed a case against the defendant seeking orders of eviction against her from Land known as parcel No.476 at Weonia within Trans-Nzoia County (suit land). It is the Plaintiff's contention that the defendant was staying on the suit land with one Jonathan Walunywa Simiyu (deceased). The Plaintiff had filed a case against the deceased and had obtained judgement in Kitale Magistrate's Court Land case No. 139 of 1996. Before the plaintiff could execute the decree in that case, the deceased passed on leaving the defendant on the suit land as a licensee.
4. The defendant filed a defence in which she contends that the suit land was originally owned by Weonia Farmers Co-operative Society Limited (Society) and that both her and the plaintiff are members of the society and that she is therefore not a trespasser on the suit land.
5. The defendant therefore argues that by dint of the Provisions of section 76(1) of the Co-operative Society Act cap 490 Laws of Kenya, the proper forum where the dispute should be resolved is the Co-operative Tribunal established under section 77 of the said Act.
6. Section 76 (1) of the Co-operative Societies Act cap490 provides as follows:-
 - (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.

7. The operative words under this section as far as the dispute herein is concerned are “ if any dispute concerning the business of a Co-operative Society arises”. The issue which arises for determination in this case is whether the dispute herein concerns the society as to call for its resolution by the Co-operative Tribunal. A look at the pleadings show that the dispute herein does not concern the society. The defendant is not a member of the society. The dispute herein was between the plaintiff and the deceased. There was a case filed at the Tribunal which ended in favour of the plaintiff. The deceased who was living on the suit land was supposed to be evicted from the suit land. Unfortunately he died before execution could be completed. From the documents filed in this case, it had been found that the deceased was not a member of the society. A decree was therefore issued directing-his eviction.

It is therefore clear that the dispute does not fall within the jurisdiction of the co-operative Tribunal. The defendant is not claiming the suit land in her right as a personal representative of the deceased.

8. Subsection (2) of section 76 sets out the nature of a dispute which falls within the jurisdiction of the co-operative Tribunal. The current dispute between the plaintiff and the defendant does not fall under any of the disputes contemplated under subsection (2) of section 76. The three cases cited by the defendant in her submissions are all not relevant. The disputes in all the three cases concerned the respective societies either with the other societies or with their members. This is unlike in the present case where the dispute does not concern the society. I therefore find that the Preliminary Objection has no merits. The same is hereby dismissed with costs to the plaintiff.

It is so ordered.

Dated, signed and delivered at Kitale on this 17th day of February,2016.

E. OBAGA

JUDGE