



**REPUBLIC OF KENYA**

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

**AT NYERI**

**ELC NO. 192 OF 2014**

**DANIEL GITHIORA GATHUA ..... 1ST PLAINTIFF**

**KAGAA FARMERS COOPERATIVE SOCIETY LIMITED .....2ND PLAINTIFF**

**-VERSUS**

**JOE KARANJA NJOROGE.....1ST DEFENDANT**

**THE MURANG’A DISTRICT LAND REGISTRAR .....2ND DEFENDANT**

**THE MURANG’A DISTRICT LAND SURVEYOR .....3RD DEFENDANT**

**THE NATIONAL LAND COMMISSION OF KENYA .....4TH DEFENDANT**

**RULING**

1. On **14th May, 2015** the 1st Defendant herein, Joe Karanja Njoroge, filed the notice of preliminary objection dated **12th May, 2015** seeking to strike the suit herein on the ground that it offends the provisions of **Section 63** and **66 (1)(b)** of the Cooperative Societies Act, Cap 490 Laws of Kenya.
2. The preliminary objection was disposed of by way of written submissions.
3. In the submissions filed on behalf of the 1st defendant, it is pointed out that the suit herein was filed when the 2nd plaintiff had been dissolved (put under liquidation). Based on the provisions of **Section 66(1)(b)** of the Cooperative Societies Act, the 1st defendant contends that only the liquidator could file a suit on behalf of the 2nd plaintiff because the 2nd defendant was none existent.
4. For the foregoing reason, it is submitted that the 2nd plaintiff lacked capacity to institute the current suit.
5. Reference is made to the case of **Keekonyokie Farmers Cooperative Society Ltd v. Hon. Engineering Peter Mositet & 18 others; Nairobi ELC Suit No.936 of 2014** where it was stated:-  

**“...the effect of the liquidation order issued on 6th August 2013 is in this respect to be found in Section 61, 62, 63 and 65 of the Act which provide as follows.....the two legal effects in the**

said provisions that are relevant to the capacity of the plaintiff to bring the suit and application herein are that firstly, the plaintiff has ceased to exist as a corporate body, and therefore lacks privileges and attributes that attached to it as a corporate body under Section 12 of the Cooperative Societies Act to hold movable and immovable property, enter into contracts and/or to sue and be sued in its name. Secondly, all the property of the plaintiff by virtue of Section 65 of the Act now vests in the liquidator appointed pursuant to the liquidation order in Gazette Notice No.11916 published on 6th August 2013, and the plaintiff has no interests in or capacity to deal with the same.”

6. On behalf of the plaintiffs, it is admitted that the 2nd plaintiff was, in accordance with **Section 62** of the Cooperative Societies Act, put under liquidation. Nevertheless, it is contended that the applicant, the 1st defendant, failed to disclose to court that the order of liquidation was stayed vide an order issued on 11th March, 2015 by **Odunga J.** In Nairobi Judicial Review case No. 68 of 2015.

7. Despite the fact that the instant suit was filed before the order for stay was issued, it is submitted that owing to the said order of stay, the notice of preliminary objection herein is unsustainable.

8. Arguing that the 1st plaintiff as a registered proprietor of one of the sub-divisions of the suit property is entitled to pursue the claim, the plaintiffs’ have contended that, even if the case by the 2nd plaintiff is found to be bad in law, the 1st plaintiff as one of the owners of the parcels of land originally owned by the 2nd plaintiff has a right to pursue the claim.

9. Terming the 1st defendant’s objection improper, brought in bad faith and only intended to confuse issues, the defendants argue that in view of the changed circumstances (staying of the liquidation order) the objection cannot be sustained.

10. Based on the decisions in **Yaya Towers Ltd v. Trade Bank Ltd (in liquidation) (2000) e KLR** and **D.T Dobie & Co. (Kenya) Ltd v. Joseph Mbaria Muchina & Another (1980) e KLR** counsel for the plaintiffs has maintained that the objection herein is unsustainable.

### **Analysis and determination**

11. It is not in dispute that by the time the current suit was filed (16th September, 2014) the 2nd plaintiff had been put on liquidation. The evidence available shows that the 2nd plaintiff was put on liquidation on or before 5th September, 2014.

12. By dint of the provisions of **Sections 61, 62, 63 and 65** of the Cooperative Societies Act, the 2nd plaintiff ceased to be a body corporate immediately its registration was cancelled.

13. There being no dispute that the 2nd respondent was by operation of law none existent as at the time the suit was filed, the question to ask is whether the stay of cancellation can validate the actions of the 2nd defendant done at a time it had no legal capacity to do the actions.

14. My view of that matter is that the stay order could not and did not validate what was done by the 2nd respondent when it had no capacity to do those actions.

15. On whether the 1st plaintiff can be allowed to proceed with the suit in his personal name, having read the pleadings filed in this suit, I note that the suit property is described as having been the property of the 2nd plaintiff. In my view, the mere fact that the 1st plaintiff is a beneficiary of the suit property does not give him locus standi to proceed with the suit, which in the manner crafted, shows that the interest being protected is that of the 2nd plaintiff and its members, the 1st plaintiff included.

16. I hasten to point out that, whereas the 1st plaintiff claims to be a registered owner of one of the sub-divisions of the suit property, he has not provided any evidence capable of proving that fact.

17. For the foregoing reasons, I uphold the objection by the 1st defendant and as a result strike out the

suit. The defendants shall have the costs of the suit.

**Dated, signed and delivered at Nyeri this 19th day of July, 2016.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Mr. Ng'ang'a h/b for Mr. Kang'ethe Warutere for the respondent

N/A for the applicant

Court assistant - Lydia