



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC SUIT NO. 500 OF 2010

PAUL MAINA NGUGI & 31 OTHERS PLAINTIFF

VERSUS

HANNAH GATHONI GICHIR1ST DEFENDANT
NJOROGE HERMAN 2ND DEFENDANT
GIDEON NDINGURI HERMAN 3RD DEFENDANT
BORO HERMAN 4TH DEFENDANT

RULING

The plaintiffs brought this suit against the defendants in respect of a parcel of land known as LR No. 7340/59 which they alleged was bought through their agents Mwitikiria investment group after which they subdivided the same and plots allocated. Subsequently, they were informed by the defendants to vacate the land because it did not belong to them. In this suit therefore, they claim orders that the defendants do register the suit property in the plaintiffs' names and that the defendants their agents, servants or employees and or proxies be restrained from evicting, threatening to evict or in any way interfere with plaintiffs quiet possession of the suit property and a declaration that it belongs to them.

Alongside the plaint, they filed an application for injunction orders in line with the orders in the plaint. The following grounds are set out on the face of the application;

- a) The plaintiffs contend that they are the lawful, beneficial and bona fide true owners of the suit property having purchased the same for valuable consideration through its agents Mwitikiria Investments from the late Ndunguri Karugia in 1993.
- b) That consequently plot certificates were issued in the plaintiffs names.
- c) The plaintiffs risk eviction by the defendants unless their rights are protected by the this court.
- d) That unless the application is heard forthwith and orders sought herein granted the plaintiffs shall suffer irreparable loss and damage.

The application is supported by an affidavit sworn by Paul Maina Ngugi named as the 1st plaintiff in this suit. It is opposed, and there is a replying affidavit sworn by Hannah Gathoni Gichuri who is the 1st defendant in these proceedings. Both learned counsel have also filed written submissions to address the application.

The agreement of sale relied upon by the plaintiffs bears the year 1993 but the day and month is not indicated. It is signed by Herman Gichuri Ndinguri described as the vendor and Mwitikiria Investment Company described as the purchaser. Nowhere in the said agreement is it stated that the purchaser was the agent of the plaintiffs herein and therefore, it is logical that there is no privity of contract between the vendor and the plaintiffs herein.

The said purchaser is also not a party to these proceedings. There is no evidence that the vendor Herman Gichuri Ndinguri had the legal capacity to sell the property which clearly belonged to Ndinguri Karugia, indicated as deceased in the said sale agreement. Indeed, he could not have had that capacity because there is now on record a Grant of Letters Of Administration dated 27th March, 2006 indicating that Hannah Gathoni Gichuri is the personal representative of the estate of the late Ndinguri Karugia.

Upon confirmation of the grant the certificate of which is dated 17th August, 2006 the entire suit property was vested in this administrator, that is, Hannah Gathoni Gichuri and therefore it follows that in 1993 when the sale agreement was purportedly executed, no one had the capacity to transfer the said parcel of land.

There is also the other issue of Land control board consent. None has been annexed and that alone makes this transaction void *ab initio*.

For the plaintiffs to succeed in obtaining the orders sought they must show that they have a prima facie case with a probability of success and that if the order is not granted they shall suffer irreparable loss that may not be adequately compensated by an award of damages. If the court is in doubt it shall decide the matter on a balance of convenience. My assessment, of the pleadings the application and the documents on record is that the applicants have not met those conditions.

The other issue is whether or not the plaintiffs/applicants can bring this suit as they have, considering that the cause of action, if any, arose in 1993. Whatever the case having found that they were not party to the agreement, and that the purported vendor had no legal capacity to transfer the suit property and there having been no Land Control Board Consent the application must fail.

Accordingly the same is hereby dismissed with costs to the defendants.

Dated, signed and delivered at Nairobi this 7th day of March, 2011.

**A. MBOGHOLI MSAGHA
JUDGE**