

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 7 OF 2003

PRAXEDES NZISA WAMBUA AND OTHERSPLAINTIFF

VERSUS

SERAPHINE NDINDA KITAKA AND OTHERS.....DEFENDANT

RULING

By a Chamber Summons dated 1.3.2003 and filed in court on 21.2.2003 the plaintiffs seek an interim order of injunction restraining the defendants from entering onto and carrying out any excavation or construction or in whatever way from interfering with plaintiffs plot land parcel No. MAKUENI/UNOA/11 which measures 50 ft. by 100 ft. The application is brought under Order 39 Rules 1, 2 and 3 Civil Procedure Rules and Section 3A Civil Procedure Act. The plaintiffs belong to Wote Township Women Group. The defendants used to be members but are said to have resigned. The parties had purchased the suit land from one Julius Kioko as per sale agreement PMW1. The applicants annexed a bundle of letters showing when the defendants allegedly resigned from that group PMW2 and that the plaintiff started developing the said plot and that the defendants have demolished what plaintiffs built and have put up another adjacent building. The application was opposed and 1st defendant swore an affidavit in which she contends that the plaintiff and defendants are joint owners of the plot and that the plaintiffs build on ½ the plot and defendants built on the other and that the agreement PMW1 shows that it is 1st defendant who signed the agreement and her letter annexed as PNW2 dated 13.10.1997 only shows that she resigned as treasurer but not as member.

Though the Counsel for Respondent did not seem to have noticed, but the dates on the application do not make sense. The Chamber Summons and even plaint are filed in court on 21.2.2003 and yet the application, plaint and affidavits are all dated 1.3.2003. These documents could not have been filed before they were signed. There is a mistake. Regarding the annexures to the application I do find that only the first 3 documents are acceptable. The others are improper as they are not properly translated from Kikamba to English. There is no certificate as to their correctness. They are fatally defective and will not be considered by the court.

Though the plaintiffs claim to be the owners of the plot in question, annexure PNW1 clearly shows that it belongs to Wote Women's Group. The officials of the Group signed the agreement. The plaintiffs can not claim the plot in their individual capacities. They have not shown that they have a prima facie case with good chances of success. However from the deponements filed in court the two parties are disputing over the said plot. I have seen the sale agreement PNW1 which 1st defendant signed when she was a treasurer. She resigned as treasurer but there is no evidence that she resigned as a member. Both groups are admitting that they are doing construction on the said plot.

I find that it is therefore proper that the court do order that none of the parties interfere with the said plot in any way either by excavating or building or constructing on the said plot till this case is heard and determines its ownership. If I order status quo it may mean that they continue with the actions of building or constructing. All work on the plot to cease forthwith and costs in the cause.

Dated, read and delivered at Machakos this 15th day of December, 2004.

R. V. WENDOH

JUDGE