



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL CASE NO. 8 OF 2013

JOEL NYANDIEKA.....PLAINTIFF

DANIEL MUINDE.....2ND PLAINTIFF

MARY WANGARI (Suing on their own behalf and that of all members of Ronda Landlords Association).....3RD PLAINTIFF

VERSUS

TOWN CLERK NAKURU MUNICIPALITY.....1ST DEFENDANT

NAKURU MUNICIPAL COUNCIL.....2ND DEFENDANT

RULING

Joel Nyandieka, Daniel Muinde and Mary Wangari have brought the notice of motion dated 11/12/2012 against the Town Clerk Municipality of Nakuru. They filed the suit on their own behalf and on behalf of members of Ronda Landlords Association. They seek the following orders:-

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3. That the 1st and 2nd defendants be restrained either by themselves, their agents, servants, and employees or otherwise howsoever from demanding, or collecting rates from the plaintiffs or charging any interest thereon or selling all those parcels of land within Nakuru Municipality Block 29 (Ronda) pending the hearing and final determination of this suit;

4. That this Honourable Court be pleased to order that all the money demanded as rates by the 1st and 2nd defendants from the plaintiffs be deposited by the plaintiffs in the Ronda Landlords Association’s account number [particulars withheld] Family Bank Nakuru Branch constituting a special fund for the administrative area covered by Ronda Landlords Association that shall enable the plaintiffs herein carry out the duties that the 2nd defendant has failed to provide and the defendants do recognize such payment to the Association as payment properly made for all purposes including the issue of rates clearance certificates.

The applicants identify themselves as residents of Ronda Estate within Nakuru County and are registered and or beneficial owners of parcels of land within Nakuru Municipality Block 29 (Ronda). The said land is said to be a freehold title that was subdivided into several parcels of land which are now owned by

Ronda Landlords Association. The applicants' complaint is that the respondents have issued them with demand notices for payment of rates yet the respondents do not offer any services such as garbage collection, maintenance of roads, provision of piped water, sewerage services amongst other services; that monies collected as rates are misappropriated or misapplied to the detriment of the applicants; that the respondents have threatened to sell the applicants' parcels of land by public auction unless the rates are paid in full and that they are likely to continue charging interest after 14/12/2012. The 3rd applicant deposed that they are willing to deposit the sums demanded in the Association's Bank account No. **[particulars withheld]**, Family Bank Nakuru Branch.

In opposing the application, a replying affidavit was sworn by Evans Luvasa, the interim County Secretary of Nakuru County Government, the legal successor of the 2nd respondent. It is the respondent's contention that the applicants lack the necessary *locus standi* to bring the application because it is a representative suit but the existence of the Association has not been demonstrated in that no certificate of registration or business or Constitution have been exhibited and there is no evidence that the applicants are the office bearers of the alleged group or association. Mr. Kiplangat, counsel for the respondents also argued that the respondent being a public body performing public duties, its actions should be challenged through Judicial Review proceedings. It was also counsel's submissions that the applicants have failed to demonstrate that they are entitled to the grant of an injunction order; that they have failed to demonstrate that they have a prima facie case in that there is no evidence of payment of rates; that the demand notices exhibited do not relate to any of the three applicants, and no loss will be suffered if an order of injunction is denied. Counsel further submitted that the respondent has been trying to provide basic services i.e. schools, clinics, markets, lights, rehabilitation of roads and storm water drainage as evidenced by the minutes of the 2nd respondent Ex.1a. It was deposed that provision of piped water and sewerage is in the ambit of Nakuru Water and Sewerage Company (NAWASCO) who are not a party to these proceedings.

I have now considered the affidavits filed herein and counsel's submissions. The three applicants purport to have filed this suit and notice of motion on behalf of all other members of Ronda Landlords Association. As correctly submitted by the respondents' counsel there is no evidence of the existence of the said association, no constitution, objects or even minutes of its meetings and resolution to file this suit/notice of motion. Further, there is no evidence that the three plaintiffs are officials of any association, secondly, this being a representative suit, the plaint should have been filed accompanied with an authority of the other members of the alleged association allowing the filing of the suit. When counsel appeared before the court under certificate of urgency, the court directed that a further affidavit be filed to accompany the authority from the members of the association. However, all that the applicants annexed to the further affidavit is a list with people's names, plot numbers and signatures. Some of the names are incomplete, some do not have identify card numbers while others do not bear signatures. This is just a list that was attached to the further affidavit of Mary Wangui and does not amount to an authority by the signatories. Those who signed it should have known exactly what they were attesting to. It should have stated that they were giving their authority to the three plaintiffs to file suit on their behalf.

Even if I have to assume that the three applicants are properly before this court on their own behalf, they have to meet the threshold required for the grant of an interlocutory injunction. They must demonstrate that they have a prima facie case with high chances of success. None of the three plaintiffs exhibited their title deeds to demonstrate that they own land in Ronda. The annexed titles belong to Alicen Jematia Cheleite, Lawrence Ngugi Mwangi and Elijah Kiplagat. They also exhibited demand notices for annual rates from Aron Marua, Lilian Moraa Mokora, Judith Mokora, Muiruri Kimani and Eloice Ayako Inzuberi. All of them had rates arrears. There is no evidence that any of the three applicants pays rates to the 2nd respondent. The applicants have failed the first test.

The second automatically fails because without showing that they are rate payers they cannot be able to show that they will suffer any substantial loss if the order of injunction is not granted. Further the minutes of the 2nd respondent dated 1/11/2010 and 19/11/2010 (E.L.K.) which the applicants have not denied, it is evident that the 2nd respondent was undertaking projects in Ronda i.e. clinic, market, street lighting, storm water drainage and schools. All were underway. The applicants cannot have been exactly truthful in denying provision of these facilities that should entitle them to be exempt from payment of rates.

Besides, the annexed demand notices show that there has been default in payment of rates and without payment of rates, the essential services cannot be provided by the 2nd respondent .

Lastly, where does the balance of probability tilt:

In my view, it tilts in favour of the respondents as the applicants have failed to demonstrate that they have standing in this matter, or that they are land owners in Ronda.

In the end, I find that apart from the application being incompetent, it does not meet the three conditions precedent to the grant of orders of injunction (see **Giella v Cassman Brown (1973)EA) 358**. The application is unmerited and it is hereby dismissed. Costs to abide the determination of the suit.

DATED and DELIVERED this 14th day of February, 2014.

R.P.V. WENDOH

JUDGE

PRESENT:

Mr. Kimathi for the plaintiffs/applicants

Mr. Kiplagat for the respondents

Kennedy – Court Assistant