



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Civil Case 170 of 2002

RICHARD THUKU MURIMI.....APPLICANT/PLAINTIFF

Versus

CYRUS KIMOTHO

MAINA WAMBUGU

RONARD NGATIA

AMOS NGURU

ROBERT GITHUI

JOSEPH NDUNG’U

CHARLES MUTERU

MATHENGE NDOGE

MARTIN KAMAU WARUI

MAINA MAHUTHU

MUCHIRI KARIUKI

T/A SWEET WATER UMOJA

SELF HALP GROUP.....RESPONDENTS/DEFENDANTS

RULING

In this Chamber Summons dated 30th October 2002, the Applicant/Plaintiff prays for orders:

“1. That the Defendants by themselves, their agents and/or servants be restrained by temporary injunction from transferring, allocating, changing, selling or in any way dealing with LR. NUMBERS NANYUKI/MARURA BLOCK 3(SWEET WATERS)3461 to 3509 until the full hearing and determination of this suit.”

The Applicant and Respondents were, at all material times, registered members of Sweet Waters Umoja Self Help Group, a Community Development Group registered by the Department of Social Services. The group members through various contributions and savings acquired pieces of land Number

NANYUKI/MARURA BLOCK 3/SWEET WATERS)1359 and Number GAKAWA/ KAHURURA/933. The purpose for the acquisition is in dispute. But it is not disputed that piece of land Number NANYUKI/MARURA BLOCK 3(SWEET WATERS) 1359 was after acquisition, subdivided into 49 plots. The purpose for that sub-division is also in dispute as the Applicant claims the purpose was to distribute to members while the Respondents say that the purpose was for selling to people generally, members and non members of the group, although sometime after the Applicant had resigned from the group, the group decided to allocate one plot to each member.

The other piece of land GAKAWA/KAHURURA/933 was to be sold.

Following misunderstanding, the Applicant, who was by then the group's Treasurer, resigned from the group but feels that instead of being refunded his contribution, he is entitled, as a contributor, to a distribution of four plots with one measuring 80 feet by 120 feet and the remaining three measuring 50 by 100 feet each from piece of land NANYUKI/MARURA BLOCK 3(SWEET WATERS)1359 and Ksh.17,000/= from the sale of other plots. Respondents do not agree as they insist that the Applicant is only entitled to refund of his contribution.

It would appear that the distribution and sale of the plots resultant from NANYUKI/MARURA BLOCK 3(SWEET WATERS)1359 is either complete or is at an advanced stage. These seem to be specified plots and each may be having an owner lawfully registered under the Registered Land Act the way Plot No. NANYUKI/MARURA BLOCK 3(SWEET WATERS)3464 is registered in the name of Robert Githui Kiboi and Plot No. NANYUKI/MARURA BLOCK 3(SWEET WATERS)3472 is registered in the name of Martin Kamau Warui. Parties to this suit decided to keep the rest of the relevant land registers away from this court. At first I thought the Respondents were going to be more open to the court than the Applicant. On the contrary, the Applicant has come out a little more open by filing copies of the two land registers I have referred to above, that is Plot No. 3464 and Plot No. 3472 – thereby forcing Counsel for the Respondents, Mr. Bwonwonga, to admit that indeed the two members, who are the Fifth Respondent and the Ninth Respondent, are so registered. Otherwise his position was as stated in the first sentence of paragraph 12 of the Respondent's replying affidavit that "the group members have never transferred to themselves the parcels of land as allegedly stated in" paragraph 6 of the Applicant's affidavit which says group members have transferred to themselves the plots.

With such lack of openness, the court has to be excused if it fails to administer justice as judges and magistrates are fellow ordinary human beings and cannot be expected to know what is hidden from them thereby denying them the opportunity to have all facts before them for use to enable them administer justice.

If adverse presumption has to be inferred from the failure to file in this court copies of relevant land registers for Plots 3461 to 3509 NANYUKI/MARURA BLOCK 3(SWEET WATERS), that presumption has to be against the Applicant/Plaintiff who is claiming four unspecified plots from an area registered under the Registered Land Act but wants an injunction to affect all the 49 plots.

There is no dispute that the Applicant resigned from Sweet Waters Umoja Group. There is no dispute that before he resigned he participated in doing certain things as a member of the group and that after he had resigned he could no longer so participate. I am not hearing the main suit and must restrain myself from declaring my stand on issues like the protection of the Applicant's equitable rights and whether he is entitled to distribution of the plots or refund of the money due to him. However, I have the feeling that the Applicant will not suffer irreparable loss if this application is not granted. I am not convinced that he is sentimentally attached to any of the four unspecified, unidentified and unascertainable plots he had never even tried to possess. I believe the Applicant can be adequately compensated.

Furthermore, where is the convenience of injuncting other people when the Applicant is not actually claiming any portions of those people's plots? In my opinion, the balance of convenience tilts against the Applicant.

On the whole therefore, let issues in dispute be thrashed out at the hearing of the main suit. As for now,

the Applicant's Chamber Summons dated 30th October 2002 is hereby dismissed with costs to Respondents.

Dated this 10th day of August 2005.

J. M. KHAMONI

JUDGE

Present:

Mr. Wahome Gikonyo for the Applicant

Respondents In Persons