



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL DIVISION
CIVIL SUIT NO. 267 OF 2016

CHARLES KARANJA NJUGUNA

JOSEPH NGUGI KABIRU

JANE WAMUYU NDIRITU

(suing on their behalf and on behalf of 170 others all

known as **JUMBO COMMUNITY SELF HELP GROUP.....PLAINTIFFS**

VERSUS

SALOME NJOKI MUHIA.....1st DEFENDANT

JUSTUS WAINAINA NJUGUNA.....2nd DEFENDANT

GODFREY KARANJA GACHAGO.....3rd DEFENDANT

PETER MAINA NDEGWA.....4th DEFENDANT

JAMES WAINAINA NDUNGU.....5th DEFENDANT

ROSEMARY NGONYO WAMUYU.....6th DEFENDANT

RULING

1. The Plaintiff applicants are members of Jumbo Community Self Help Group, a community self-help group registered in 2002 under the then Ministry of Home Affairs, Heritage and Sports. They are suing on behalf of 170 other members.
2. The defendants claim to be the organization's officials, duly elected at a meeting duly convened and held on 15th July, 2016.
3. The Plaintiffs' application dated 11th October, 2016 seeks to injunct the defendants, their servants and agents from interfering with the Plaintiff's management of Jumbo Community, and/or transacting in any manner in the affairs of the organisation. In particular, they wish the defendants restrained from interfering with the Jumbo Community Account Number [...] Equity Bank- Kariobangi Branch.

4. The application is supported by the affidavit of Joseph Ngugi Kabiru dated 11th October, 2016, deposed on his behalf and that of the other plaintiffs. He avers that Jumbo Community Self-Help group comprises a membership of some 1045 members contrary to the defendants' allegation that it only comprises of 11 members, and has exhibited a list of containing 1045 names asserted to be members of the organization.

5. According to the plaintiffs, at the last Annual General Meeting, the members resolved that the current office bearers do continue to hold office until a court case concerning the members' land was concluded. Accordingly, the meeting convened on 15th July, 2016 at which the 11 members held the elections, and the 6 defendants were allegedly elected as officials, was conducted un-procedurally as the elections had not been scheduled.

6. The plaintiffs contend that the purpose of the meeting convened on 15th July, 2016 by the defendants was to defraud them of their land LR No 14231/2, which the defendants have now fraudulently allocated to themselves. Further the said land L.R. NO. 14231/2 has been registered in the name of Foster Trading Company Limited and a certificate of title was issued before the said company was legally incorporated.

7. It is further contended that the defendants subsequently started selling plots from the said land to unsuspecting buyers under the aforesaid registered company, Foster Trading Company Limited well knowing that the land title was fake. It is for these reasons that the plaintiff seeks the orders of the court.

8. Justus Wainaina Njuguna, as presumptive Secretary of Jumbo Community Self Help Group, filed a Replying Affidavit dated 20th February, 2017 in opposition and response to the application and response to the application. He asserts that the organisation duly held its elections with all procedures being followed, and the Chief of the area and his *askari* personally served the plaintiffs with the requisite notices. The elections were never challenged until the suit was filed as an afterthought. Consequently, they registered the new officials with the Director of Social Services.

9. The defendant denies that the Jumbo Community Self Help Group has 170 members on whose behalf the plaintiffs are suing, or 1045 members as pleaded. According to the defendants, a Self Help Group cannot have more than 15 members. The deponent further asserted that since registration the organisation had never held an AGM or elections.

10. With regard to the Foster Trading Company limited, the defendants' position is that it is a separate legal entity with its own activities and as such irrelevant to Jumbo Community Self Help Group's elections and leadership, which are the subject matter of this suit.

Discussion and Analysis

11. The only issue for determination at this stage is whether the application meets the threshold for grant of an injunction pursuant to Order 40 Rule 1 CPR which provides:

'Where in any suit it is proved by affidavit or otherwise-

(a) that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or

(b) that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit, the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

12. The principles for grant of an injunction were long settled in **Giella vs. Cassman Brown & Co. Ltd [1973] EA**. There, Spry, V.-P held that:

‘The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First, an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not be normally granted unless the applicant might otherwise suffer irreparable injury, which would not be adequately compensated by an award of damages. Thirdly, if the court is in doubt, it will decide on an application on the balance of convenience. (E.A. Industries v. Trufoods, [1972] E.A. 420)

13. On the basis of the material on record, the plaintiffs have clearly shown that they are constituted into a self-help group comprising of 1045 members, as per exhibit “JNK1”. The list of members exhibited as “JNK6” reflects the attendance of 172 members at the meeting held on 5th September, 2015. Amongst the persons present was one Salome Njoki Muhia, presumably the 6th Defendant. The minutes of the said meeting exhibited as “JNK 3” sufficiently support the plaintiffs’ assertions regarding the meeting. In minute 3/09/15 the list of officials is indicated.

14. Minute 5/09/15. 6 of the said minutes, discloses that a committee composed of 39 Members of Parliament visited the group areas affected by demolitions and evictions; and Minutes 5/09/15. 8 to 17 refer to LR Nos 14231/1 and 14231/2, and indicate the dispute as to ownership thereof. The plaintiffs also annexed as “JNK4” a copy of the title for LR 14231/2 registered as IR 117257/1 on 9th July, 2009, showing the proprietor as Foster Trading Company Limited.

15. Finally, the plaintiffs have exhibited a copy of minutes of a meeting of 15th July 2016 in which the defendants are indicated to have been elected by 8 members of the organization.

16. On the other hand, the defendants’ contention is that they are a self-help group bearing the same name, but comprise a membership of 11 persons. Mr Njuguna exhibited the Constitution of the organization, and an ‘application for replacement of registration of self-help group’ of the Ministry of Labour, Social Security and Services. It shows the defendants and one other member as the officials. A separate list annexed shows the members to be 11 only, and of those, three have not signed nor are their identity card numbers indicated. .

17. The Constitution of Jumbo Community Self Help Group exhibited by the defendant has no provision capping the number of its members. Accordingly, there is no basis for their assertion that a self-help group cannot have more than 15 members.

18. In light of all the foregoing, I am of the view that in comparison to the defendants’, the plaintiffs list of members is a more plausible list of the Jumbo Community Self Help Group.

19. From the Plaintiff I note that there is a suit pending between the plaintiff and some of the defendants in High Court ELC No. 207 of 2011 at Machakos, concerning L.R. No. 14231/2. The parties to that suit are the three plaintiffs herein on behalf of 143 others known as Jumbo Community Self Help Group versus Foster Trading Company Limited, Simon Migwi Ndegwa, the Second and Fourth defendants herein, and the Attorney General on behalf of the Registrar of Titles. This is important information that aids the court in establishing the scope and nature of the present dispute. According to Minute 8/09/15 .3 of the minutes of the meeting held on 05/09/2015 the Jumbo Community Self Help Group resolved that the:

“Current group officials be mandated to pursue all matters regarding law suits as concerns Jumbo Community Self Help Group until the same are concluded”.

These resolutions were made before the group fronted by the defendants had allegedly come into office.

20. The upshot of the foregoing is that I am satisfied that the application meets the threshold for grant of an injunction in accordance with the first two principles set out in **Giella (supra)**. As such, restraining

orders are necessary to restrain any other persons from interfering with the management of Jumbo Community Self Help Group until this matter is fully determined.

Disposition

21. Accordingly the court is persuaded to grant the following orders:

1. That pending the hearing and determination of this suit, the defendants and/or their servants and/or agents be and are hereby restrained from interfering in any way with the plaintiffs management of Jumbo Community Self Help Group or transacting in any manner in the affairs of Jumbo Self Help Group and in particular Account Number [...] Equity Bank-Kariobangi.

2. Given that there is another suit involving essentially the same parties; and given that this suit seeks to permanently restrain the defendants herein from interfering with the affairs of Jumbo Community Self Help Group; and given that the land herein mentioned is alleged by the plaintiffs to be part of the property or affairs of the plaintiff organization; I direct that:

2.1. This file be transferred forthwith to Machakos and placed before the Environment and Land Court Judge within fourteen days (14) from the date hereof for further directions;

2.2. That the said court do consider the file herein for determination as to the predominance and similarities of issues, and whether to consolidate the two cases or determine them concurrently.

3. Costs of the Notice of Motion shall be in the cause.

22. Orders accordingly.

Dated and Delivered at Nairobi this 21st Day of June 2017

RICHARD MWONGO

PRINCIPAL JUDGE

Delivered in the presence of:

1.for the Plaintiffs/Applicants

2.for the Defendant/ Respondents

Court Clerk.....