



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO. 226 OF 2004
TORATIO NYANG'AU & 4
OTHERS.....APPELLANTS
Versus
LIETEGO FCS
LIMITED.....RESPONDENT

JUDGMENT

This is an appeal from the ruling of the Cooperative Tribunal (the Tribunal) delivered on 2nd of March 2004 in Cooperative Tribunal Case No. 1 of 2001 in which it found for the respondent.

The respondent is a cooperative society registered under the Cooperative Societies Act. In its amended statement of claim before the Tribunal it claimed that it is the registered proprietor of all those pieces of land situate in Nyamira District and known as **Title No. Rietego/Settlement Scheme/91** and **Title No. Kisii/Rietogo/56**. (the suit pieces of land). Sometimes in 1994 the appellants had without any colour of right or justified excuse entered upon the said pieces of land and constructed premises thereon. Despite demand the respondents refused to vacate forcing the appellant to file the claim in which it claimed declarations that it is the lawful registered owner of the said suit pieces of land and that the respondents are trespassers thereon. They also prayed for the cost of the claim.

The proceedings show that the 1st appellant came into the matter late and was granted leave to file his reply but I am unable to trace it in the file. In their amended reply and counter claim the 2nd, 3rd, 4th and 5th appellants denied the respondent's claim and averred that they are the owners of the portions they occupy which were allocated to them way back in 1962.

When the matter went before the Tribunal for hearing counsel for the appellants' referred to **Section 159** of the **Registered Land Act** and **Section 76** of the **Cooperative Societies Act** and challenged the Tribunal's jurisdiction to hear the matter. In a short ruling the Tribunal dismissed that preliminary point.

Thereafter the Tribunal ordered *suo moto* that the District Land Registrar Nyamira do visit the suit pieces of land and determine whether or not the appellants' structures were on the respondent's parcel No. 91 and file a report. After the report was filed, despite protestations from counsel for the appellants the Tribunal directed the parties to file written submissions on the basis of which it decided the matter granting the respondent's claim thus provoking this appeal.

The appellants' 9 grounds of appeal gravitate upon two main points: that the Tribunal had no jurisdiction

to entertain the matter and that it condemned the appellants unheard.

In their written submissions counsel for the appellants argued that **Section 159** of the **Registered Land Act** gives jurisdiction to the High Court to hear cases related to land registered under that Act and the Resident Magistrate's Court where the value of the land is less than Kshs.25,000/=. They also argued that the land ownership dispute in this case is not a part of the business of the respondent. On those points they argued that the Tribunal has no jurisdiction to entertain the matter.

On the merits of the case counsel submitted that the Tribunal condemned the appellants unheard. They said after the report from the District Land Registrar the Tribunal should have formally heard the case before deciding on the matter.

Counsel for the respondent on their part supported the Tribunal decision and argued that it had jurisdiction to hear the matter as the dispute affected the respondent's business. On the basis of the report from the District Land Registrar they submitted that the Tribunal was right in not requiring the formal hearing of the matter and on that they urged me to dismiss this appeal with costs.

I have considered these rival submissions and read the record of appeal. **Section 76** of the **Cooperative Societies Act** gives the Tribunal jurisdiction to determine "any dispute concerning the business of a cooperative society that arises among its members or between any member and the society." 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 first 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 society 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 this in my understanding of **Section 76** of the **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. This in effect disposes of this appeal. But I want to say something about the appellants' complaint that they were condemned unheard.

The appellants in their reply and counter claim claimed that the plots they occupy were allocated to them and are not on the respondent's parcel No. 91. They did not specify who allocated those pieces of land to them. There is, however a letter on the record that the plots were allocated to them by Gusii County Council. Even if the District Land Registrar's report indicated that those plots are on the respondent's parcel No. 91 the Tribunal was duty bound to hear the matter and determine the propriety of the appellant's claim. Counsel for the appellants had demanded to cross examine the District Land Registrar but the Tribunal did not accord them an opportunity to do that. In the circumstances I agree with the counsel for the appellant that the Tribunal condemned the appellants unheard.

For these reasons I allow this appeal and set aside the Tribunal's said judgment. As I have found that the Tribunal had no jurisdiction to entertain the dispute the aggrieved party should seek redress elsewhere. Given that it is the Tribunal which misdirected itself in the matter, I order that each party shall bear its own costs of this appeal.

DATED and delivered this 7th day of April 2011.

D.K. MARAGA

JUDGE