



**Kiriita Pyrethrum & Vegetable Growers Co-operative Society Limited & 3 others
v Njuguna & 15 others (Civil Appeal E1023 & E488 of 2022 & E1017 of 2023
(Consolidated)) [2025] KEHC 657 (KLR) (Civ) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEHC 657 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

CIVIL

CIVIL APPEAL E1023 & E488 OF 2022 & E1017 OF 2023 (CONSOLIDATED)

LP KASSAN, J

JANUARY 30, 2025

BETWEEN

**KIRIITA PYRETHRUM & VEGETABLE GROWERS CO-OPERATIVE SOCIETY
LIMITED APPELLANT**

AND

JONATHAN MUIGAI NJUGUNA 1ST RESPONDENT
KAMANDE ITUTHU 2ND RESPONDENT
PETER NDUNGU NENE 3RD RESPONDENT
GEORGE KIBATHA KAMAU 4TH RESPONDENT
SAMUEL MUTURI NGANGA 5TH RESPONDENT
WANYOIKE WAWERU 6TH RESPONDENT
NJUGUNA PETER KINYAGIA 7TH RESPONDENT
JOHN KAMAU HUHO 8TH RESPONDENT
KANGWATHA MAMIA 9TH RESPONDENT
HOSEAH MWICHIGI 10TH RESPONDENT
PETER GICHUHI MWANIKI 11TH RESPONDENT
NYOIKE WAWERU 12TH RESPONDENT
JOHN NJENGA GICHECHE 13TH RESPONDENT
SAMUEL MWAURA 14TH RESPONDENT
WILSON KAMONYE 15TH RESPONDENT



**AS CONSOLIDATED WITH
CIVIL APPEAL E488 OF 2022**

BETWEEN

SAMUEL MWAURA 1ST APPELLANT
WLISON KAMONYE 2ND APPELLANT

AND

JONATHAN MUIGAI NJUGUNA 1ST RESPONDENT
KAMANDE ITUTHU 2ND RESPONDENT
PETER NDUNGU NENE 3RD RESPONDENT
GEORGE KIBATHA KAMAU 4TH RESPONDENT
SAMUEL MUTURI NGANGA 5TH RESPONDENT
WANYOIKE WAWERU 6TH RESPONDENT
NJUGUNA PETER KINYAGIA 7TH RESPONDENT
JOHN KAMAU HUHO 8TH RESPONDENT
KANGWATHA MAMIA 9TH RESPONDENT
HOSEA MWICHIGI 10TH RESPONDENT
PETER GICHUHI MWANIKI 11TH RESPONDENT
NYOIKE WAWERU 12TH RESPONDENT
JOHN NJENGA GICHECHE 13TH RESPONDENT
**KIRIITA PYRETHRUM & VEGETABLE GROWERS CO-OPERATIVE SOCIETY
LIMITED 14TH RESPONDENT**

**AS CONSOLIDATED WITH
CIVIL APPEAL E1017 OF 2023**

BETWEEN

SAMUEL MWAURA 1ST APPELLANT
**KIRIITA PYRETHRUM & VEGETABLE GROWERS CO-OPERATIVE SOCIETY
LIMITED 2ND APPELLANT**

AND

JONATHAN MUIGAI NJUGUNA 1ST RESPONDENT
KAMANDE ITUTHU 2ND RESPONDENT
PETER NDUNGU NENE 3RD RESPONDENT



GEORGE KIBATHA KAMAU	4 TH RESPONDENT
SAMUEL MUTURI NGANGA	5 TH RESPONDENT
WANYOIKE WAWERU	6 TH RESPONDENT
NJUGUNA PETER KINYAGIA	7 TH RESPONDENT
JOHN KAMAU HUHO	8 TH RESPONDENT
KANGWATHA MAMIA	9 TH RESPONDENT
HOSEA MWICHIGI	10 TH RESPONDENT
PETER GICHUHI MWANIKI	11 TH RESPONDENT
NYOIKE WAWERU	12 TH RESPONDENT
JOHN NJENGA GICHECHE	13 TH RESPONDENT

(Being an appeal from the Judgment and Decree of the Co-operative Tribunal at Nairobi delivered on 26th May 2022 in CTC No. 399 of 2005)

JUDGMENT

1. Before this Court for consideration are three (3) consolidated appeals being Nairobi Milimani HCCA No. E1023 of 2022, Nairobi Milimani HCCA No. E488 of 2022 and Nairobi Milimani HCCA No. E1017 of 2023, all emanating from a judgment and eventually a ruling of the Co-operative Tribunal in CTC No. 399 of 2005 (hereinafter the Tribunal) delivered on 26.05.2022 and 21.09.2023 respectively. For ease of reference the Court will hereinafter refer to the respective parties, in the appeals, as they appear in Nairobi Milimani HCCA No. E1023 of 2022, which was designated as the lead file.
2. The proceedings before the Tribunal were commenced by way of a statement of claim filed by Jonathan Muigai Njuguna, Kamande Ituthu, Peter Ndung'u Nene, George Kibatha Kamau, Samuel Muturi Ng'ang'a, Wanyoike Waweru, Njuguna Peter Kinyagia, John Kamau Huho Kangwatha Mamia, Hoseah Mwichigi, Peter Gichuhi Mwaniki, Nyoike Waweru and John Njenga Gicheche the claimants before the Tribunal (hereafter the 1st to 13th Respondent) as against Samuel Mwaura, Wilson Kamonye Kuria, Kiriita Pyrethrum & Vegetable Growers Co-operative Society, (hereafter the 14th & 15th Respondent and Appellant respectively) and Chege Ngage, the respondents before Tribunal. The 1st to 13th Respondent sought among others orders: -
 - i. A declaration that the 14th Respondent holds parcels of land Kaisagat/Chekoilel Plot No. 109, 110, 111, 112, 113, 114, 115, 116, 119 and 120-127, 146, 147, 148, 149, 150, 151, 152, 154, 5505/2 and LR. No. 5505/2 upon trust for the Appellant, the 14th Respondent's wife Margaret W. Gitau holds parcels No. 168 and 171 upon trust for the Appellant whilst his son Simon Njoroge Kamonye holds Plot No. 90 upon trust for the Appellant;
 - ii. A declaration that the Chege Ngage holds parcels of land Kaisagat/Chepkoilel Plot No. 108, 211, 214 & 240 upon trust for the Appellant;
 - iii. A declaration that the 15th Respondent holds parcels of land Kaisagat/Chepkoilel Plot No. 21, 59, 107, 213, & 125 upon trust for the Appellant;



- iv. A declaration that that the 14th & 15th Respondent, Chege Ngage and Appellant are under a duty to account to the 1st to 13th Respondent and other members of the Appellant the 4,200 acres comprised in LR. No. 10343, LR. No. 497, LR No. 205 and LR. No. 6935 entrusted to them for sub-division as per the 1998 resolution of the Appellant;
 - v. A declaration that the 14th & 15th Respondent, Chege Ngage and Appellant are under a duty to account to the 1st to 13th Respondent and other members of the Appellant the consideration paid by Mr. E.C Saina for LR. No. 5505/1 and consideration paid upon sale of Kaisagat/Chepkoilel Plot No. 91, 191, 192, 195 and 196;
 - vi. An order that the 14th Respondent transfer to the Appellant Kaisagat/Chepkoilel Plot No. 109, 110, 111, 112, 113, 114, 115, 116, 119 and 120 to 127, 146, 147, 148, 149, 150, 151, 154, 5505/2 and LR. No. 5505/2;
 - vii. An order that the Chege Ngage transfers to the Appellant, Kaisagat/Chepkoilel Plot No. 108, 211, 214 & 240;
 - viii. An order that the 15th Respondent transfer to the Appellant Kaisagat/Chepkoilel Plot No. 21, 59, 107, 213 and 125;
 - ix. An order that the 14th & 15th Respondent, Chege Ngage and Appellant account for all the parcels of land comprised in Kaisagat/Chepkoilel Block 5 (Kiriita) and Kabombo/Koiogolo Block/1 Kiriita originally LR. No. 6935;
 - x. An order that the 14th & 15th Respondent, Chege Ngage and Appellant account to the 1st to 13th Respondent the proceeds of the sale of LR. No. 5505/1;
 - xi. A permanent injunction to restrain the 14th & 15th Respondent, Chege Ngage and Appellant from transferring selling, charging or otherwise dealing with the Appellant's parcels of land comprised in Kaisagat/Chepkoilel Block 5 (Kiriita) originally 10343, 5507, 5505 and Kabombo/Kologolo Block /Kiriita originally LR. No. 6935;
 - xii. An order that the 14th & 15th Respondent, Chege Ngage and Appellant account to the 1st to 13th Respondent and other members of the Appellant the proceeds of the sale of the coffee factory, 2 dairy garages, 5 tractors, 4 trailers, 4 ploughs, a pick up, maize in stores and livestock;
 - xiii. An order that the 14th & 15th Respondent, Chege Ngage and Appellant account to the 1st to 13th Respondent, the moneys fetched from the sale of murrum from Kaisagat Farm;
 - xiv. Order that the 14th & 15th Respondent and Chege Ngage explain to the 1st to 13th Respondent and other members of the Appellant the status of parcels of land allegedly allocated for use by the church of the province of Kenya, Mukeu Primary School, AIPCA Church PCEA, AIC, Fathi Primary School and a shopping center; and
 - xv. Any other reliefs as the honorable may deem fit to grant.
3. It was averred that the 14th & 15th Respondent and Chege Ngage, served as members and management committee of the Appellant wherein in 1965 the 1st to 13th Respondent and other members of the Appellant bought two (2) farms which were comprised of four (4) parcels of land namely LR. No. 10343, LR. No. 497, LR. No. 505 and LR. No. 6935 whose total acreage was about 4,200 and caused the same to be registered in the name of the Appellant. That said farms were bought and charged with inter alia moneys borrowed from Agricultural Finance Corporation (AFC) and Land & Agricultural Bank of Kenya. It was further averred that in November 1988 members of the Appellant made a



resolution affecting the farms towards settlement of the charge to AFC and equally sub-division of the parcels of land to be allotted to members of the Appellant. However, in 1989 the Government of Kenya wrote of the debt owed to AFC thereby nullifying part of the resolution which required part of the parcels of land to be excised towards settled of the charge to AFC. That between 1989 to 2005, the 14th & 15th Respondent, Chege Ngage and Appellant did not convene any meetings of the Appellant whereas they continued to transact the Appellant without any reference to its members whatsoever in contravention of the 1988 Resolution, the Appellant's by-laws and their fiduciary duty to the Appellant and its members in respect of various parcels of land and proceeds received from sales in respect of the Appellant.

4. The 14th & 15th Respondent filed a statement of defence admitting to specific facets of the statement of claim however denied key tenets in the statement of claim meanwhile averred that they acted in all their dealings on behalf of and with the society conscientiously and in its best interest.
5. The Appellant on its part equally filed a statement of defence admitting to specific facets of the statement of claim however denied key tenets in the statement of claim meanwhile contended that its affairs were conducted in accordance with its by-laws and at no time was the same reduced into a partnership as alleged, to wit, any act or activity carried ought by the 14th & 15th Respondent, Chege Ngage and Appellant were lawful and within their respective rights and responsibilities. The Appellant further averred that its members were free to buy land from each other by way of shares and on purchase the purchaser was entitled to receive the land of the seller from the Appellant and many members who were not a party to the proceedings did purchase such shares and obtained several parcels of land registered under them and any plots registered into the Appellant's name is its property. The Appellant equally contended that the suit is bad in law, the statement of claim incurably defective and would raise a preliminary objection to the same whereas the tribunal lacked jurisdiction to entertain the claim.
6. Chege Ngage filed a statement of defence admitting to specific facets of the statement of claim however denied key tenets in the statement of claim meanwhile averred that the additional parcels of land acquired by him were obtained contractually for valuable consideration above board.
7. The suit proceeded to full hearing during which the 1st -13th Respondent, 14th & 15th Respondent and Appellant called evidence in support of the averments in their respective pleadings. In its judgment, the Tribunal found in favour of the 1st to 13th Respondent and order that judgment is entered in favour of the claimants in terms of prayers (i), (ii), (iii), (iv), (vii), (viii), (xi), (xii) and (xiii) of the statement of claim; an order that the 1st to 13th Respondent serve parties not before the tribunal with the judgment; an order directing the Land Registrar of the respective registries to effect the transfer referred to in the judgment in terms of prayers (iv), (vii) and (viii); costs & interests of the claim; and that costs of transfer (if any) be borne by the 14th & 15th Respondent, Chege Ngage and Appellant.
8. Aggrieved with the outcome, the Appellant preferred (Nairobi Milimani HCCA No. E1023 of 2022) challenging the Tribunal's decision on the following grounds: -
 1. The Tribunal erred in fact and law in hearing and determining a dispute in which parties duly cited were not served with summons to enter appearance and consequently condemned them unheard by entering judgment against the parties.
 2. The Tribunal erred in law in ignoring to determine the issue of its jurisdiction which was contended, disputed and denied in accordance with the *Co-operative Societies Act*.
 3. The Tribunal erred in law and fact in basing its decision on only one set of members general meeting resolutions and ignoring all other resolutions made in all subsequent years by the same members.



4. The Tribunal erred in law and fact in failing to appreciate the import of various statutory provisions which this transaction was subject to and or affected by and therefore arrived at an erroneous conclusion.
 5. The Tribunal erred in analyzing the evidence in a manner that gave undue weight to the claimant in the matter and ignored all other materials placed before it by the Appellant and this arrived at the wrong conclusion.
 6. The Tribunal erred in not considering whether it was the right forum to conduct these proceedings when the parties had not exhausted other avenues provided in the co-operatives societies resolutions had been made to refer the matter raised to those prior mechanism as established.” (sic)
9. Equally aggrieved by the said decision, the 14th and 15th Respondent’s preferred (Nairobi Milimani HCCA No. E488 of 2022) challenging the Tribunal’s decision on the following grounds:
1. The learned trial Court erred in law and in fact in failing to appreciate that it did not have jurisdiction to deal with the instant suit in the first instance because it was premature and that the remedy for determining the disputes under the Co-operative Societies Act was explicitly stated in Section 58 and 73 of the Act.
 2. The Tribunal misdirected itself in failing to appreciate that the claimants ought to have engaged the Commissioner for Co-operative Societies by invocation of Section 58 and 73 to inquire into the conduct of the persons they allege to have misappropriated the 4th Respondent’s Society’s funds and properties.
 3. The learned Trial Court erred in law and in fact in failing to appreciate that the claimant’s claim could not be determined before the Cooperative Tribunal as provided for by Section 159 of the Registered Land Act of the Laws of Kenya.
 4. The dispute as outlined in the pleadings does not align itself to the provisions of Section 76 of the Act. Not all grievance under the Co-operative Societies Act are disputes within the jurisdiction of the Tribunal. The Court should have therefore carefully considered the claims before it to determine whether they amount to a dispute concerning the business of the society in the sense of Section 76(1) and (2) of the Co-operative Societies Act.
 5. The Cooperative Tribunal failed in its duty of properly analyzing its jurisdiction. The fact that the High Court is the final Court in Co-operative Societies matters only reinforces the need for the Co-operative Tribunal to ensure that a proper analysis is done to determine whether a dispute is one that falls within the jurisdiction of the Tribunal in order to avoid prejudice of the right access to justice under the Constitution, but not a bar for the High Court to determine matter falling outside the ambit of the Tribunal.
 6. The learned trial Court erred in law and in fact in failing to appreciate that the claim as pleaded was not properly before it.” (sic)
10. Subsequent to the judgment, the 14th Respondent and the Appellant filed a motion dated 09.09.2022 inter alia that the honorable Tribunal be pleased to set aside its judgment and decree issued on 26.05.2022 and all consequential orders. The gist of 14th Respondent’s deposition in support of the motion was that to the extent that the Tribunal ordered for transfer, it acted without jurisdiction as there are specialized Court’s given jurisdiction with respect of use, occupation and title to property. That the jurisdiction of the Tribunal did not extend to the issue relating to use occupation and title to



property therefore it was just that the motion be allowed. The motion was opposed by way of a replying affidavit deposed by 3rd Respondent, on behalf of the 1st to 13th Respondent. In its ruling delivered on 21.09.2023, the Tribunal dismissed the said motion with costs.

11. Aggrieved by the said ruling, the 14th Respondent and Appellant preferred (Nairobi Milimani HCCA. No. E1017 of 2023) challenging the tribunal's decision on the following grounds: -
 1. The learned Tribunal erred in law in finding as it did that it had jurisdiction to order rectification of the register by way of a transfer of land in spite of the clear provisions on jurisdiction under Article 162 of Constitution, Section 13 & 26(1) of the Environment & Land Court Act and Section 2 and Part VIII of the [Land Registration Act](#).
 2. The learned Tribunal erred in law and in fact in finding as it did that it has jurisdiction to order transfer of land upon the Appellants with the provisions of Section 76 of the [Co-operative Societies Act](#).
 3. The learned Tribunal erred in law and in fact in failing to find that it is not one of the specialized Courts to which jurisdiction has been conferred by [the Constitution](#) and the law to deal with concerning occupation and title to land.
 4. The learned Tribunal erred in law and misdirected herself by failing to follow binding judicial precedent.
12. It must be noted that, upon presentation of the latter appeal, the 1st to 13th Respondent challenged the competency of the said appeal by filing the Notice of Preliminary Objection (PO) dated 02.12.2023 and later amended on 19.01.2024 on grounds: - that the Court lacks jurisdiction to hear it by virtue of Article 162 of [the Constitution](#) and also Section 79 of the [Civil Procedure Act](#); and; that the 14th Respondent and Appellant have no right of appeal against the judgment delivered on 26.05.2022, in Nairobi CTC No. 339 of 2005, having already preferred a review against the judgment; and that the 14th Respondent and Appellant cannot exercise the right of review and appeal at the same time." Vide a ruling delivered by Meoli, J. on 31.07.2024, this Court proceeded to dismiss the amended PO however went on to strike out that prayers (a) & (b) in the 14th Respondent and Appellant memorandum of appeal that pertained or challenged the impugned judgment of Tribunal delivered on 26.05.2022.
13. The appeals were subsequently canvassed by way of written submissions of which this Court has duly considered alongside the authorities cited in support of the submissions and the record of appeal.
14. This is a first appeal, specifically from the Co-operative Tribunal premised on Section 81 (1) of the [Co-operative Societies Act](#), which provides that:

Any party to the proceedings before the Tribunal who is aggrieved by any order of the Tribunal may, within thirty days of such order, appeal against such order to the High Court:

Provided that the High Court may, where it is satisfied that there is sufficient reason for so doing, extend the said period of thirty days upon such conditions, if any, as it may think fit.
15. The Court of Appeal for East Africa set out the duty of the first appellate Court in *Selle v Associated Motor Boat Co.* [1968] EA 123. It is further settled that an appellate Court will not ordinarily interfere with a finding of fact made by a trial Court unless such finding was based on no evidence, or it is demonstrated that the Court below acted on wrong principles in arriving at the finding it did. See *Ephantus Mwangi & Another vs Duncan Mwangi Wambugu* [1982 – 1988] 1 KAR 278. Thus, upon review of the memorandum of appeals and submissions by the respective parties, it is the Court's view



that the appeal turns on whether the tribunal's finding on the issues it identified for determination were well founded and justified.

16. Pertinent to the determination of issues before this Court are the pleadings, which form the basis of the parties' respective cases before the Tribunal and are relevant before dealing with evidentiary matters. In *Wareham t/a A.F. Wareham & 2 Others v Kenya Post Office Savings Bank* [2004] 2 KLR 91, the Court of Appeal stated in this regard that: -

“We have carefully considered the judgment of the superior court, the grounds of appeal raised against it and the submissions before us on those matters. Having done so we are impelled to state unequivocally that in our adversarial system of litigation, cases are tried and determined on the basis of the pleadings made and the issues of fact or law framed by the parties or Court on the basis of those pleadings pursuant to the provisions of Order XIV of the Civil Procedure Rules. And the burden of proof is on the Plaintiff and the degree thereof is on a balance of probabilities. In discharging that burden, the only evidence to be adduced is evidence of existence or non-existence of the facts in issue or facts relevant to the issue. It follows from those principles that only evidence of facts pleaded is to be admitted and if the evidence does not support the facts pleaded, the party with the burden of proof should fail.” (Emphasis added).

17. This Court having earlier captured the gist of the respective parties' pleadings, it serves no purpose restating the same. That said, the gravamen of the Appellant, the 14th & 15th Respondent's contention before this Court is that the Tribunal's lacked jurisdiction to entertain the claim as filed whereas its finding on the issues presented for determination went against the weight of evidence before it. That said, at the outset, this Court wishes to first address the appeals challenging the impugned decision of the Tribunal delivered on 26.05.2022 before addressing the appeal challenging the ruling delivered on 21.09.2023, out of prudence that would later come to fore in this judgment. Further, in light of the appeals challenging decision of the Tribunal delivered on 26.05.2022 Nairobi Milimani HCCA No. E1023 of 2022 and Nairobi Milimani HCCA No. E488 of 2022, it is palpable that in limine, the Appellants therein challenge the Tribunal's jurisdiction to entertain the said proceedings. Therefore, it would be germane to first canvass the issue of jurisdiction as its boon and bane would manifestly have a logical bearing on the outcome of the appeals in question.

18. The locus classicus on the question of jurisdiction is the case of *Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd* [1989] KLR 1 where Nyarangi. JA (as he then was) famously stated:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

19. Further, it was held in *Macharia & another v Kenya Commercial Bank Limited & 2 others* [2012] KESC 8 (KLR), that a Court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by *the constitution* or other written law. A Court cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. It is important to note that the Co-operative Tribunal is a creation of Article 169(1)(d) & (2) of *the Constitution* as read with Section 77 of the *Co-operative Societies Act* meanwhile draws its original jurisdiction to entertain disputes from Section 76 of the Act which provides that: -



- (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 purpose 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 member, 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 licence or any other due, from the Authority.

20. At the point, this Court must emphasize that it ought to tread carefully in light of the of the judgment of the Tribunal delivered on 19.09.2014, the appeal emanating thereof being Nairobi Milimani HCCA No. 434 of 2014 and the resultant judgment in the said appeal rendered by Serگون, J. on 21.01.2020. Why do I say so? The question of jurisdiction is not new to the instant proceedings. Vide the judgment delivered by the Tribunal on 19.09.2014 in CTC No. 399 of 2005, the Chairman on the Tribunal dismissed the 1st to 13th Respondent claim. I find it useful to quote in part relevant facets of his judgment wherein he pronounced himself as follows; -

“I have gone through, the claim as well as the defence filed against it. ... In my humble opinion, this matter should not have been allowed to proceed before the Tribunal in the manner that it did.

In my view of the prayers being sought by the claimant’s, I am of the considered view that the suit was filed in this Tribunal prematurely and unfortunately it has dragged on and on for so many years without being determined.....Going by the prayers being prayers being sought in the statement of claim, the 4th Respondent ought to have been one of the claimants. Section 73 of the *Co-operative Societies Act* Cap 490 is very clear on how a claim of this nature ought to have been approached and prosecuted.

The claimants ought to have engaged the Commissioner for Co-operatives Societies to inquire into the conduct of the persons they allege to have misappropriated the 4th Respondent Society’s funds and properties.In order to conduct an inquiry under Section 58 or 78 of the *Co-operative Societies Act* and make a finding, the Commissioner or his assistant would need to examine such cash, accounts, books, documents and securities relating to the affairs of the 4th Respondent which they may require.

The tribunal does not have the capacity to conduct such an inquiry and indeed it is not its mandate to do so.The Tribunal’s work is to determine Co-operative disputes based on the evidence presented before it.....In the circumstance, I direct that the claimants do engage



the Commissioner for Co-operatives Societies as aforementioned so that his office can get to the bottom of the bottom of the issues affecting the 4th Respondent Society” (sic)

21. The latter decision prompted Nairobi Milimani HCCA No. 434 of 2014, which vide a judgment delivered by Sergon, J. on 21.01.2020, the Court proceeded to pronounce itself as follows: -

“17. A careful reading of the two provisions i.e sections 58 and 73 of the Cooperative Societies Act will reveal that some matters or claims required to be referred to the commissioner for cooperatives may also overlap with those required to be filed before the cooperative Tribunal. The law does expressly state that a claimant must first file his claim with the commissioner for cooperatives before approaching the Tribunal, therefore the question as to whether a claim is prematurely before the Tribunal does not arise.

18. It would appear the two avenues could be approached as alternative methods of dispute resolution mechanisms in cooperative societies disputes. In other words, the fact that there is an alternative remedy did not oust the cooperative Tribunal’s jurisdiction to hear the dispute.

19. Having re-evaluated the evidence presented before the Tribunal, it is clear that the claim which was before the Tribunal is that envisaged under section 58 of the cooperative societies Act, hence the Tribunal had jurisdiction to hear and determine it. The learned Tribunal chairman therefore fell into error when he denied the Tribunal jurisdiction.

20. In the end, the appeal is allowed. The order dismissing the Appellants’ claim is set aside. The claim is reinstated and remitted back to the cooperative Tribunal to determine the claim on its merits by considering the evidence already tendered before it.” (sic)

22. Why have I scrupulously taken the liberty of restating the aforesaid decisions? It must be remembered by dint of the decision in Nairobi Milimani HCCA No. 434 of 2014, the question of jurisdiction was more or less settled as rightly noted by the Tribunal at Paragraph 41(i) of its decision, therefore to address the questions canvassed by Sergon, J. in his decision, would be to preside over an issue already settled by a Court of concurrent jurisdiction and therefore usurp the Court of Appeal’s jurisdiction as an appellate Court on the issue, in any event. Therefore, having contextualized the nature of the appeal before Sergon, J. and the emanating decision therefore this Court will refrain from addressed itself as to the Tribunal’s jurisdiction in respect of Section 58 as read with Section 73 of the Co-operative Societies Act which was conclusively settled in Nairobi Milimani HCCA No. 434 of 2014.

23. That said, what this Court garners to be the Appellant, 14th & 15th Respondent grievance in respect of the Tribunal’s decision is whether its exceeded its mandate on accord of Section 76 of the Co-operative Societies Act. While calling to aid the provisions of Article 162(2)(b) of the Constitution, Section 2 & 80 of the Land Registration Act, the decisions *Freizer Mumo v Jonha kavithi Daniel & Magdalene Wayua Daniel* (sued as the representative of the Estate of Daniel Mulwa Kavithi & 3 Others [2020] eKLR in as cited with approval in *Mathew Mutuku Muli & 5 Others v Peter Wanjohi Kiama, Official Liquidator Drumvale Farmers’ Co-operative Society Limited & 14 Others* [2022] eKLR, *Kennedy Kimani Ndarwa v Methi & Swami Farmers’ Co-operative Society Limited & Another* [2016] eKLR and *Ol Kalou West Farmer’s Co-operative Societies Ltd v David Kibue Kinyanjui* [2019] eKLR as cited with approval in *Donald Kawinzi Muteti v Mali Ya Mungu Muteti & Another* [2020] eKLR, the Appellant, 14th & 15th Respondent all contend that by virtue of the reliefs being sought relating to



interest in land whereas the Tribunal purporting to cancel the title held by various owners and stating that the same be transferred back to the Appellant ousted the Tribunal of jurisdiction to entertain the 1st to 13th Respondents claim. Counsel for the Appellant specifically posited that it is only the Environment & Land Court (ELC) that is vested with jurisdiction to determine dispute involving occupation of and title to land.

24. In riposte, counsel for the 1st to 13th Respondent relied on the provisions of Section 74(2) of the *Co-operative Societies Act* and the decision in *Macharia & another v Kenya Commercial Bank Limited* to summarily submitted that the Tribunal was vested with jurisdiction to hear and determine the appeal.
25. With the above in reserve, the gist of the statement of claim and as earlier captured in this judgment reveals that the 1st to 13th Respondent claim against the 14th & 15th Respondent, Chege Ngage and Appellant which sought a raft of orders that included a declaration that certain parcels of land were held in trust for the Appellant and an order of transfer of certain parcels of land to the Appellant. On promulgation of *the Constitution*, 2010, it established specialized Courts, specifically the Environment and Land Court by dint of Article 162(2)(b) of *the Constitution*. The enabling Act of the Court, the *Environment and Land Court Act*, provides at Section 13(1) & (2) that:
 - (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of *the Constitution* and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
 - (2) In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the Court shall have power to hear and determine disputes—
 - (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (b) relating to compulsory acquisition of land;
 - (c) relating to land administration and management;
 - (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (e) any other dispute relating to environment and land.
26. As earlier observed the cause of action before the Tribunal gyrated around a dispute concerning the business of the Appellant between its members and officials of the Appellant wherein it was averred by 1st to 13th Respondent that between 1989 to 2005 the 14th & 15th Respondent and Chege Ngage continued to transact by the Appellant without any reference to its members whatsoever in contravention of the 1988 Resolution, the Appellant's by-laws and their fiduciary duty to the Appellant and its members in respect of various parcels of land and proceeds received from sales of assets of the Appellant. As a consequence of their actions they acquired various parcels of land, to wit, by dint of the statement of claim, the 1st to 13th Respondent sought declarations that the parcels were held in trust for the Appellant and orders of transfer of the specifically identified parcels of land. A holistic reading of the *Co-operative Societies Act*, the same does not provides for powers and or the nature of orders the Co-operative Tribunal can issue. Nevertheless, the nature of disputes before it can clearly be discerned by reading of Section 76(2) of the Act.
27. The *Environment and Land Court Act* with status of the High Court can contemporaneously address itself to other issues originating and or arising out of occupation of and title to land within its mandate



as provided for in Section 13(1) & (2) of the [Environment and Land Court Act](#) whereas on the contrary the Co-operative Tribunal jurisdiction is ring-fenced by Section 76(2) of the Act. The Court of Appeal in Harambee Co-operative Savings and Credit Society Limited v Nyongesa & another (Civil Appeal 176 of 2018) [2023] KECA 837 (KLR) while addressing itself to whether a dispute was for determination before the Employment and Labour Relations Court and the Co-operative Tribunal, succinctly observed that Section 76 of the [Co-operative Societies Act](#) specifically appertained questions concerning the business or membership of the Society limited to the Tribunal therefore it would be difficult to see how the Tribunal would consequently grant orders in respect of a declaration of trust and or an orders of transfer of property directed towards a Land Registrar, as it did in its final orders. As rightly contended by the Appellant, a reading of Section 2 alongside Section 80 the [Land Registration Act](#) an order concerning the rectification of the register by directing that any registration be cancelled or amended, in an order that can only be made by a Court sitting as [Environment and Land Court Act](#).

28. Notably, the claim before the Tribunal was filed in 2005 prior to the enactment of the [Land Act](#) and [Land Registration Act](#). To the foregoing end, this Court is inclined to agree with the rendition of Oundo, J. in Ol Kalou West Farmer's Co-operative Societies Ltd wherein he observed that: -

41. In essence thereof the trial Magistrate had the jurisdiction to try the suit before it. The provision envisaged under Section 159 of the Registered [Land Act](#) (now repealed) being distinguishable with the provision envisaged under section 76 of the [Co-operative Societies Act](#)
42. In the case of [Paul Mutua Mutwiwa v. Kimeu Kyumba and 2 others Machakos HCCC No. 438 of 2012](#) it was held:-

“...The provisions of Section 76 of the Cooperative [Societies Act](#), No.12 of 1997 do not contemplate the Cooperative Tribunal to determine the ownership of land even if the dispute is between members, present, past, deceased and even if it was, the same has been superseded by the enactment of article 162(2) (b) of [the Constitution](#) and the creation of the Environment and Land Court. Thus this court has jurisdiction to entertain this matter and the preliminary objection is dismissed.”

43. Indeed there is no evidence before me that points to the fact that the dispute herein concerned “the business of a Co-operative Society” (emphasis mine). The authorities cited herein by the Appellant in support of this argument are distinguishable to the present case.
44. In [Toratio Nyang'au & 4 Others v. Lietego FCS Limited \(2011\) e KLR Maraga J., \(as he then was\)](#) observed:-

In its effort to resolve the matter the Tribunal attempted to define the term “dispute”. That is where, in my view, it started erring. The operative word in that section is “business”. So the Tribunal should have determined whether or not the dispute before it concerned the “business” of the respondent society.

The Cooperative [Societies Act](#) does not define the term “business”. But we know that cooperative societies are business organizations owned and operated by a group of individuals for their own mutual benefit. Although we are not told what the respondent was established to do, I am, however, certain that resolving its land disputes with third parties whether or not they are its members cannot have been one of the businesses of the respondent society. In the circumstances the land ownership dispute in this case did not fall within the purview of Section 76 of the [Societies Act](#) and the Tribunal had, therefore, no jurisdiction to entertain the matter.



Even if I am wrong in my understanding of Section 76 of the Cooperative Societies Act I am certain that as the land in this case is registered under the Registered Land Act, Cap 300, it is clear from Section 159 thereof that the Tribunal had no jurisdiction to try the matter...

29. Undoubtedly, in respect of the instant appeal, the dispute before the Tribunal did not exclusively reflect the business of the Appellant as it equally concerned disposition of interest in land, going by reliefs sought in the claim. Therefore, as at when the claim was heard, the Tribunal was ousted of jurisdiction, whereas the dispute was within the purview of the Environment and Land Court. In the circumstances, the Court is inclined to agree with the Appellant, 14th and 15 Respondent, that the Tribunal lacked jurisdiction to entertain the proceedings and or exceeded its mandate on accord of Section 76 of the Co-operative Societies Act. Therefore, the commending order in respect of Nairobi Milimani HCCA No. E1023 of 2022 and Nairobi Milimani HCCA No. E488 of 2022 is that the judgment of the Tribunal delivered on 26.05.2022 is accordingly set aside and substituted with an order striking out the claim in CTC No. 399 of 2005 with no order as to costs, given the nature of the disputing parties.
30. As concerns Nairobi Milimani HCCA. No. E1017 of 2023, on the backdrop of the ruling delivered by Meoli, J. on 31.07.2024, the 14th Respondent and Appellant were essentially barred from challenging the decision of the Tribunal delivered on 26.05.2022 whereas the appeal was to be concentrated on the ruling delivered on 21.09.2023. However, a conscientious review of the all grounds of appeal as juxtapose as against the impugned ruling delivered on 21.09.2023, clearly reveals the intent of the 14th Respondent and Appellant. By their grounds of appeal and submissions before this Court, by design or form do not challenge the impugned ruling however seem more or less to assail the impugned judgment of Court delivered on 26.05.2022, in clear contravention of the ruling by Meoli, J. delivered on 31.07.2024. In the end, the appeal as presented is incompetent for the forestated reasons and is accordingly dismissed with costs.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 30TH DAY OF JANUARY 2025.

HON. L. KASSAN

JUDGE

In the presence of:

Githinji for the Appellant in 1017/2023

Andolo holding brief for the 1st – 13th Respondents in 1023/2022 &

Respondent in E1017/2023

Guyo - Court Assistant

