



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL CASE NO. 21 OF 2008**

**PAUL NGOBIA NJOROGE, JAMES MAINA WERU  
& FRANCIS GITONGA KIMERIA On behalf of 88 others  
Tenants at Nanyuki Housing Scheme.....PLAINTIFF/APPLICANTS**

**VERSUS  
KENYA NATIONAL ASSURANCE  
CO. (2001) LTD.....DEFENDANT/RESPONDENT**

**RULING**

The subject matter of this ruling is the Motion dated 7<sup>th</sup> October 2011 in which the tenants occupying Houses Nos. 3, 4, 7, 10, 13,17, 20, 24, 36, 45, 51, 54, 73, 76, 78 and 86 standing on **L.R. NO. NANYUKI MUNICIPALITY BLOCK 8/898** sought for the following orders:

- 1. That this honourable court be pleased to order that the current application is extremely urgent and that the same may be heard exparte in the 1<sup>st</sup> instance.***
- 2. That this honourable court be pleased to vary and/or set aside its orders made on the 23<sup>rd</sup> September, 2011 dismissing the application dated the 10<sup>th</sup> March, 2011.***
- 3. That in the alternative, the honourable court be pleased to order that the status-quo be maintained in Houses No. 3,4,7,10,13,17,20,24,36,39,45,51,54,73,76,78, and 86 until this application and/or matter is heard and determined and/or until further orders of the court.***
- 4. That the costs of this application be provided for.***

The Motion is supported by the affidavit of John Mugambi. The Defendant filed grounds of opposition and the replying affidavit of Tabitha Mwaniki to oppose the Motion.

I have considered the grounds set out on the face of the Motion plus the facts deponed in the affidavits filed for an against the application. I have also considered the grounds of opposition and the oral rival submissions of learned counsels. The filing of the Motion was provoked by this Court's ruling delivered on 23<sup>rd</sup> September 2011. The aforesaid ruling was the outcome of the Motion dated 10<sup>th</sup> March 2011 in which the Applicants had applied for an injunction to restrain the Defendant from evicting them from their demised premises and from selling those premises until a comprehensive valuation of the house was done. The Motion was heard and dismissed. Some of the Applicants are now before this court through the current Motion seeking for the dismissal order to be reviewed, varied and set aside. They claim that there are new and sufficient reasons which ought to have been brought to the attention of the

Court. The Applicants further aver that the Respondent is guilty of anticipatory breach of contract. The Applicants have accused the respondent of failing to issue receipts to the Applicants despite having received 10% of the purchase price in compliance with the letters of offer. The applicants aver that they are ready and willing to pay the purchase price in accordance with the terms of the letters of offer.

The Defendant has urged this Court to find the Motion to be incompetent. It is the Defendant's submission that the applicant has no authority to represent other parties in this suit without first obtaining leave of Court under *Order 1 rule 8 (1)* of the Civil Procedure rules. Secondly, it is also argued that there are no new matters which merit the dismissal order of 23<sup>rd</sup> September 2011 to be set aside. The Defendant further urged this Court to find that there is nothing to review in the circumstances of this case.

Let me start with the question as to whether or not the Motion in question is competently before this Court! According to the Respondent, the Applicant herein had no authority to file the Motion before this Court. It is not in dispute that the tenants occupying the houses standing on **L.R. NO. NANYUKI MUNICIPALITY BLOCK 8/898** authorised Paul Ngobia, Maina Weru and Francis Gitonga to file this suit. The Motion herein was filed and supported by the affidavit of John Mugambi on behalf of Nineteen (19) others listed tenants. It goes without saying that there is no evidence that he was initially authorized to file this suit. There is also no evidence that he was subsequently authorized to file the Motion behind the back of the duly authorized Plaintiffs under *Order 1 rule 8 (1)* of the Civil Procedure Rules. If the 19 Applicants wanted to be properly on record, the law under *Order 1 rule 8 (3)* required them to apply to be made a party to the suit. That was not done. It is therefore obvious that the Motion is incompetently before this Court hence the same must be struck out.

Even assuming that the Motion is properly before this Court, I do not think there is any merit in the Motion. This Court has been beseeched to review, vary and or set aside its ruling of 23<sup>rd</sup> September 2011. A critical look at the averments in the supporting affidavit shows that there is no new matter which was not within the knowledge of the Applicants at the time of making the Motion gave rise to the ruling of 23<sup>rd</sup> September 2011. It is said that there is evidence that the Applicants have paid the Respondent 10% of the purchase price to accept the offer. It is not in dispute that the aforesaid deposit was made either on 28<sup>th</sup> September 2011 or a few days thereafter. It would appear the deposit was made after the court delivered its ruling of 23<sup>rd</sup> September 2011. In my humble view, the Motion does not meet the requirements of an application for review. The Motion is therefore unmeritorious. In the end the application is ordered dismissed with costs to the Respondent.

***Dated and delivered at Nyeri this 17<sup>th</sup> day of October 2011.***

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Ng'ang'a for the Plaintiffs and Mr. Mahinda for the Defendant.