



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC MISC NO. 107 OF 2019

TERESA NJERI KINYARI.....APPLICANT

VERSUS

JUSTUS NGUKU GITHAIGA.....1ST RESPONDENT

LEAH GATHONI KINYARI.....2ND RESPONDENT

MOSES KARIUKI MUNDIA.....3^D RESPONDENT

SAMUEL KINYANJUI NGUGI.....4TH RESPONDENT

CATHERINE WANJIKU KIMANI.....5TH RESPONDENT

FRESHA WANJIRU KAGERA.....6TH RESPONDENT

DORCAS MWENI KILIKU.....7TH RESPONDENT

SALOME WAIRIMU NJOROGE.....8TH RESPONDENT

RUTH NJERI.....9TH RESPONDENT

MARY NYOKABI NJOROGE.....10TH RESPONDENT

NAIROBI CITY COUNTY.....11TH RESPONDENT

RULING

1. The Applicant herein Teresa Njeri Kinyari had been sued together with her mother Leah Gathoni Kinyari in Milimani Chief Magistrate's Court Civil Case No. 10304 of 2018. The Applicant filed a counter-claim in the suit in which she named the Plaintiff in the suit as 1st Defendant among other Defendants.

2. The Applicant filed the present application seeking to transfer the suit at the Chief Magistrates Court on grounds that the combined value of the plots the nine Defendants are claiming is about 24,000,000/= which is above the monetary jurisdiction of the Chief Magistrates Court. The Applicant also contends that there is an issue touching on the Physical Planning Act (Now repealed) which can only be handled by this Court.

3. The Applicant argues that she engaged the services of a valuer who valued the land and improvements which came to Kshs.24,000,000/=. The Applicant is the registered owner of LR No. Nairobi/Block 126/1442 which measures one acre. The Applicant had settled her parents and brother on that land sometime in 2005. The mother then sold plots measuring 40x 80 to the Defendants/Respondents who proceeded to construct and settle on it. The Applicant now claims that her mother did not have authority to sell the land.

4. The Applicant's application has been opposed by some of the Respondents on the ground that the valuation has been grossly exaggerated and that under the Physical Planning Act (Now repealed), there was a procedure which ought to have been followed by any person who felt aggrieved that no development permission had been given. As that procedure was not followed, the Applicant cannot use the Act to obtain a

transfer of the case from the Chief Magistrate's Court to this Court.

5. The Respondents contend that the Applicant is out to delay this case and that in any case the Respondents purchased their individual plots and that the value of a one-acre parcel in Ruai cannot fetch 20,000,000/=.

6. I have considered the Applicant's application as well as the opposition to the same. I have also considered the submissions filed. Any issue which touched on the Physical Planning Act (Now repealed) had a manner in which the complaints therein were to be handled. Any aggrieved person was expected to appeal against any decision to the Liaison Committee or escalate it to other committees before moving to the High Court by way of appeal. There is no evidence that the procedure was followed.

7. The Applicant has sued defendants who individually purchased land from her mother. Each purchaser has an individual sale agreement. She is pursuing each individual who has a portion in the property she is claiming. Though there is a valuation report which has valued the property together with developments at Kshs.24,000,000/= I doubt whether an acre in Ruai is worthy 20,000,000/= as the valuer claims. The court cannot take an expert's view as the gospel truth. This valuation is grossly exaggerated.

8. The structures in the property have been valued at Kshs.4,000,000/= making total value of Kshs.24,000,000/=. It is clear that the valuation is exaggerated with a view to obtaining a transfer. I find no merit in this application which is hereby dismissed with costs to the 1st, 4th, 5th, 6th, 7th, 8th and 10th Respondents.

It is so ordered.

Dated, Signed and Delivered at **Nairobi** on this **4th day of February 2021**.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

M/s Wanyama for Mr Wati for Applicant

Mr Maramba for M/s makori for 2nd Respondent

Mr Angaya for 1st, 4th to 8th and 10th Respondents

Mr Nyauchi for 11th Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE