



Aiyabei & 3 others v Afya Savings & Credit Cooperative Society Ltd & 6 others (Environment & Land Miscellaneous Case E002 of 2024) [2024] KEELC 4646 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4646 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND MISCELLANEOUS CASE E002 OF 2024**

**EO OBAGA, J
JUNE 13, 2024**

BETWEEN

**DR. ISMAEL AIYABEI 1ST APPLICANT
EDWIN KIRWA 2ND APPLICANT
BENNUEL MOMANYI 3RD APPLICANT
CYNTHIA MARITIM 4TH APPLICANT**

AND

**AFYA SAVINGS & CREDIT COOPERATIVE SOCIETY LTD . 1ST RESPONDENT
FOREMAN RIREI 2ND RESPONDENT
PAUL SANG 3RD RESPONDENT
DANIEL KEITANY 4TH RESPONDENT
PHILIP SANG 5TH RESPONDENT
EUNICE SUGUT 6TH RESPONDENT
PAUL LANGAT 7TH RESPONDENT**

RULING

1. This is a ruling in respect of a Notice of motion dated February 7, 2024 in which the Applicants seek orders that this court transfers Eldoret Chief Magistrates Miscellaneous Civil Application No. 72 of 2019 to this court for hearing and disposal and that the costs be provided for. The Applicants contend that they were decree holders in co-operative Tribunal Case No. 173 of 2017. Being desirous of executing the decree, they erroneously filed a Miscellaneous application for adoption and execution



- of the decree before the Chief Magistrate which has no pecuniary jurisdiction to entertain the matter as the subject matter is over twenty million shillings.
2. The Applicant contends that as at the time the suit property was being purchased, its value was Kshs 10,000,000/= but that now the estimated value is Kshs 30,000,000/= They therefore contend that the suit property is beyond the monetary jurisdiction of the Chief Magistrate and that it is only this court which has the pecuniary jurisdiction to try the same.
 3. The 1st Respondent opposed the application through a replying affidavit sworn on February 28, 2024. The 1st Respondent states that this court lacks jurisdiction to entertain this application. The Respondent argues that it is the Co-Operative Tribunal which has jurisdiction to deal with the execution of decrees arising from its judgements.
 4. The Respondent states that before 2004, the Tribunal had no jurisdiction to execute. Its mandate was to appoint an arbitrator who would arbitrate any dispute under its jurisdiction. The arbitral award would then be taken to the High Court for adoption as a judgement and enforcement.
 5. Subsequently Act No. 2 of 2004 gave the Tribunal executory powers. This therefore means that it is only the Tribunal which can execute its own decrees.
 6. Besides the replying affidavit, the Respondent had also raised a preliminary objection on the ground of jurisdiction. The parties were directed to file written submissions in respect of both the preliminary objection and the application. The Applicants filed their submissions dated April 15, 2024. The Respondents filed submissions dated April 5, 2024.
 7. The Applicants submitted that tribunals are not courts and in support of this they relied on the definition of “tribunal” as per Black’s Law Dictionary which defines tribunal as follows: -

“A tribunal is an institution with authority to adjudicate and determine claims or disputes. They are termed tribunals to emphasize that they are not courts of normal jurisdiction.”
 8. In support of their proposition that a tribunal is not a court, they relied on the case of *National Dry Cleaners Limited v Ezekiel Karanja* (1987) KLR 565 where it was held as follows:-

“A tribunal is not a subordinate court. It is specially established under an Act to exercise jurisdiction conferred to it.... The tribunal has no machinery to execute its judgement or orders.”
 9. The Respondent submitted that there can be no transfer of a matter which is filed in a court without jurisdiction for that which is filed before a court with no jurisdiction is a nullity ab initio incapable of being transferred. The Respondent relied on the cases of *Charles Omwata Omwoyo v African Highlands & produce Company Limited* (2002) eKLR, *Abraham Mwangi Wamigwi v Simon Mbiriri Wanjiku & another* (2012) eKLR, *Boniface Waweru Mbiyu v Mary Njeri & another* (2005) eKLR and *Wamathu Gichoya v Mary Wainoi Magu* (2015) eKLR. In all these cases, the courts held that a matter that has to be transferred must have been filed in a court with jurisdiction to hear it. If it was filed in a court without jurisdiction, then the court being asked to transfer that matter has no jurisdiction to transfer a suit which is a nullity or incompetent.
 10. The Respondent further submitted that this court has no jurisdiction to deal with a matter arising from a decision of a Co-Operative Tribunal. It can only deal with appeals from the Tribunal whereby this



court's decision will be final. The Respondent submitted that the Co-Operative Tribunal has executory power under section 79 (3) of the Co-Operative Societies Act. Section 79 (3) of the Act states as follows: -

“(3) Where the Tribunal enters judgment in terms of the award together with costs, it shall issue a decree which shall be enforceable as a decree of a court.”

11. Further section 79(5) of the Act gives the Tribunal unlimited geographical and pecuniary jurisdiction in matters of co-operative disputes. The section states as follows: -

“The Tribunal shall have unlimited geographical and pecuniary jurisdiction in matters of co-operative disputes.”

12. I have carefully considered the submissions by the parties. From the authorities cited by the Respondents, it is clear that a court cannot transfer a matter which is filed before a court without jurisdiction. Besides this, there is no provision which requires either the Chief Magistrate's court or the Environment and Land Court to adopt and enforce decrees from the Co-operative Tribunal. The Tribunal was given executorial powers vide Act No. 2 of 2004. The decision in *National Dry Cleaners Limited Case* (Supra) which was cited by the Applicant's is no longer good law as it was rendered obsolete when the Co-Operative Tribunal was given executorial powers in 2004 which is a period of 17 years after the said decision. I therefore uphold the preliminary objection by the 1st Respondent and proceed to strike out the Applicants' application with costs to the 1st Respondent.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 13th day of JUNE, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Muriuki for Respondent.

Mr. Kipkoech for M/s Lelei for Applicants.

Court Assistant –Laban

E. O. OBAGA

JUDGE

13TH JUNE, 2024

