



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

**CIVIL CASE NO.1335 OF 2003**

**EDWARD K. KIMUHU }**

**GEORGE MURUA MUINANIA }**

**PETER NDONYE N GUGI }**

**JOHN GATHUNGA }**

**JANE NDUTA MUIRIUKI }**

**MONICA WANGECI }**

**LYDIA WANJIRA KANGETHE }**

**EDITH GATHONI KARIUKI }**

**JOHN NGUNJIRI WAIGWA }**

**ISAKA KIMANIE }.....PLAINTIFFS**

**JOHN KIMONJI KINYENJE }**

**MERCY MUTHONI }**

**MARY WAIRIMU KAMIRI }**

**DOUGLAS GITHIAKA MBUGUA}**

**MERCY NYAMBURA KARANJA}**

**GRACE WAMBUI MBURU }**

**LABAN GICHAANA NJOROGE }**

**STEPHEN NDUNG'U NGURE }**

**VERSUS**

**WERU WAMUTHURWA**

**INVESTMENT CO. LTD.....1ST DEFENDANT**

**THIKA RIVERS ESTATE LTD.....2ND DEFENDANT**

**P. MBURU NGUGI, NG'ANG'A NYOIKE HOSEA**

**M. MWIKA T/A KARAGITA SELF HELP MIXED GROUP.....  
.....3RD DEFENDANT**

**CHIEF LAND REGISTRAR.....4TH DEFENDANT**

**RULING**

By an Agreement in writing dated 27th April 1993 the 2nd Defendant agreed to sell and the 1st Defendant agreed to buy the 2nd Defendant's parcel of land known as LR NO. 3961/29 situate in Nakuru District. Upon payment of the sum of Shs.600,000/= by the 1st Defendant, the 2nd Defendant allowed the 1st Defendant possession. The 1st Defendant subdivided the suit land into various parcels which he purportedly sold to the plaintiffs individually. The plaintiffs allege that on various dates within the years 1993 and 2002 the 2nd, 3rd and 4th Defendants colluded to and combined the suit parcel of land with land Reference No. 396/30 Nakuru District and proceeded to illegally approve the subdivision of the two parcels of land in favour of the 3rd Defendant and thereby denied the plaintiffs of their interest in LR NO. 396/29. By their illegal and fraudulent acts the said Defendants have since reparcelled the said parcels of land and renamed them NAIVASHA/MWICHIRINGIRI/BLOCK 6/1-10

The plaintiffs brought this suit seeking the following orders:

- a) A declaration that the combination of LR NO.396/29 and 396/30 into NAIVASHA/MWICHIRINGIRI/6/1-300 and approval for subdivision thereof is illegal.
- b) Rectification of the register in respect of LR NO.396/29 by canceling of any titles issued therefrom.
- c) An injunction restraining the Defendants or any of them from further denying the plaintiff's occupation and possession of the suit parcel of land and from any further dealing in respect of subdivisions, issuance of titles or all over L.R NO. 396/29. NAIVASHA/MWICHIRINGIRI/BLOCK 6/1-300 or any part thereof.

The 3rd defendant KARAGITA MIXED SELF HELP GROUP is a self help organization registered with the Ministry of Culture and Social Services and the 3 persons named in the plaint P. Mburu Ngugi, Ng'ang'a Nyoike and Hosea Mwika are its office bearers namely Chairman, Secretary and Treasurer respectively.

The 3rd Defendant brought this application by way of Chamber Summons seeking orders that the plaintiffs suit against them be struck out with costs on the ground that the suit discloses no reasonable cause of action against the 3rd Defendant and that the suit against the 3rd defendant is frivolous, vexatious and an abuse of the process of the court Mr. Ngala for the applicants submitted that plaintiffs suit against the 3rd defendant who is the office bear of Karagita Mixed Self Help Group cannot be maintained.

Mr. Mbugua counsel for the respondent submitted that the application is fatally defective and incompetent in that it is expressed to be brought under Order VI Rule 13 (a-d). An Application cannot be fatally defective simply because it quotes a wrong order or section under which it is brought.

This defect is curable by amendment. The second ground raised by Mr. Mbugua is that the issue of the 3rd defendant was raised in the Notice of Preliminary Objection filed by the applicants dated 13th January 2004 and was dealt with by Ransley J in his ruling dated 4th June 2004.

KARAGITA MIXED SELF HELP GROUP is registered with the Ministry of Culture and Social

Services. This does not give it a legal entity. A non-existent person cannot maintain an action. It can only sue or be sued through its appointed officials or office bearers. Since as I have stated above Karagita Mixed Self Help Group lacks legal entity, it can only sue or be sued through its office bearers who are in this case P. Mburu Ngugi, the Chairman, Nganga Nyoike – the Secretary and Hosea Mwika – the treasurer. The 3rd Defendants application therefore fails and the same is dismissed with costs.

Dated and delivered at Nairobi this 10th day of May 2005.

**J.L.A. OSIEMO**

**JUDGE**