



**REPUBLIC OF KENYA**

**IN THE INDUSTRIAL COURT OF KENYA AT NYERI**

**Cause No. 8 Of 2013**

**JOHN IRUNGU MWANGI.....CLAIMANT**

**VERSUS**

**IREMBU FARMERS CO-OPERATIVE**

**SOCIETY LTD. .... RESPONDENT**

**RULING**

1. At paragraph 8 of the statement of defence the defendant in this suit notified the plaintiff that it shall at the first instance of the hearing raise as preliminary, an objection that the claim is bad in law and should be struck out as jurisdiction vests in the Co-operative Societies Act in particular the tribunal so established to settle disputes particularly under section 76(1) read together with Co-operative Societies (amendment) Act 2004 section 37(5). Mr. Kimwere who appeared for the defendant urged the court that the objection be resolved prior to delving into the hearing of the suit on merit.
2. As has been said several times by this court and other courts in our Judicial system, an objection as to jurisdiction whenever raised must be determined in limine. Because without jurisdiction the court would be engaging in a futile exercise.
3. It was Mr. Kimwere's contention that the claimant, though an employee of the respondent, or Union, he was also a member thereof hence his dispute with the respondent ought to have been referred to the Co-operative Tribunal. He further submitted that the word "officer" under section 76(1) includes employees hence the correct forum was the co-operative Tribunal.
4. Mr. Mbutia for his part submitted that the objection was misplaced and that the word "officer" under section 76(1), referred to officials of the society such as Chair, Treasurer and Secretary and that these are not employees of a Co-operative Society. It was therefore Mr. Mbutia's submissions that disputes between employer and employee such as the one before the court were within its jurisdiction. The preamble to the Co-operative Society Act provides as follows:

***"An Act of Parliament to make provision concerning the constitution, registration and regulation of Co-operative Societies and for purposes incidental thereto".***

5. Section 76 provides:

(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 purposes 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 members, 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 license or any other due from the Authority.**

6. A plain reading of section 76 and the preamble gives the meaning that, in cases of disputes concerning the business of a Co-operative Society involving parties listed under Section 76, the same shall be referred to the Tribunal set under section 77.
7. Subsection (2) of section 76 makes an attempt to list down some of the possible disputes that can arise out of the business a Co-operative Society. These include dispute over debt or demand for it and dispute over refusal to grant or revocation of license. It is common knowledge that Co-operative Societies are in the business of offering Non-mainstream financial services to their members based on their share contributions which form an essential ingredient of Co-operative Societies Capital. In this process disputes are bound to occur which may require to be resolved by the Tribunal set under section 77.
8. I have not come across a Society whose core business is to offer employment to its members so that if a dispute arises it would be referred to the Tribunal. It is true that Co-operative Societies hire workers or employees to help it carry out its business but it cannot be said that a dispute between the Society as an employer and its employee, is a dispute concerning the business of a Co-operative Society as contemplated under Section 76. In any event employment relationship is a conspicuous and essential element of a Co-operative Societies' operations that it could not have been reasonably possible to exclude it under the rubric of disputes under section 76(2) over which the Tribunal has jurisdiction. Its exclusion therefore can only be interpreted to mean that Parliament did not regard it as a dispute concerning the business of a co-operative Society.
9. This Court is created by section 4(1) of the Industrial Court Act read together with article 162(2) (a) of the Constitution.
10. The preamble to this Act provides as follows:-

***“An Act of Parliament to establish the Industrial Court as a Superior Court of record; to confer jurisdiction on the Court with respect to employment and labour relations and for connected purpose”.***

11. Section 12 of the Act confers on the court exclusive jurisdiction over employment and labour relation matters and proceeds to enumerate those matters over which the court has jurisdiction which include disputes relating to or arising out of employment between an employer and an employee. This means that no other Court or Tribunal under the present legal order, has jurisdiction over employment and labour relation disputes except the Industrial Court. Any Court

or Tribunal which therefore purports to exercise jurisdiction over labour relations and employment disputes will be acting without jurisdiction and contrary to the Constitution. To this extent, despite the fact that the claimant was a member of the respondent society his dispute with the respondent once admitted to arise out of employer and employee relationship, can only be resolved by the Industrial Court.

12. The consequence of the foregoing is that the preliminary objection fails and is hereby dismissed with costs. The matter shall proceed to hearing on merits on a date to be mutually fixed by the parties at the Registry.

13. It is so ordered.

*Dated at Nyeri this 28th day of March, 2014.*

**ABUODHA J. N**

**JUDGE**

*Delivered in open Court in the presence of Mr. Abubakar holding brief for Mr. Mbutia Counsel for the Claimant and in the absence of Mr. Kimwere Counsel for the Respondent.*

**ABUODHA J. N.**

**JUDGE**