

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Case 529 of 2004

SAVANA JUA KALI ASSOCIATION (Suing through its Chairperson)

ANNE KHASOA.....PLAINTIFF

VERSUS

COUNCILLOR AMOS NGATA.....1ST DEFENDANT

JOHN MAINA.....2ND DEFENDANT

JORDAN.....3RD DEFENDANT

RULING

The plaintiff filed this suit against the defendants seeking permanent order of injunction barring the defendant from entering the premises comprised in plots Nos. BLOCK 82/4265, 82/7836, 82/785, 82/7814, 82,7812, 82/786040, 82/6194, 82/1764, 82/1765, 82/1768 and 82/7856.

In paragraph 4 of the plaint the plaintiff claims that the members of Savana Jua Kali Association are the allottees and bonafide owners of the named above plots.

The defendant by way of a Chamber Summons dated 26th

October 2004 and filed in court the same day seeks orders that the plaint herein be struck out on the ground that it does not disclose reasonable cause of action. The application is expressed to be brought under Order VI Rule 13(1) of the Civil procedure Rules.

The application is supported by sworn affidavit by councilor Amos Ngata who has deponed that the plaintiff's association has no locus standi to institute the suit if it does not own any of the plots in dispute. That the suit is a gross abuse of the court process as none of the plots mentioned in the plaint belongs to the plaintiff or even its members. That the suit is bad in law as it does not seek any declaration of the plaintiff's rights and merely seeks an injunction against the defendants without establishing the basis thereof.

When the application came up for hearing there was no appearance for the respondent, counsel for the applicant applied for leave to proceed as the date was taken by consent and leave was granted. In his submissions he urged the court to strike out the plaintiff's suit on the ground that the plaint does not disclose reasonable cause of action. The plaintiff does not aver that it owns the plots the subject matter of this suit. It avers that the plots belong to its members and if that is so then the plaintiff has no locus standi to bring this suit. If land is owned by each individual member then those members should sue by themselves.

The plaintiff had annexed letters of the allotment to prove ownership but the allottees named therein are not among the plaintiffs. Counsel further submitted that if the plaintiff Association is registered it ought to bring the suit through its officials and if it is brought by Anne Khasoa in a representative capacity, then she ought to have obtained leave under Order 1 Rule 8 of the Civil Procedure Rules.

There is no evidence that the Association is registered. It is not known whether the Association has

power to sue or be sued. The whole suit is clearly misconceived and for that reason is incompetent.

For the above reason this suit is struck out. The plaintiffs will bear the costs of this application as well as the whole suit. It is so

ordered.

Delivered and dated Nairobi this 29th day of June 2005.

J.L.A. OSIEMO

JUDGE