



**Good Hope Sacco Limited v Yiale & 4 others (Civil Suit
E002 of 2022) [2023] KEHC 20233 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20233 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CIVIL SUIT E002 OF 2022
F GIKONYO, J
JULY 17, 2023**

BETWEEN

GOOD HOPE SACCO LIMITED PLAINTIFF

AND

ANNE KARITIE 1ST DEFENDANT

SOLOMON YIALE 2ND DEFENDANT

**SURCHARGES NO 3-22 (AS ENUMERATED IN COMMISSIONER OF
SOCIETIES SURCHARGE DATED 13TH JANUARY, 2022) 3RD DEFENDANT**

WILSON NKANAE 4TH DEFENDANT

**SURCHARGEES NOS 24-34 (AS ENUMERATED IN COMMISSIONER OF
SOCIETIES SURCHARGE DATED 13TH JANUARY 2022) 5TH DEFENDANT**

RULING

1. The significant orders sought in the application dated June 9, 2022 are: - i) An injunction to restrain the defendants from filing suits and claims against the plaintiff in various courts pursuant to action of the commissioner of co-operatives of terminating their service with the plaintiff and surcharging the defendants as provided in the Co-Operatives Act; and ii) Costs of the application to be borne by the defendants jointly and severally.
2. The application is expressed to be brought under Sections 1A, 1B, 3, and 3A of the [Civil Procedure Act](#) Order 40(2), 51, and all other enabling sections of the law.
3. The application is based on the grounds set out in the application and the supporting affidavit of Isaac Dopoi Kilesi sworn on June 9, 2022.



Grounds of opposition

4. The 2nd, 3rd, 4th, 5th, 6th, 7th, 9th, 10th, 14th and 18th defendants filed grounds of objection dated November 18, 2022 to wit;
 - i. That the prayers as sought by the plaintiff under the stated provisions of order 40(2) are hazy and not available as crafted.
 - ii. The plaintiff's motion and plaint as crafted is too convoluted and offends provisions of Article 162 of *the Constitution*.
 - iii. That consequently this honourable court lacks jurisdiction to issue such injunctive and/ or declaratory relief as sought in the notice of motion and plaint.
 - iv. That further, this honourable court is already seized with a matter on the same substance by the same parties being JR E002 of 2022, and cannot injunct itself as contemplated by the plaintiff.
 - v. That it is good practice and a statutory requirement per Section 6 *CPA*.
 - vi. That follows therefore that the plaintiff's instant motion and plaint are in bad faith its hands are tainted and disentitled to prayers sought.
 - vii. That the plaintiff has no case with a possibility or even probability of success and is disentitled to any interlocutory relief as sought.
5. The 23-25,28,31-33 defendants filed grounds of opposition dated February 7, 2023 seeking to oppose the application dated June 9, 2023 on the following grounds;
 - i. That the said defendants have never sued the plaintiff at any point in time
 - ii. That this application is brought forth in bad faith to cover up unexplained financial decisions by the applicant for instance unpaid dividends.
 - iii. That the cooperative tribunal is the proper forum to address issues arising out of the surcharge orders hence the suit is pre-maturely before this honourable court.

Applicant's case

6. The applicant contends that the defendants herein have filed several suits and various claims against the applicant in various courts as follows;
 - i. Defendants 2, 3,4,5,6,7,9,10,14, and 18 filed judicial review No E002 of 2022 seeking to stop surcharges against them by the commissioner of co-operatives knowing very well they had partaken of plaintiff Sacco's funds in breach of the law.
 - ii. Defendant 24, Angeline Naanyu Kipteng filed a claim in Kilgoris senior principal employment and labour case No 2 of 2019 against the plaintiff while she knew very well that her termination was by the commissioner of co-operatives.
 - iii. Defendant 24, obtained orders in her favour contrary to natural justice and the law in spite of protest by the plaintiff. The plaintiff only forestalled execution by filing an appeal in Nakuru Employment and labour court being appeal No E013 of 2022.
 - iv. Defendants Nos 7, 9, and 10 filed Nos 1, 2, and 3 in the employment and labour magistrate court in Narok.



7. The applicant contends that all the above cases are challenging the same decision of the commissioner of co-operatives. That they arise from the same set of facts and circumstances.
8. The applicant argued that the filing of the above suits in various courts has led to the applicant having to defend many suits obtaining from the same circumstances in those courts thus straining the applicant in terms of labour and resources.
9. The applicant stated that the procedure to follow when disputes arise is well laid down in the act providing for the Sacco. The Defendants have opted to file different claims in various courts outside clear provisions of the law.
10. The applicant however appreciates that, Defendants 2, 3,4,5,6,7,9,10,14, and 18 acted within the law by filing Judicial Review No E002 of 2022 challenging the actions of the commissioner of co-operatives to surcharge them.
11. The applicant argues that it is being victimized in the claims above for a decision made by the commissioner of co-operatives which Sacco did not have the discretion legally to determine otherwise.
12. That the defendants should have sued the commissioner of cooperative development since the termination of the defendant's services to the applicant was effected by the commissioner.
13. The applicant urged this court to stop the defendants herein from filing fallacious claims against the applicant. That if they continue to do so they offend the law by bringing sub judice matters to court and may occasion contradictory decision.
14. The applicant further argued that the prayers herein sought will not be prejudicial to the defendants and will serve the cause of justice.

The 24th defendant's case

15. The 24th defendant', filed a replying affidavit sworn by Angeline Naanyu Kipteng on May 27, 2022.
16. The 24th defendant averred that this court lacks jurisdiction to hear and determine this matter and to refrain the defendant herein from pursuing her cause in an employment and labour relations court.
17. The 24th defendant contends that she was not served with the notice to sue in order to prepare her defense.
18. The 24th defendant stated that this matter is res sub judice to her case being Kilgoris SPM ELRC No 02 of 2019. Her matter was heard and determined but the applicant appealed against the judgment. Further that Nakuru ELRC Misc App No 004 of 2022 was finalized contrary to the allegation by the applicant. That ruling on the garnishee proceeding is pending before the Kilgoris court. That an application dated October 4, 2021 in Narok HC Civil Application No 023 of 2021 seeking staying orders of further proceedings and other reliefs was struck out by this court. That an application in Nakuru ELRC No 025 of 2021 seeking staying of further proceeding of Kilgoris SPM ELRC No 02 of 2019 was dismissed. That an application in Nakuru civil application No 004 of 2022 seeking leave to file appeal out of time and staying orders; 14 days leave was granted and staying orders denied. Nakuru ELRC Appeal No 13 of 2022 is pending admission upon depositing security for costs. Therefore, this matter is sub judice.
19. The 24th defendant urged this court to dismiss this application with costs to her.



The 15th defendant's case.

20. The 15th defendant stated that she took a loan of Kshs 2,693,670/= vide a letter dated March 14, 2020 she requested to clear her loan arrears. She proceeded to pay her loan arrears through the applicant's National Bank account as per the commissioner's report. She requested the applicant to pay part of her balance with her shares. She received a letter from the applicant dated March 14, 2021 informing her that she had cleared the manipulated loan of Kshs 723,950 and Kshs 1,000,000/= of running loans thus clearing her from all loan arrears as per the commissioner's inquiry report.
21. She received a notice to show cause dated January 14, 2021 from the commissioner of cooperatives. She responded vide letter dated August 11, 2021 outlining all the facilities she had taken including how and when she cleared the same. The commissioner never responded to her letter. She was surcharged thereafter. She received the surcharge orders dated January 13, 2022. She appealed against the same on February 3, 2022 in the co-operatives tribunal. She obtained a stay of execution until the appeal is heard and determined.
22. She contends that she has been denied information in the custody of the applicant which information she required for her defense in the appeal.
23. The 15th defendant has argued that her employment was terminated unfairly and un-procedurally.
24. The 15th defendant contends that there is an imminent threat of attachment of her assets to satisfy the orders of the commissioner. That it is in the interest of justice that the appeal at the tribunal be heard to its final determination and she should be allowed to seek redress where the law was breached.
25. In the end, she urged this court to dismiss the application with costs.

The 22nd defendant's supplementary affidavit

26. The 22nd defendant filed a supplementary affidavit sworn by Angeline Naaanyu Kipteng on October 17, 2022.
27. The 22nd defendant has elaborated the contents of the supplementary affidavit in his submissions as will be illustrated below.

Submissions

Plaintiff/applicant's submissions.

28. The applicant submitted that the defendants have filed several suits and claims against the applicant in various courts therefore it is prudent to injunct them from further filing. That the suits are challenging the same decision of the commissioner of cooperatives and arise from the same set of facts and circumstances. The applicant urged this court to invoke the concept of sub judice since the issue is pending before this court and bar other courts from trying the issue as long as this suit goes on. That it is desirable that the issues be resolved or adjudicated by one court only to avoid conflicting decisions. The plaintiff relied on Section 6 *CPA*, Section 76(19-c), and 69 of the *Co-Operative Societies Act* 2012.
29. The applicant submitted that the balance of convenience in this matter is in favour of the applicant since the applicant on the face of pleadings has a serious grievance worth the attention of this court. The applicant relied on the case of *Nguruman Limited v Jan Bonde Nielsen & 2 others* [2014] eKLR.
30. The applicant urged this court to allow the application dated June 9, 2022 in totality with costs to the applicant



The 13th defendant's submissions

31. The 13th defendant submitted that the plaintiff has an identifiable stake, legal interest, or duty in this proceedings and the plaintiff used manipulated records and information to surcharge the 13th defendant. The 13th defendant argued that she was an employee of the plaintiff and not the commissioner of co-operatives. The commissioner for co-operatives terminated the 13th defendant's employment. To buttress this point the 13th defendant has relied on;
- i. *Black's law dictionary*, 9th edition at page 1232,
 - ii. *The 'Mutunga Rules' The Constitution of Kenya 9 Protection Of Rights And Fundamental Freedoms) Practice And Procedure Rules*, Legal Notice No 117 of 2013,
 - iii. *Kenya Medical Laboratory Technicians And Technologists Board & 6 Others V Attorney General & 4 Others* [2017] eKLR, and
 - iv. *Communications Commission Of Kenya & 4 Others v Royal Medical Services Limited & 7 others* [2014] eKLR.
32. The 13th Defendant submitted that she has not defaulted in repaying the loan facilities advanced and has cleared all the monies advanced as a loan. The plaintiff's wishes to execute the surcharge order to recover the monies is illegal and unconstitutional. That the plaintiff's claim would prejudice the 13th defendant to a sum of Kshs 6,945,780/=. The defendant supported her assertions with cases of *Bao Investments And Office Management Services Limited v Housing Finance Limited* [2006] eKLR, *Ridge Baldwith* [1963] 2ALL ER 66 at 81, *Paul Mutuma v Director of Co-Operatives, Meru County and Another* [2018] eKLR.
33. The 13th defendant submitted that the plaintiff did not make a case to the required standard before the commissioner for co-operatives by relying on the flawed August 2019 inquiry report on good hope Sacco Society. That the statements were manipulated and the report was faulty. The 13th defendant relied on *Simon Sunkuyia Shira v Kilonzo Nganga Kinila* [2020] eKLR, *Mbogo & Another v Shah* [1968] EA 93.
34. The 13th defendant submitted that the plaintiff has no right to prevent the 13th defendant from appealing the decision of the commissioner and seeking redress for unfair and un-procedural termination of her employment among other breaches. She relied on Chapter 4 and Article 48 of *the constitution of Kenya*.
35. In conclusion, the 13th defendant prays that;
- i. The interim orders issued by this court be lifted with immediate effect,
 - ii. The decision of the commissioner for cooperatives development delivered on January 13, 2022 to surcharge the 19th defendant with Kshs 6,945,780/= be declared null and void,
 - iii. The plaintiff be compelled to release all the information relied on in the inquiry to aid the 13th defendant and in furtherance of the rules of natural justice,
 - iv. Application be dismissed with costs and this court do issue such orders, directions and any orders which it may deem just and fit and expedient to grant.



The 15th, 11th, and 19th defendant's submissions

36. The 11th, 15th and 19th defendants' submissions are similar to those of the 13th defendant save for the amount claimed and surcharged. The 11th, 15th and 19th defendants claim a sum of Kshs 10, 721,294/=, 2,440,920/= and 1,556,877/= respectively.
37. The 11th defendant submitted that the plaintiff failed to show a prima facie case with a probability of success. That the plaintiff withheld information from this court and against the defendants thus prejudicing them and playing victim. The plaintiff withheld the fact that it refused to afford the 11th defendant information in its custody to defend herself so that the 11th defendant can be prejudiced and consequently surcharged. The plaintiff un-procedurally terminated the employment of the 11th defendant. That further the plaintiff will not suffer any injury/irreparable harm. She relied on *Giella v Cassman Brown* case.
38. The 11th defendant submitted that the plaintiff blindly relied on section 6 *CPA*. That there are different issues that have been lodged in separate/different courts. The issues include termination of employment, appeal on the commissioner's decision and review of the commissioner's findings among others. The issues are not raised by the same persons and do not benefit them in the same way. That some defendants have cleared their loans and attached requisite evidence in their replying affidavit and thus appealed to be cleared while others need information from the plaintiff in order to defend themselves. The 11th defendant followed the procedure in section 69 *Co-Operative Societies Act* which is still underway. The 11th defendant argued that she has been maliciously enjoined in this suit and prayed that this application against her be dismissed with costs. She relied on section 6 *CPA*, *Omar Salim Chengo & Others v Philemon Mwaisaka & 13 Others* [2021] eKLR.
39. The 11th defendant submitted that the commissioner for co-operative did not terminate her employment but that pursuant to section 58(3) of *Co-operative Societies Act* the commissioner made a report of his findings and gave recommendation that officers adversely mentioned be laid off. The 11th defendant argued that it was upon the plaintiff to follow the procedure and fairly lay off the said employees. The 11th defendant however stated that she did not file suit against the plaintiff for unfair termination of employment.
40. The 11th defendant submitted that the plaintiff denied her information she needed to defend herself in spite of being the custodian of the same pursuant to section 58(2) *Co-Operatives Societies Act*. The said failure led to the 11th defendant being denied a fair hearing and hence has appealed to the Co-Operatives Tribunal.
41. 11th defendant prayed for:-
- i. the lifting of interim orders, the plaintiff be barred from trying to deny the 11th defendant her rights to access justice,
 - ii. 11th defendant be allowed to seek justice in subsequent suits where the need arises,
 - iii. plaintiff be compelled to release all the information relied on in the inquiry to aid the 11th defendant and in furtherance of the causes of natural justice,
 - iv. application against the 11th defendant be dismissed with costs, and
 - v. This court issues such orders as it deems fit, just and expedient to grant.



The 2, 3,4,5,6,7,9,10,14, and 18 defendant’s submissions.

42. The defendants submitted that this application does not meet the threshold laid down in [Nguruman Limited v Jan Bonde Nielsen & 2 Others](#) [2014] eKLR.
43. The defendant submitted that this court lacks the jurisdiction to injunct other specialized courts from carrying out their mandate. They relied on;
 - i. articles 162(2), 165(3), and 169 of [the Constitution](#),
 - ii. The supreme court of Kenya Commercial Bank Limited & Others [2012] eKLR,
 - iii. [Republic v Karisa Chengo & 2 Others](#) [2017] eKLR,
 - iv. Sections 43 and 44 of the [Interpretation and General Provisions Act](#),
 - v. Section 12(10) [Employment and Labour Relations Court Act](#),
 - vi. Section 5 [Civil Procedure Act](#),
 - vii. [Orange Democratic Movement v Yusuf Ali Mohamed & 5 Others](#) [2018] eKLR.
44. In the end submitted that both the application and suit both dated June 9, 2022 as crafted are an abuse of the court process, bad in law, and ought to be struck out.

The 22nd Defendant’s submissions

45. The 22nd defendant submitted that the plaint is fatally incompetent and incurably defective. That the applicant has not indicated the amount claimed against the defendants. That the affidavit in support of the motion has not demonstrated his authority to swear the same. That the plaint is filed without summons to enter appearance therefore the suit abated. The 22nd defendant relied on Order 4, rule 1(4) (6) and sub-rule 2, 3,4,5 of the rule and Order 4 Rule 2(1) [CPR](#), Orders 5 rule 191(3)(5) and (6) [CPR](#), order 4 1 1 (f) (b) (c) and (d) [CPR](#).
46. The 22nd defendant averred that the instant suit is sub judice. That Kilgoris SPM civil application no E002 of 2022, which raises similar issues and involves the same parties, is still pending. That the plaintiff is guilty of material non-disclosure of material facts for failing to disclose that there are pending matters before other courts. Therefore, the orders and prayers sought are sub judice and this court is barred by articles 162(2) and 165(5) of [the constitution](#). She relied on Section 6 [CPA](#), ELRC case No 1543 of 2014 [Kenleb Cons Ltd v New Gatitu Service Station Ltd & Another](#) 1990 eKLR 557.
47. The 22nd defendant submitted that the applicant in its submission admitted that it filed the present application, application No E004 of 2022 and appeal No 13 of 2022 at ELRC at Nakuru to forestall the execution of warrants. The 22nd defendant argued that the admission demonstrates that the applicant is forum shopping for a favourable judicial officer. The 22nd defendant submitted that the applicant’s Nakuru ELRC appeal No 13 of 2022 on December 8, 2022 was dismissed for lack of merit with costs to the 22nd defendant. Therefore, there is no pending appeal. The 22nd defendant added that the applicant is guilty of concealment of material facts. The 22nd defendant relied on the case of [Dalip Singh V State of UP](#) [2010] 2SCC 114 in the Apex Court.
48. The 22nd defendant submitted that the applicant’s affidavit dated June 9, 2022 makes no reference to any documents therefore the documents attached thereto are mere flypapers. The 22nd defendant, therefore, argues that the present application offends the provision of rule 9 of the [Oaths and Statutory Declaration Rules](#). The 22nd defendant urged this court to strike out all documents to the said affidavit.



She relied on the cases of Fredrick Mwangi Nyaga [Supra], Mombasa High Court Civil Suit No 134 of 2014, Abraham Mwangi v SO Omboo & Ors Hcc No 1511 of 2002 t Paras 17 and 18, Solomon Omwenga Omache & Another v Zachary Ayieko & 2 Others [2016] eKLR.

49. The 22nd defendant urged this court not to grant the injunctive orders sought by the applicant. That the applicant has not established that it will suffer any irreparable loss or a prima facie case with the likelihood of success. That the 22nd defendant stands to suffer irreparable damage for defending the Kilgoris case, the Nakuru case, and this case. She relied on Giella v Cassman Brown [1973] EA 358 ELRC No E6522 of 2020.
50. The 22nd defendant urged this court to find that the 22nd defendant is entitled to costs of these proceedings. She relied on Independent Candidate Of Kenya v Mutual Kilonzo & 2 Others, The Literally Work Of Justice (Rtd) Kuloba In Judicial Hints On Civil Procedure 2nd Edn (Nairobi: Law Africa, 2011 P 94)

The 23-25, 28, 31-33rd defendant's submissions.**

51. The defendants submitted that they have never sued the applicant therefore the applicant lacks locus standi to instate the suit as against them. They have relied on Law Society of Kenya v Commission Of Lands & Others, Nakuru High Court Civil Case No 464 Of 200, Alfred Njau and Others v City Council Of Nairobi (1982) KAR 229
52. The defendants submitted that the applicant being a cooperative society is before a wrong forum for the demand of monies due to it. They relied on section 76 of the Co-Operative Society Act.
53. The defendants prayed that the application and suit herein be dismissed with costs.

Analysis And Determination

Issues for determination.

54. A purely impulsive reaction to the application may produce a feeling- albeit erroneous- that this is an application to bar vexatious litigation by the defendants. However, casting the major issues herein so narrowly would diminish the important and substantial questions arising in the application especially in relation to the right to access to justice and right to fair hearing in article 48 and 50(1) of the Constitution, respectively. A proper casting of the broad issues arising for determination in the application, the responses, and the rival submissions by the respective parties relate to: - i) jurisdiction of the court; and ii) merit or otherwise of an order for injunction.
55. Of the discussion on jurisdiction, the court will determine whether the suit herein is *res judicata* or sub judice or relate to matters of which jurisdiction is reserved exclusively for the specialized courts in article 162(2) of the Constitution or is limited by statute on the basis of the doctrine of exhaustion of remedies in the Cooperative Societies Act and Sacco Societies Act.
56. And, ultimately whether the applicant deserves an injunction to restrain the defendants from filing judicial proceedings in relation to the report by the Commissioner for Co-operative Societies. The right to access to justice as well as fair hearing will be a significant feature.

Of res judicata, sub judice and jurisdiction.

57. The objections raised by the defendants is based on section 6 and 7 of the Civil Procedure Act.
58. The court is precluded from proceeding ‘... with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between



- the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed’. Section 6 of the [Civil Procedure Act](#).
59. In considering res judicata, it is imperative that; ‘Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action but a plaintiff may relinquish any portion of his claim’. Order 11 Rule 1 (1) of the [Civil Procedure Rules](#)
 60. Although *res judicata* has been argued robustly, the problem here is somewhat convoluted and may not be fixed fully by invoking the general jurisdiction-regulating principles such as res judicata, a preclusion doctrine aimed at protecting the finality of the decision. The court notes that matters being raised relate to right to access to justice, and fair hearing, abuse of process of the court by the parties and lack of jurisdiction. Notably also, the matters in issue are at different stages of progress, whilst others are in courts which have exclusive jurisdiction over those matters.
 61. It has been claimed by the plaintiff that the defendants are filing multiplicity of suits arising from the report by the Commissioner for Cooperative Societies which is aimed at frustrating their effort to recover the surcharge imposed upon the defendants. The defendants on the other hand claim that they are simply exercising their right to access to justice and right to fair hearing.
 62. There is quite a tension here.
 63. ‘Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body’. Article 50(1) of [the Constitution](#). A party should, nonetheless, only engage the process of the law to vindicate a party’s legitimate expectations and lawful interest rather than to advance personal desire to prevent another from availing self of lawful application and benefit of the law. The latter will be an abuse of process which should be suppressed by courts of law any time it appears.
 64. Kimaru J (as he then was) observed that; ‘The plaintiff has filed suits left, right and centre to achieve only one purpose: to frustrate the 1st defendant from realizing the security that the plaintiff had charged to it. The plaintiff does not give a hoot if by filing multifarious suits means that he is breaching the same laws that he is seeking to have enforced and protect him’. Nakuru HCCC No239/2004 [Abdi Hashi Duale v. National Bank of Kenya & 2 others](#);
 65. Ultimately, the judge concluded that: ‘In the circumstances of this case, I would hold that the plaintiff abused the due process of the court when he filed this suit’. Ibid.
 66. It emerges from the documents filed by the parties herein that the defendants have filed different suits against the plaintiff in different courts- ELRC and the cooperative tribunal- and are at different stages.
 67. It also emerges that the plaintiff, in this case, has filed four other suits concerning the same subject matter.
 68. The suits filed by the defendants challenge the dismissal from employment following the recommendation by the commissioner for cooperative societies. Such disputes are set apart for the exclusively jurisdiction of ELRC, and the High Court does not have jurisdiction in respect of matters falling under article 162(2) of [the Constitution](#). In a way, Article 162(2) and 165(5) of [the Constitution](#) constitute exclusive and inflexible jurisdictional clause, barring litigation of disputes falling within the jurisdiction of Employment and Labour Relations Court (hereafter ELRC) and Environment and Land Court (ELC) in the High Court. Therefore, this is not a matter of pendency of parallel or competing proceedings in the same dispute but one where the court has absolutely no jurisdiction. As res judicata envisions possession of jurisdiction, it does not arise in a case of lack of jurisdiction. And,



this court does not evince any thought that it can issue an injunction to restrain a party from filing disputes relating to employment in the ELRC- the court with the requisite jurisdiction in law.

69. The application herein has an element that is asking this court to supervise filing of suits in ELRC- something that is expressly prohibited under article 165(6) of *the Constitution* that: - ‘The High court has supervisory jurisdiction..., but not over a superior court’
70. One more thing. Disputes relating to the business of a cooperative society or Sacco society or amongst its members or with the society are governed by the *Co-operative Societies Act* and *SACCO Societies Act* which have complete juridical, procedural and substantive regime on resolution of disputes falling within the statutes. A party only comes to this court on appeal or where specifically provided in the Act, for enforcement of the decisions by the cooperative tribunal. Under the doctrine of exhaustion of remedies, this court will not restrain parties from filing appropriate judicial proceedings before the tribunal or in the High court so far as the proceedings are in accordance with the relevant statutes. And, any objections to such proceedings should be raised before the correct forum rather than through an omnibus proceeding to restrain parties from taking out proceedings in the appropriate forums.
71. Be that as it may, the High court will not hesitate to strike down proceedings filed before it which are an abuse of the process of the court.
72. The overall impression of the facts of this case is that; i) the suits filed by the defendants relate to employment dispute within the jurisdiction of the specialized court- ELRC; and ii) others before the cooperative tribunal. Any objections should be raised before those forums.
73. There are those suits however which have been filed by the plaintiff before this court. In light thereof, the court doubts whether an injunction to restrain the defendants from filing suits on the basis of the report by the Commissioner for Cooperatives is any lawful cure or bar to the perceived vex brought upon the plaintiff by suits in ELRC or Cooperatives Tribunal. The defendants also accuse the plaintiff of abuse of court process in trying to prevent them from accessing justice in the courts.
74. Accordingly, the plaintiff has not made out a prima facie case for issuance of an injunction. Other than complaints that the defendants are filing numerous cases, the plaintiff has not shown that the suits in question are an abuse of court process.
75. In the upshot, the application dated 9/06/2022 seeking for injunction is dismissed. But, in light of the circumstances of this case, each party shall bear own costs of the application. Orders accordingly.
76. For clarity’s sake, the plaintiff’s suit has not been dismissed for, it also entails enforcement of the surcharges imposed on the defendants. The propriety or merit or otherwise of the suit is a matter for trial. It is also advisable that all suits on the subject matter herein be listed back to back or together so as to prevent any possibility of abuse of process of court.

DATED, SIGNED AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 17TH DAY OF JULY, 2023.

F. GIKONYO M.

JUDGE

In the presence of:

Ms. Naipanoi for 11th, 13th, 15th & 19th defendants

Mr. Kasaso CA

M/s Lepore h/b for Nchoko for plaintiff



Okinyi for 2nd – 7th , 9th, 10th 14th & 18th respondents

Angeline Naanyu – 22nd respondent

Ms. Saika for 23rd – 33rd respondent

