



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL NO. 1258 OF 2013

MUUNGANO WA RIFTVALLEY PROVINCE
ON ENVIRONMENT AND NATURAL RESOURCES
& DISTRIBUTION ORGANIZATION (MURENRDO)1ST PLAINTIFF
MUUNGANO WAKAJIADO COUNTY2ND PLAINTIFF
VERSUS
COUNTY COUNCIL OF OLEKEJUADO.....1ST DEFENDANT
JOHN OBEL T/A GEOMARK.....2ND DEFENDANT
JOHN WANYOIKE GITHINJI..... 3RD DEFENDANT
OKOTH ANGIRA 4TH DEFENDANT

RULING

The 1st and 2nd plaintiffs are in the plaint dated 18th October 2013 and filed on the same date described as Societies registered under the Societies Act Cap 108 of the Laws of Kenya. The suit by the plaintiffs is filed by one Pastor **Thomas Kionjore Macharia** pursuant to a purported authority to plead dated 18th October 2013 filed in court on the same date. A certificate of Registration NO. 24997 issued by the Assistant Registrar of Societies on 21st June 2005 affirms **Muungano wa Rift Valley province on Environment and Natural Resources Distribution organization** is duly registered under the Societies Act Cap 108 of the Laws of Kenya.

The plaint by the plaintiffs seeks firstly a permanent order of injunction restraining the Defendants from resurveying, replanning, redrawing of another part Development plan, wasting alienating, possessing building developing and/or in any manner whatsoever from dealing with the plots of the members of the plaintiffs or any portions thereof known as **Ngong/Ngong 822, 1750, 1754 and 13575 Ongata Rongai**. Secondly the plaint seeks a mandatory injunction compelling the clerk to the council, the 1st and 4th

Defendants to approve forthwith the part Development plan prepared by **Chris N. Omare** a Registered Physical Planner on the 30/11/2011 and subsequently title deeds processed and issued to the members of the plaintiffs.

The plaintiffs have by Notice of Motion dated 18th October 2013 sought an order of injunction restraining the Defendants from resurveying, replanning, redrawing of another part Development plan alienating, possessing, building developing, cultivating and/or in any other manner whatsoever from dealing with the plaintiffs plots NOS. **Ngong/Ngong/822, 1750, 1754 and 13575- Ongata Rongai**. The plaintiffs claim the above parcels of land were allocated to them following an order by the former **President Daniel Arap Moi** in the year 1997. The plaintiffs claim the plots were subdivided and allocated to the members of the plaintiff and the members currently occupy the subdivided plots. The plaintiffs complaint is that the 1st and 4th Defendants have commissioned a resurvey and replanning of the plots without involving the members who are the stakeholders and see this as an attempt to deny and/or deprive the members of the use of their plots.

The 2nd and 3rd Defendants oppose the plaintiffs application and **John Wanyoike Githinji**, the 3rd Defendant has sworn a replying affidavit in opposition thereto. The 2nd and 3rd Defendants aver that the resurvey work that the 1st and 4th Defendants have commissioned for purposes of establishing the beacons of the members individual plots is for purposes of processing title deeds. The 2nd and 3rd Defendants aver that the plaintiffs members including their officials and the provincial Administration have been involved in the process survey and refer to a letter dated 17/6/2013 by the county Government Kajiado to the surveyors marked "**JWG2**" and copies of minutes of meetings of 25/6/2013 and 26/7/2013 marked "**JWG3 a & b**" to illustrate there was participation by members of the plaintiffs.

The 2nd and 3rd Defendants further contend that the said Pastor **Thomas Kionjore Macharia** has no authority of the plaintiffs to bring this suit and that the suit is incompetent for want of authority. The 2nd and 3rd Defendants further contend the suit is vexatious and frivolous and is brought with malice and is thus an abuse of the process of the court.

The plaintiff and the Defendants filed written submissions. The plaintiffs filed their submissions on 12/2/2014 where they reiterate the facts as outlined in the affidavits. The plaintiffs submit the Defendants act of interference through a resurvey is likely to result in double allocations and influx of strangers into the suit land and could result in members losing land by reason of double allocations, insecurity due to dispossession and irregular allocation of land to strangers through fraud.

The 2nd and 3rd Defendants filed their submissions on 17/4/2014 and aver that the plaintiffs have not demonstrated a prima facie case with any probability of success to warrant the grant of a temporary injunction. They submit that the applicant has no legal authority to file this suit. The Defendants argue that Pastor **Thomas Kionjore** was not validly granted any authority by the plaintiffs to bring this suit. The Defendants point to the fact that the purported authority dated 18th October 2013 by the 1st Plaintiff was infact signed by Pastor **Thomas Kionjore** himself whereof nobody has signed on the part of the 2nd plaintiff giving him the authority.

The Authority to plead dated 18/10/2013 through which **Pastor Thomas Kionjore Macharia** claims to derive authority to bring this suit is worded thus:-

Authority to plead

We **Muungano Wa Rift Valley Province on Environment and Natural Resources and Distribution Organisation** and **Muungano Wa Kajiado** County have today authorized Pastor **Thomas Kionjore Macharia** and **Geoffrey Macharia Gicheru** to plead on their behalf in this suit.

Dated at Nairobi this 18th October 2013.

1st Plaintiff in the presence of }Advocate

2nd Plaintiff in the presence of }.....Advocate

Against the 1st Plaintiff the signature that appears is similar to the signatures signed by Pastor **Thomas Kionjore Macharia** in the various documents including the affidavits, plaint and witness statements and/ I have no hesitation in finding that he is the same person who has signed for the 1st plaintiff. There is no signature against the 2nd plaintiff. In the premises it is my view that Pastor **Thomas Kionjore Macharia** could not properly authorize himself to represent and act for the plaintiffs. It is the plaintiffs themselves who could donate the authority to him and not him to give himself.

It is a cardinal rule of practice that registered Societies can only sue and/or defend suits through their officials. In the present matter the plaintiffs must have registered officials as required under the provisions of the Societies Act Cap 108 of the Laws of Kenya. The instant suit could only be brought under the names of the registered officials of the Society. If the said officials wished to act or be represented in the suit by an agent they ought to have appointed an agent under the provisions of order 9 Rule 1 of the Civil Procedure Rules which provides as follows:-

Order 9 Rule 1.

“Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf”.

Order 9 Rule 2 provides who recognized agents are and include persons holding powers of attorney, persons carrying on trade or business for and in the names of parties not resident within the jurisdiction of the court and in respect of a corporation, an officer of the corporation duly authorized under the corporate seal.

Under Order 2 Rule 16

“Every pleading shall be signed by an advocate or recognized agent (as defined by order 9, rule 2) or by the party if he sues or defends in person”.

In the present suit the said **Pastor Thomas Kionjore Macharia** signed the plaint and the instant application and in my view he was not and cannot be a recognized agent as defined under order 9 Rule 2 and thus the pleadings signed by him lack competency and are unsustainable. Indeed it is not disclosed who the current officials of the plaintiffs are and/or whether they are aware of this suit and have sanctioned the institution of the suit. The said pastor **Thomas Kionjore Macharia** has usurped the role and functions of the elected officials of the plaintiffs and he lacks the locus and capacity to act and represent the plaintiffs. The pleadings drawn and filed by him are incompetent and are for striking out.

In the premises it is my finding and holding that the Notice of Motion and suit as brought are an abuse of the process of the court. The suit is incompetent and I accordingly order both the Notice of Motion and the suit struck out for being an abuse of the court process. I order that the costs of the struck out application and the suit be paid by the said **Pastor Kionjore Macharia** personally and not the plaintiffs whom I have held had not authorized him to bring the suit.

Orders accordingly.

Ruling dated, signed and delivered this...25thday of ...September.....2014.

J. M. MUTUNGI

JUDGE

In presence of:

.....For the Plaintiffs

.....For the Defendants