



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Civil Case 74 of 2009**

**JOSHUA NZIVE MULWA.....1<sup>ST</sup> PLAINTIFF**

**JULIUS MUTINDA KANYOTU.....2<sup>ND</sup> PLAINTIFF**

**CHARLES MATHEKA (Suing as Chairman, Secretary and Treasury  
of Kasuitu Plot Owners Self Help Group.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**JOSEPHAT NZIOKA WAMBUA.....1<sup>ST</sup> DEFENDANT**

**FRANCIS KIKUVI NZIOKA.....2<sup>ND</sup> DEFENDANT**

**AGNES MUTINDI NGANDI.....3<sup>RD</sup> DEFENDANT**

**RULING**

The plaintiffs sued the defendants vide the plaint dated 23<sup>rd</sup> March, 2009 and filed in court on the same date. Contemporaneously with the filing of the suit, the plaintiffs took out an application, the subject of this ruling. The application sought interlocutory injunction to restrain the defendants from dealing in land parcels Numbers Mavoko Town Block 3/533-5331 respectively until the suit is heard and determined. They also sought mandatory injunction to compel the defendants to hand over to them the original title deed and or documents in respect of the aforesaid parcels of land as well as all receipt books, rubber stamps record books and original certificate of registration of Kasuitu Self Help Group.

The said application was based on the supporting affidavit of **Julius Mutinda Kanyotu** sworn on 23<sup>rd</sup> March, 2009, and a supplementary affidavit sworn by the same person on 26<sup>th</sup> July, 2010. The said two (2) affidavits are quite detailed and documents annexed thereto are quite clear.

Essentially the plaintiffs claim to be office bearers of Kasuitu Plot Owners Self Help Group having been elected on or about 13<sup>th</sup> December, 2008, whereas the defendants were former officer bearers. The Self Help Group is the registered proprietor of the suit premises. Since being voted out, the defendants had refused to hand over documents belonging to the group to the current office. Instead they had been soliciting for and collecting money from members of public using the documents and promising to allocate to them portions of the suit premises aforesaid

On their part, the defendants filed a statement of defence dated 15th April, 2009. They further filed a replying affidavit, sworn by **Josephate Nzioka Wambua**, on 20<sup>th</sup> April, 2009.

The plaintiffs no doubt are the current *bonafide* elected officials of Kasuitu Plot Owners Self Help Group, whereas the defendants are past officials of the said Self Help Group. It is also common ground that the suit premises are registered in the names of the defendants as trustee of Kasuitu Plot Owners Self Help Group. In prayer No. 2 the plaintiffs are asking the court to issue an order of injunction restraining the defendants from selling, transferring or charging the suit premises. An annexure to the supplementary affidavit of **Julius Mutinda Kanyotu** sworn on 26<sup>th</sup> July, 2010 clearly confirms that the defendants have actually entered into sale agreements with third parties for the sale of the suit properties.

The response by the defendants is that the elections in which the plaintiffs claim to have been elected as officials were conducted in breach of the constitution of the group and therefore they are not *bonafide* officials and therefore have no right to seek the orders. On that basis the plaintiff had not established a *prima facie* case with probability of success. My response is that whether or not the plaintiffs were elected in flawed elections is not for me to determine. That is for another forum on another day. As long as no steps have been taken to have the alleged flawed elections reversed the plaintiffs remain valid office bearers.

Further, the plaintiffs have demonstrated that the defendants are no longer officials of the aforesaid Self Help Group, having been voted out as such officials on or about 13<sup>th</sup> December, 2008. The defendants therefore have no basis retaining the groups documents. They should be compelled to hand over to the plaintiffs the original title deeds/documents on the suit properties, as well as all receipt books, rubber stamps, record books, original registration certificates of the aforesaid Self Help Group, and any other property of Kasuitu Self Help Group as prayed in the application before the court.

In the premises I am satisfied that the plaintiffs have established a *prima facie* case with a probability of success on trial. They have also demonstrated that they and the Help Group membership stand to suffer irreparably if orders sought are not granted as the defendants/respondents will go ahead and transfer the suit properties to third parties

On the other hand, the defendants have not shown that they will suffer any form of prejudice if orders sought are granted.

Accordingly the application is allowed as prayed in terms of prayers 2 and 3. Costs shall be in the cause. The injunction is however issued on condition that the plaintiffs shall each execute an undertaking as to damages in the sum of Kshs. 700,000/= each within the next seven (7) days from the date of this ruling.

**DATED** at MACHAKOS this 22<sup>ND</sup> day of NOVEMBER, 2012.

**ASIKE-MAKHANDIA**  
**JUDGE**

**DATED, SIGNED** and **DELIVERED** at MACHAKOS this 30<sup>TH</sup> day of NOVEMBER, 2012.

**GEORGE DULU**  
**JUDGE**