



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

**Civil Case 79 of 2004**

**AMON KINYUA & 18 OTHERS ..... PLAINTIFFS**

*Versus*

**NDATHI MUGUNDA COMPANY LIMITED .....DEFENDANT**

**RULING**

The application before court is brought by the Defendant Company. It is by way of Chamber Summons dated 13<sup>th</sup> July, 2007. By that application the Defendant sought from the court for an order of status quo to be maintained in respect of twenty one disputed plots, the subject of this suit. Further the Defendant sought restraining order against the first and eleventh Plaintiffs. To stop them interfering with the administration of the Defendant Company. In the affidavit in support which was sworn by a director of the Defendant Company the deponent stated that this action was brought by 19 Plaintiffs whom between them claimed ownership of over 21 plots which plots are a subdivision of the Defendant's land namely title IR 5933/1 comprising or L.R. No. 7387/28, 7387/29, 7387/30. He further deponed that the Company had denied that the plaintiffs were its members or that they either jointly or individually owned the plots they claimed. That it was the first and the eleventh plaintiffs who had promoted irregularities which were as consequence the other plaintiffs were claiming the land. That an order of interlocutory injunction had been issued by this court against the Defendant restraining the Defendant from issuing title deeds to its legitimate members. This order had brought to a halt the Defendant operations. That on 20<sup>th</sup> June 2007 the ninth Plaintiff hastily began to construct a structure on plot No. 45 which she claims she owns. In this regard the deponent stated that the first and the Eleventh Plaintiff were instrumental in the activities that were going on. That they had been approving sales of the plots even as this suit is still subsisting. The Defendant had been restrained from taking any other action by the interlocutory injunction. The deponent then finally stated that if the orders sought are not granted to stop the first nine and eleventh plaintiffs the suit property would be altered greatly to the detriment of the defendants.

In response to that application the Plaintiffs filed grounds of opposition. Those grounds irregularly raised facts and the same are for that reason rejected. One of those grounds was that the ninth Plaintiff had filed a notice of withdrawal of this case. In the absence of an affidavit the court is unable to entertain that ground.

It is clear that there is need of the orders that are sought by the defendant to be granted. Although the Plaintiff's argued that without knowing the status quo the court could not order it to be maintained, I beg to differ. Here we are talking about property. Whatever is the status on the ground is what the court will grant. The Defendant has also sufficiently met the principles of granting an injunction in respect of its prayers for restraining orders against the first and Eleventh Plaintiff. They have shown a prima facie case with a probability of success. The Defendant has also shown that if orders are not granted they would suffer irreparable loss. This is because the Plaintiffs have not denied the depositions in the affidavit that they are carrying out the administration of the Defendant Company. Left without any restraining orders such action would lead to irreparable loss. I have noted that this case was part heard before the Honourable Lady Justice Okwengu. In view of the matter raised by the Defendant I am of the view that the interest of justice demand that this case be heard as soon as is possible. At the reading of this ruling the court will give the necessary directions in that regard. Accordingly the orders of the court are as

follows:-

- 1. That status quo be maintained on the disputed 21 plots, the subject of this suit (to wit plot Numbers 39, 40, 45, 46, 49, 71, 76, 89, 104, 107, 147, 155, 196, 215, 235, 241, 321, 377, 432, 446 and 497), which are excisions from the land registered as title IR 5933/1 comprising of L.R. No. 7387/28, 7387/29 and 7387/30 by all the plaintiffs, their agents, servants and/or other persons acting on their behalf pending the hearing and determination of this suit.**
- 2. The court grants an order of injunction restraining the first and eleventh plaintiffs from further interfering with the administration of the Defendant/Applicant Company's affairs and more specifically from further purporting to be Directors/Officials of the Defendant Company.**
- 3. That this order be served through and its compliance be overseen by the Officer Commanding Station - Kiganjo Police Station.**
- 4. That the first, ninth and eleventh plaintiffs/Respondents be ordered to pay the costs of the application.**

**DATED AND DELIVERED THIS 19<sup>TH</sup> DAY OF MARCH 2008.**

**MARY KASANGO**

**JUDGE**