



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

CIVIL CASE NO. 99 OF 2012

NARO-MORU VICTORY ACADEMY LTD.....APPLICANT

VERSUS

ISAAC NGATIA KIHAGI.....1ST RESPONDENT

RAHAB WAMBUI NGATIA.....2ND RESPONDENT

RULING

This ruling is the outcome of the Motion dated 9th May, 2012 taken out by **Naro-Moru Victory Academy Ltd**, hereinafter, referred to as the Applicant. In the aforesaid Motion, the Applicant sought for the following orders:

1. **THAT** this instant application may be certified urgent, service thereof may be dispensed with and it may be heard ex-parte in the first instance.
2. **THAT** this Honourable Court may be pleased to grant a mandatory injunction to compel the defendants/respondents to move out, vacate, shift/move house and/or surrender Plaintiff's/Applicant's residential premises on its L.R.No. Nyeri/Naromoru/2376 they are illegally occupying after entering into an agreement on 7/1/2011 selling all their stake and receiving the consideration thereof thereby ceasing to be members and/or employees of the Plaintiff Company/Applicant.
3. **THAT** costs of this motion application be borne by the Respondents.

The Motion is supported by the affidavit of Nelson Muraguri Mbekenyua. When served with the Motion, **Isaac Ngatia Kihagi** and **Rahab Wambui Ngatia**, hereinafter referred to as the 1st and 2nd Respondents, filed the replying affidavit of Rahab Wambui Ngatia to oppose the Motion.

It is the submission of Mr. Muthoni, learned advocate for the Applicant that the continued stay of the Respondents' in the Applicant's School compound while running a rival school nearby after quitting is injurious to the Applicant. It is argued that the Respondents' conduct will undermine, inconvenience and disturb the Applicant's school business. It is also Mr. Muthoni's argument that the Respondents have breached the terms of the contract they executed with the Applicant on 07/01/2011 by refusing to surrender the school house. For the above reason, this court was urged to issue a mandatory and a prohibitory orders of injunction to restrain the Respondents' from breaching the said contract despite transferring their shares and rights upon receipt of the purchase sum.

The Respondents' rejected the Applicant's averments on the ground that the Applicant is not the registered proprietor of the parcel of land known as L.R.Nyeri/Naromoru/2376 which is registered in the

joint names of Nelson Muraguri Mbakenya, Isaac Ngatia King'ong'o. Besides that it is argued that the property is charged with Taifa Sacco Society Ltd as a collateral for Kshs.1,000,000. The Respondents poked holes on the agreement dated 7th January 2011 claiming the same was between Isaac Ngatia Kihagi (1st Respondent) and the Applicant in respect of shares in the company and nothing else. The 2nd Respondent was not party to the agreement neither was she a shareholder of the Applicant. The 2nd Respondent further argued that she and her husband and reside in a house they put up in L.R.no.Nyeri/Naromoru/2376 since 2001 hence their rights are protected under **Section 27** and **28** of the **Registered Land Act**. The 1st Respondent denied poaching any pupils or inciting the Applicants staff. The 2nd Respondent claimed that the Plaintiff has filed this suit to solely circumvent an anticipated in which she intends to file for eviction against the Applicant.

After considering the rival submissions. There is no doubt that the Plaintiff company was incorporated on 16th August, 2010. The predecessor of the Plaintiff/Applicant Naromoru Victory Academy, a partnership registered under the Registration of Business Names Act. The documents availed to this court shows that the partners are namely:

- i. **Nelson Muraguri Mbakenya**
- ii. **Isaac Ngatia Kihagia**
- iii. **Charles Maina King'ong'o**

It is also obvious that the 2nd Defendant/Respondent has never been a shareholder of the Plaintiff Company. It is also clear that the registered proprietors of L.R.no.Nyeri/Naromoru/2326 are Isaac Ngatia Kihagi, Charles Maina King'ong'o and Nelson Muraguri Mbakenya. A charge in favour of Nyeri Farmers Sacco Society Ltd is registered against the title hence the interest of the chargee are protected under **Section 70** of the **Registered Land Act** until the charge is discharged.

It is clear in my mind that the Plaintiff/Applicant has no proprietary interest over the suit land. There is no evidence of transfer of L.R.Nyeri/Naromoru/2376 in accordance with **Section 3** of the **Land Control Act**. There was need to also obtain Land Control board consent to legalise the transaction.

In the end, I am not satisfied that the Motion meets the requirements for a grant of an order of injunction. The case before this court is not one of those clear cases to issue a mandatory order of injunction. Consequently, the Motion dated 9th May 2012 is ordered dismissed with costs to the Respondents.

Dated, Signed and delivered in open court this 21st day of February,2014.

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J.K.SERGON

JUDGE

In the presence of:

P. Muthoni for Plaintiff

Mr. Kiboi holding brief for Mr. Wahome for Defendant