



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CIVIL SUIT 91 OF 2008

SAMSON MBITHA MWAMBIRE.....PLAINTIFF

-VERSUS-

JOHN KAMAU KAMUNYA

ALFRED NICHOLAS MWACHUGHA

JOSEPH KITSAO KISOMA (CHAIRMAN)

SAID OKUMU (SECRETARY)

MORRIS WANJE (TREASURER)

MAISHA MAPYA SELF HELP GROUP.....DEFENDANTS

RULING

1. In arguing the application filed on 12th November, 2008, counsel for the respective parties chose to rely on affidavits filed, Mr. Mouko for the 2nd to 5th defendants making brief highlights. The application sought one main prayer, namely, an injunction to restrain the Defendants from, inter alia, encroaching or trespassing upon the plaintiffs' alleged land portion no. 1071/50 (formerly 1734/67) Malindi pending the hearing and determination of the suit. Through his affidavit the applicant claims to be the rightful owner of the suit property having purchased the same in the 1990s from the 6th defendants, Maisha Mapya Self-Help Group. The same was however allegedly conveyed to the 2nd defendant through collusion with the 3rd, 4th, 5th defendants, (office bearers of the 6th defendant) and later to the 1st defendant. The applicant terms the conveyances illegal, irregular, wrongful, null and void.
2. I do not see on record any replying affidavit by the 2nd to 6th defendants although there is a defence on record. The 1st defendant's replying affidavit asserts the 1st defendant's title, to the suit property which he allegedly purchased from the registered owner, the 2nd defendant in 2006.
3. That the Applicant purported to sell the suit property to several parties including Pius Njoroge Kihara,

and Frederick J. N. Kitti both who have filed separate suits regarding the said property in the Lower Court, being CC No. 288 of 2008 and CC 205 of 2008.

4. Clearly, the subject matter in this case and the suits in the Lower Court is the same. Four of the defendants in the present suit are also defendants in the suits pending in the Lower Court. The current plaintiff is the 2nd plaintiff in SPMCC 265/2008 and the 5th defendant in SPMCC No. 288 of 2008. In light of this, the apparent value of the suit property and for purposes of furthering the overriding objective in Section 1A, B of the Civil Procedure Act, I direct that this suit be transferred to the Lower Court for consolidation with SPMCCC No. 205 and 208 of 2008 for hearing and determination of the present application afresh as well as the disposal of the main suit. This will forestall the likelihood of courts giving conflicting orders over the same subject matter as well as enhance efficient use of the judicial resources.

5. Let the three suits be listed for mention before the Lower Court as soon as possible, for necessary directions.

Delivered and signed this **28th** day of **May, 2012**

C. W. MEOLI

JUDGE