

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA

H.C.C.S. NO. 23 OF 1993

OPWATETA GROWERS CO-SOCIETY LTD
& 7 OTHERS

PLAINTIFFS

VERSUS

NORTH BUKEDI COOPERATIVE UNION LTD

DEFENDANT

BEFORE: THE HON. MR. JUSTICE C.M. KATO

R U L I N G

This ruling is with regard to two preliminary objections which were pleaded in the written statement of defence and were raised in this court by the learned defence counsel Mr. Natsoni when the case was called up for hearing. The essence of the first objection is that this being a matter which concerns co-operative societies and a co-operative union, it should have started its history with an arbitrator as provided for under section 72 of the Co-operative societies statute 1991 (statute no. 8 of 1991) Mr. Natsoni the learned counsel for defence argued strongly that the case had been prematurely presented before this court and for that reason it should be dismissed. The second point of objection is that this court has no jurisdiction to entertain the suit which took place in Mbale. He quoted the cases of: Manfred Halzbauer v. Dr. Engwan Godfrey (High Court civil suit no. 5 of 1990 Mbale District Registry unreported) and Francis Wanyala v. Bugisu District Administration (1982) HCB 128 in support of his first objection. In support of the second point of objection Mr. Natsoni quoted the provisions of Article 83(4) of the Constitution and section 13 of the Judicature Act together with the case of: Lawrence Bernard Oboth v. Piny-ki-Pir Mixed Farm Mbale District Registry Miscellaneous application no. 12 of 1992 (unreported),

On his part Mr. Okaleng who appeared for the plaintiff opposed both objections. On the first objection he maintained that the court has jurisdiction to hear the case, he based his contention on the case of: David Kayondo v. The Co-operative Bank (1992) 2 KAL 119. As for the second objection Mr. Okaleng was of the view that the contract was entered into at Pallisa which is within the jurisdiction of South Eastern Circuit.

I propose to deal with the two points of objection in the order they were raised starting with the first objection first. Both the plaintiffs and the defendant are registered societies within the meaning of sections 72 and 83 of the Co-operative Societies Statute 1991 (statute no. 8 of 1991), so both parties are governed by the provisions of that statute. That being the position the plaintiffs had to abide by the provisions of section 72(1)(d) of the Statute which requires that when there is a dispute between two societies that dispute must be referred to an arbitrator or arbitrators. The same statute makes provisions under which the matter may be placed before the court of law. Those provisions are contained in the following subsections of section 72: 10(c), 12, 13, 14, and 15; section 74 of the statute also provides the circumstances under which a party to proceedings under that statute may find his way to the courts of law. With due respect I do agree with Mr. Natsomi when he says that this matter has been prematurely presented before this court, this court would only be properly moved if the above provisions of the law were adhered to, to act otherwise may result in rendering the provisions of section 72 of the statute meaningless especially when that section is read together with sections 74 and 75 of the same statute.

This case must be clearly distinguished from the case of: David Kayondo v. The Co-operative Bank (U) Ltd (1992)2 KAIR 119. On a number of grounds as far as the interpretation of the provisions of the Co-operative Societies statute is concerned. In the first place the basic issue to be settled in that case was whether or not this court had jurisdiction to hear the case falling under the then co-operative Societies Act 30/70 which was repealed and replaced by the present statute; in the present case however, the issue is not so much that of jurisdiction but that of the procedure. What the learned counsel for defence is saying is that this court has jurisdiction to hear the case but it is being prematurely requested to exercise that jurisdiction. I agree with the learned counsel for defence on that point because the law makers in their wisdom have stipulated the circumstances under which the court should be called upon to intervene but none of those circumstances has so far occurred, the lodging of the suit in this court is therefore irregular and premature at this stage. The plaintiffs should only come to

this court in accordance with the conditions laid down in sections 72 and 74 of statute 8 of 1991. Another matter that makes the present case different from David Kayondo's (supra) case is that section 73 of the Co-operative societies Act 1970 under which Kayondo's case was brought was repealed and replaced by the present section 72 of the 1991 statute. Although the new section is materially similar to the old section, there is one basic difference with regard to settlement of disputes, in the old law disputes were to be referred to the Registrar for settlement and he had discretion to appoint an arbitrator or arbitrators, but the new law does not make the Registrar a party to settlement of disputes, the new law makes it mandatory to have the matters directly referred to an arbitrator or arbitrators which means the court was applying to Kayondo's case the provisions of the law which has been altered by the new statute.

For the reasons given above I am satisfied that the first objection raised in the written statement of defence and ably argued in court by the learned counsel for defence is a valid one and it must be sustained. The manner in which the suit was instituted in this court was incurably irregular as it did not conform with the provisions of section 72 of the Co-operative Societies Act 1991.

As regards to the second preliminary objection I find no merit in that objection. Paragraph 7 of the plaint clearly shows that the cause of action arose at Pallisa where the transaction which is the subject of this suit was conducted, Pallisa is found within the South Eastern Circuit which falls under the jurisdiction of this court. No evidence by way of an affidavit was adduced to support the defence allegation that the contract was entered into at Mbale, in the absence of such evidence the contents of paragraph 7 of the plaint must prima facie be taken as representing the correct position of the venue where the contract was entered into. When the matter comes up for hearing before the correct tribunal the defence may take up the matter again by way of evidence to show that paragraph 7 of the plaint does not represent the true position of the venue but until that is done that paragraph must be treated as representing the valid state of affairs. In these circumstances the second preliminary objection is rejected.

The final outcome of the two preliminary objections raised by the defence is that the first objection is upheld with the result that the suit is dismissed under Order 6 rule 28 of Civil Procedure Rules, the plaintiffs are however free to follow up their claim against the defendant in accordance with the provisions of section 72 of the Co-operative Societies Statute 1991; the second objection stands rejected.

Since the objections have been partially successful I order that each party meets his own costs of this suit.

C. M. KATO

JUDGE

11/3/1994

11/3/94: All plaintiffs present

Okalang for all the plaintiffs present


Dani Baka Treasurer of defendant Union present

Natsomi for defence absent

Baligeya court clerk

Tuyiringire holding brief for Natsomi for defence

court: Ruling is delivered, signed and dated.


C. M. KATO

JUDGE

11-3-1994