



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELCC No. 200 OF 2015

WILSON KIPKOECH CHEPKWONY & 16 OTHERS.....PLAINTIFFS

VERSUS

SAMUEL KIBOWEN TOWETT

KENNETH CHESIYNA KIPTOON

ELIUS KIPTOO CHESINEN (sued as officials of EMO CHERGAA

NAKURU SELF HELP GROUP).....DEFENDANTS

JUDGMENT

1. Proceedings in this matter were commenced through the plaint filed on the 4th July 2015. The plaintiffs are members of Emo Chergaa Nakuru Self Help Group and allottees of plot numbers B, C, D, E, F, G, H, I, J, K, L, M, N and P of the parcel of land known as LR No. Nakuru Municipality Block 8/37. The defendants are officials of Emo Chergaa Nakuru Self Help Group where the 1st defendant is the chairperson and the 2nd defendant the secretary. The 3rd defendant was the treasurer but is since deceased. The plaintiffs opted to proceed without substitution of the deceased 3rd defendant on the basis that the suit is against the self-help group and that the defendants are only sued as officials.

2. The plaintiffs averred that about the year 2008/2009 they were allotted various plots of land of LR No. Nakuru Municipality Block 8/37 and paid conveyancing and survey fees to pave way for issuance of titles to them and that the defendants as officials of the group were to process the titles and their behalf. They added that the defendants are yet to process the titles and “*have engaged the plaintiffs in cat and mouse games in collusion with land officials in Nakuru*”.

3. The plaintiffs therefore pray for judgement against the defendants for:

a) *An order compelling the defendants to issue the plaintiffs with respective individual titles.*

b) *An order of injunction restraining the defendants, either by themselves, servants howsoever, from selling, disposing, alienating or in any way dealing with the plaintiffs’ entitlement to LR No. Nakuru Municipality Block 8/37 pending determination of the suit.*

c) *An Order compelling the defendants to refund the plaintiffs their money at the current market price of KShs. 3 million per 0.046 Hectares.*

d) *Costs of this suit.*

4. The defendants filed a Statement of Defence through which they denied the plaintiffs’ claim and prayed that the suit be dismissed with costs.

5. The 1st plaintiff testified as the sole plaintiffs’ witness at the hearing. He stated that the plaintiffs are members of EMO Chergaa Nakuru Self Help Group and that they purchased 14 plots of land out of LR No. Nakuru Municipality Block 8/37. Two of 14 of the plots were double plots. The size of a single plot was 0.0460 hectares while each double plot measured 0.0920 hectares. The double plots were P which was purchased by Boniface Kipkemoi Yebey (14th plaintiff) and Andrew Birir (15th plaintiff) and N which was purchased by Fredrick K. Ruto (4th plaintiff) and Veronica Chesire (5th plaintiff). Two Plaintiffs, Haron Kikosgei Rotich (12th plaintiff) and Dina Chepchirchir Rotich (13th plaintiff) own plot C which is a single plot while the rest of the plaintiffs own single plots. The cost of a single plot was KShs. 360,000 per

plot.

6. He further testified that the plaintiffs paid the full purchase price for the all plots and that the current market value of the land is KShs. 3,000,000 per plot. He also stated that before payment of the purchase price, the plaintiffs were shown a certificate of lease which indicated that the parcel of land was owned by EMO Chergaa Nakuru Self Help Group and a search was also conducted which affirmed the position. After payment of the purchase price, they did not take possession of the land as they were waiting for the titles as promised by the defendants. He further testified that they conducted a search which showed that the land was in the name of EMO Chergaa Nakuru Self Help Group and that another search was later done on 27th June 2013 which showed different people as proprietors of the land. That they did not have any sale agreements with EMO Chergaa Nakuru Self Help Group but only allotment letters. He therefore prayed for judgement as per the Plaintiff. He produced a copy of each of the following documents as exhibits: demand letter dated 15th May 2015, certificate of lease dated 1st September 2009 in respect of Nakuru Municipality Block 8/37 in the name of EMO Chergaa Nakuru Self Help Group, valuation report dated 30th June 2015 by Prime Valuers, application for official search and receipt for KShs 520 both dated 5th May 2015, authority to act, allotment letter number 536 in respect of plot number M, allotment letter number 538 in respect of plot number F, allotment letter number 535 in respect of plot number H, allotment letter number 547 in respect of plot number B, allotment letter number 551 in respect of plot number K, allotment letter number 539 in respect of plot number G, allotment letter number 540 in respect of plot number L, allotment letter number 537 in respect of plot number J, property rates payment request number LR1407-00070 dated 3rd July 2014, property rates payment request number LR1407-00142 dated 10th July 2014, property rates payment request number LR1406-01271 dated 26th June 2014, property rates payment request number LR1406-01272 dated 26th June 2014, property rates payment request number LR1407-00191 dated 11th July 2014, property rates payment request number LR1407-00069 dated 3rd July 2014, property rates payment request number LR1406-00430 dated 13th June 2014, property rates payment request number LR1406-01277 dated 26th June 2014, property rates payment request number LR1407-00140 dated 10th July 2014, property rates payment request number LR1406-01315 dated 27th June 2014 and a bundle of receipts.

7. The defendants also called only one witness: Samuel Kibowen Towet, the 1st defendant. He stated that as officials of EMO Chergaa Nakuru Self Help Group and with the knowledge and involvement of the members of the group, they purchased plot number Nakuru Municipality Block 8/37 through sale agreement dated 29th May 2009 from Peter Nguru Betwel. They paid the purchase price in full and the land was transferred to the name of the self-help group. The land was then subdivided and each member was allocated a plot. Later some people emerged with another title deed claiming the suit property. He added that members of the self-help group filed a suit against the claimants and further that later, the officials of the self-help group filed another suit being Nakuru ELC E009 of 2020. He identified parties in Nakuru ELC E009 of 2020 as Samuel Kibowen Towett & Kenneth Chesiyua Kiptoon (suing as officials of Emo Chergaa) versus Peter Ngure Betwel, Joseph Chege Muthama, Land Registrar Nakuru & the Attorney General. He further stated that they did not transfer plot number Nakuru Municipality Block 8/37 to anyone else and that they used the members' funds to purchase the plot.

8. He acknowledged that besides a copy of a cheque for KShs 1.4 million, he did not have any document in court showing payment in full of the purchase price of Nakuru Municipality Block 8/37. He admitted that the plaintiffs are members of Emo Chergaa who duly paid and were allocated their plots after survey and that the officials of the self-help group could not transfer the plots to them owing to the emergence of the new claimants with a title. He equally conceded that the plaintiffs are entitled to their plots and expressed readiness to help them secure their parcels of land. Mr Towet produced copies of the following documents as exhibits: certificate of official search dated 27th January 2012, extract of title in respect of Nakuru Municipality Block 8/37 showing Peter Nguru Betwel as registered owner as at 10th October 2004, rent clearance certificate dated 12th June 2009, M/s Ikua, Mwangi & Co. receipt for KShs 1 million dated 8th July 2009, M/s Aminga, Opiyo, Masese & Co. letter dated 19th June 2009, receipt dated 19th June 2009 for KShs 250, Commissioner of Lands consent dated 23rd June 2009, bankers cheque dated 4th August 2009 for KShs 1 million payable to M/s Ikua, Mwangi & Co., transfer of lease, Municipal Council of Nakuru Clearance Certificate Request Form, Municipal Council of Nakuru Rates Clearance Certificate dated 17th July 2009, Sale Agreement dated 29th May 2009, Municipal Council of Nakuru Bill dated 16th July 2009, Land Rent Payment Request dated 25th January 2012, Certificate of official search dated 27th June 2013, Rates Demand Notice dated 6th March 2014, Local Physical Development Plan by Nakuplan Consultants and County Property Rate Statement.

9. Parties filed and exchanged written submissions. The plaintiffs in their submissions only addressed one issue which is whether they are entitled to the orders sought. They argued that having complied with the terms of their allotments including payments, they are entitled to individual title deeds. They relied on the case of **John Muchiri Mbuthia v Rebecca Were Mutanda & another [2015] eKLR** where the court quoted the case of **Rukaya Ali Mohammed Vs David Gikonyo Nambacha & Another Kisumu HCCA No. 9 of 2004** as well as the case of **Dr Joseph N K Arap N'gok vs. Justice Moijo Ole Keiwua & Others Civil Application No. Nai. 60 of 1997**. They further argued that the defendants held the land as trustees for members of the self-help group. Nevertheless, they acknowledged that pursuant to the certificate of search dated 27th June 2013 the defendants no longer own the property and the land may no longer be available. They contended that the transfer from the defendants was fraudulent and urged the court to grant them judgment as prayed and in the alternative award them their money at the current market price owing to non-availability of the land.

10. In their submissions, the defendants argued that the plaintiffs have not proven their allegations of fraud. They saw the suit as an attempt at arm-twisting them yet reasons for failure to transfer the properties to the plaintiffs are beyond their control since they still hold the original of their title. They relied on the case of **Evanson Wambugu Gachugi vs Simon Wainaina Gatwiki & 2 Others [2014] eKLR**. They concluded by submitting that the court should not grant the orders sought and that *status quo* be maintained dispute between the defendants and the vendors be resolved.

11. I have carefully considered the pleadings, the evidence and the submissions. A lot of the facts surrounding the case are not in dispute. The plaintiffs are members of Emo Chergaa Nakuru Self Help Group while the defendants are its officials. Self-help groups are just that: individuals come together informally for some common purpose. Such groups have no known legal capacity. As my brother Munyao J stated in the case of **Kipsiwo Community Self Help Group v Attorney General And 6 Others [2013] eKLR**:

It is clear that Self- Help Groups are not incorporated bodies. In fact I know of no law that recognizes them or incorporates them. They were probably the brain-child of administrators who at times had to come up with a tool to identify specific groups of people that needed

assistance, or needed to undertake projects together. They seem to have helped harness resources at community level. The only problem is that the Government has not put in place any legal framework under which they can be registered and managed....

12. It seems to me therefore that all the members of the self-help group herein are individuals who came together informally for the common purpose of acquiring the plots. The defendants just happen to be officials. It has not been shown how they bear any greater responsibility for the affairs of the group than the plaintiffs. There is no allegation that they are personally at fault. The plaintiffs' only claim is that despite paying the self-help group for the plots, the defendants are yet to process the titles. As members of such an amorphous entity as a self-help group, and in the absence of any evidence of specific failures on the part of the defendants, all the members including the plaintiffs would bear responsibility for the failure to obtain the titles.

13. The parties are in agreement that Emo Chergaa Nakuru Self Help Group acquired the parcel of land known as LR No. Nakuru Municipality Block 8/37 and that a certificate of lease dated 1st September 2009 was issued showing Emo Chergaa Nakuru Self Help Group as the registered proprietor. The defendants produced a copy of certificate of official search dated 27th January 2012 showing that the three defendants were registered as proprietors of the property as trustees of Emo Chergaa Nakuru Self Help Group. Parties are also in agreement that Emo Chergaa Nakuru Self Help Group is no longer the registered proprietor: the defendants produced a copy of a certificate of official search dated 27th June 2013 showing that Stephen Malakwen Sang, Charles Opot Adura and Raymond Kipkemoi became registered proprietors of the property on 6th June 2013. While the plaintiffs have claimed both in evidence and submissions that the defendants fraudulently transferred the property to the new owners, no single allegation of fraud against the defendants was pleaded in the plaint. Thus, fraud is not an issue in this case.

14. Parties being in agreement that the parcel of land known as LR No. Nakuru Municipality Block 8/37 is no longer available for transfer to the plaintiffs, the only issue to be determined is whether the plaintiffs are entitled to refunds as sought.

15. In the absence of any proof of fraud or any other fault on the part of the defendants, I do not see how the claim for refund would succeed as against the defendants. Even assuming that the plaintiffs had shown that they should be refunded, I still would not award any refund in the circumstances of this case, for reasons that follow below.

16. The plaintiffs claim for refund is based on a valuation report dated 30th June 2015, prepared by Prime Valuers. At page 2 of the report, under the heading "Terms of Reference", the valuers state that they inspected the property comprised in "Nakuru Municipality/Block 8/37 (Part 'M') on 25th June 2015 with a view to advising on its current market value". At page 4, they state that the title in respect of the property is registered in the names of Emo Chergaa Nakuru Self Help Group. In view of the certificate of search as at 27th June 2013 which shows that as at that date the registered proprietors of the property were Stephen Malakwen Sang, Charles Opot Adura and Raymond Kipkemoi, one wonders on what basis the valuer concluded that the property was registered in the names of Emo Chergaa Nakuru Self Help Group as at the date of their report. Still at page 4 of the valuation report, under the heading "Area", the valuers state:

"The subject of this valuation is a portion of this land marked 'G' ..." yet at page 6, under the heading "Valuation", the valuers state *"... we return the following value on L.R. No. Nakuru Municipality/Block 8/37 (Part 'M'):-*

Current Open Market Value:

... Kshs. 3,000,000 ..."

17. In view of the confusion on the property being valued, including confusion as to its ownership, I am unable to accept the valuation report as being of any help to the court as regards the value of the properties in dispute. The result is that the claim for KShs 3,000,000 has not been established.

18. In view of the foregoing, the plaintiffs have failed to establish their case. I dismiss the suit. Considering that the plaintiffs are members of the self-help group while the defendants are its officials and further taking into account that the defendants have not been sued in their private capacities, if I were to impose costs against the plaintiffs, I would indirectly be condemning the self-help group to costs since the group and its members is one and the same thing. I therefore make no order as to costs.

Dated, signed and delivered at Nakuru this 11th day of February 2021.

D. O. OHUNGO

JUDGE

In the presence of:

Mr Kipkoech for the plaintiffs

No appearance for the defendants

Court Assistants: B. Jelimo & J. Lotkomo