



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENTAL & LAND DIVISION
ELC CIVIL SUIT NO. 614 OF 2012

DAVID NGATI.....1ST PLAINTIFF
YUDA JOSEPH.....2ND PLAINTIFF
BONIFACE MATHEKA.....3RD PLAINTIFF
JAMES M. NDETO.....4TH PLAINTIFF

-VERSUS-

EMBAKASI VILLAGE CRAFT

JUA KALI ASSOCIATION.....1ST DEFENDANT
NAIROBI CURIOS JUA KALI ASSOCIATION....2ND DEFENDANT
JOHN M. MUTIE.....3RD DEFENDANT
JOSEPH OBONYO.....4TH DEFENDANT
JULIUS MUANGE.....5TH DEFENDANT
ANDREW MBITHI.....6TH DEFENDANT
BONIFACE OMBUI.....7TH DEFENDANT
JEMIMAH KIOKO.....8TH DEFENDANT
JOYCE MUSILA.....9TH DEFENDANT
KYALE SIMBA.....10TH DEFENDANT
JUNES MUNANIE.....11TH DEFENDANT

RULING

The plaintiff by a Notice of Motion dated 17th September, 2012 inter alia seeks the following orders from the court:-

1. That a temporary injunction be issued restraining the Defendant/Respondent from selling and/or transferring the land L.R. No. 21695 and/or part of it pending hearing and determination of this application.
2. That there be temporary injunction freezing the society's account number 1135581347 held at KCB Ltd Moi Avenue Branch and any other Bank accounts operated by the society y pending hearing and determination of this suit.
3. That there be an order compelling the Defendants to produce the membership register.
4. That there be temporary injunction restraining the defendant from any meeting or elections meetings until this suit is determined.

The said application is grounded on inter alia the following grounds set out on the face of the application:-

- i. The Defendants have not disclosed to the plaintiff how the contribution of 32 Million contributed by the members of the society was spent.
- ii. The defendants have intention to sell off part of the land L.R. No. 21695 without the authority of 2/3 members of the society.
- iii. The defendants have called for meetings and election selectively.
- iv. The defendants are misusing the society's funds at expense of the other members.
- v. The defendant's acts are unjustified and aimed at depriving the plaintiffs.
- vi. The defendants have failed in their mandate as trustees for the society

The plaintiff's application is further supported on the grounds contained in the affidavit and further affidavit sworn by David Ngati on behalf of the plaintiffs. The plaintiff filed their written submissions dated 17th June, 2013 in support of their position in regard to the application. On their part the Defendants oppose the application by the plaintiff and the 6th Defendant who is also the secretary of the 1st and 2nd defendants has filed an affidavit in reply sworn on 27th September, 2013 and a further replying affidavit to the plaintiff's further affidavit sworn on 30th May, 2013. The defendants also filed their written submissions dated 17th July, 2013 in support of their position.

The court has reviewed the pleadings filed by the parties and on the part of the plaintiff the court is not satisfied that the plaintiffs have established how their interests in the 1st and 2nd Defendants have been infringed and/or affected. The plaintiffs have alluded to contributions that members made to purchase L.R. No. 21695 but there is no indication when this was done and if indeed the plaintiffs for their part made any contributions. Indeed there is no clear evidence that the alleged L.R. No. 21695 is owned by the 1st and 2nd defendants as alleged by the plaintiffs. The defendants in their reply to the plaintiff's application have denied that the 1st and 2nd defendants were the registered owners of the suit property and in the absence of a current search the court is not in a position to verify the rival averments.

What is clear from the plaintiffs averments and the response from the defendants is that there is a management rivalry pitting the plaintiffs on one part and the 3rd to 12th defendants on the other part. The court in the present suit would not be properly suited to conduct an investigation into whether the 1st and 2nd defendant are being run and managed in accordance with their respective constitutions and that probably would be best suited for the registrar general to do.

As I understand the plaintiff's application and suit the plaintiff's complaint is that the defendants are engaged in the process of sale of a part of L.R. No. 21695 without appropriate consultation and/or

resolution by members. For their part the defendants' position is that the affairs of the 1st and 2nd defendant have been run in accordance with their respective constitutions and various minutes of meetings and resolutions are annexed to support the averments.

The registrar of societies has confirmed the defendants to be valid officials of the 1st and 2nd defendants and therefore the Defendants have the mandate to run the affairs of the two associations until they cease to be the officers of the associations. The respective constitutions of the associations give them that mandate and in case the plaintiffs are dissatisfied in the manner their society is being run then their recourse would be to have the said officers replaced when the time comes to elect new office bearers and/or they can have recourse to the constitution to force them out of office. The office of the registrar of societies undoubtedly can investigate the affairs of the 2 associations if petitioned to do so.

In the circumstances of this case I am not persuaded that the plaintiffs have demonstrated they have a prima facie case with a probability of success to warrant the court to grant an order of injunction as sought by the plaintiffs. Indeed the suit is but a manifestation of management rivalry between two opposition camps and the court will not jump into the fray. I hold and find that the plaintiff's application has no merit and I dismiss the same with costs to the Defendants. The interim order of injunction granted in favour of the plaintiffs at the ex parte stage is hereby ordered vacated.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF SEPTEMBER 2013.

J. M. MUTUNGI

JUDGE

In the presence of:

..... for the Plaintiff

..... for the Defendants