



REPUBLIC OF KENYA



KENYA LAW
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Romari & another v Balozi Housing Co-operative Society Limited (Land Case E020 of 2023) [2024] KEELC 6401 (KLR) (26 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E020 OF 2023
LN MBUGUA, J
SEPTEMBER 26, 2024**

BETWEEN

ESTHER ROMARI 1ST PLAINTIFF

PAOLO FAVERO 2ND PLAINTIFF

AND

BALOZI HOUSING CO-OPERATIVE SOCIETY LIMITED DEFENDANT

RULING

1. The Defendant’s Preliminary Objection raised at paragraph 15 and 16 of its defence dated 15.9.2023 is for determination. The grounds raised are;
 - a. That the jurisdiction of this Honourable Court is denied as the matter is a dispute between a co-operative society and its member.
 - b. The Plaintiff’s claim is statute barred.
2. On 23.4.2024, directions were taken by consent for the two Preliminary Objections to be canvassed by way of written submissions. The Defendant filed submissions dated 9.5.2024 where it argues that this court is not the proper forum to determine the issues herein since the dispute relates to a claim by a member of the Defendant (a society) and its members (Plaintiffs). That Section 76 of the *Co-operative Societies Act* establishes the procedure for redress of a dispute arising between a co-operative society and its member, whereby such a dispute must be referred to the Co-operative Tribunal.
3. To this end, the Defendant relies on the case of *Gatanga Coffee Growers v Gitau* [1970] EA 361, *Speaker of the National Assembly v Karume* (Civil Application 92 of 1992) KECA 42 (KLR) (29 May 1992) (Ruling), *Geoffrey Muthinja & Another v Samuel Muguna Henry & 1756 Others* [2015] eKLR as well as *Martin Kabubii Mwangi v County Government of Laikipia* [2019] eKLR.



4. It is argued that since the court has no jurisdiction to determine the matter, it ought to down its tools as it cannot transfer the suit to another forum. To this end, the case of *Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel* [2016] eKLR is cited.
5. It is also submitted that the Plaintiff's claim is statute barred under Section 4 (1) (a) of the *Limitation of Actions Act* as it is pegged on a contract entered into in the year 2006, yet the suit was filed in the year 2023. That even if it was to be considered as a land matter, it would still be time barred under Section 7 of the *Limitation of Actions Act* thus it is a stale suit. The case of *Alba Petroleum v Total Marketing Kenya Limited* [2019] eKLR is relied upon.
6. The Plaintiffs were directed to file submissions by 7.6.2024 but there was no compliance.
7. I have considered the two preliminary objections. In *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696, it was held that;

“ A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication of pleadings or which arises by clear implication of pleadings and which if argued as a preliminary point may dispose of the suit”.
8. The defendant contends that this court has no jurisdiction to hear the suit as the matter ought to be heard by the co-operative tribunal as the Plaintiffs are members of the Defendant.
9. The provisions of Section 76 (1) (b) of the *Cooperative Societies Act* gives the Co-operative Tribunal exclusive jurisdiction as the court of first instance in disputes between Co-operative Societies, or among members and past members.
10. In *Secretary, County Public Service Board & another v Hulbbhai Gedi Abdille* [2017] eKLR the Court of Appeal stated that;

“Time and again it has been said that where there exists other sufficient and adequate avenue or forum to resolve a dispute, a party ought to pursue that avenue or forum and not invoke the court process if the dispute could very well and effectively be dealt with in that other forum. Such party ought to seek redress under the other regime.”
11. In light of the foregoing analysis, I do find that the defendant has rightly re-stated the position on dispute resolution mechanism in its submissions and authorities proffered. In the circumstances, I make a finding that this court does not have original jurisdiction to deal with the Plaintiff's claim. Thus this court will not interrogate the second issue relating to limitation. I will say no more, save that the court will not penalize the petitioner on costs, seeing that the dispute is yet to be resolved. As such this suit is hereby struck out and each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kipsigei holding brief for Willy for plaintiff

Thiga for defendant

Court assistant: Joan

