



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 60 OF 2015

JOHN MBUGUA BORO.....1ST PLAINTIFF

NICHOLAS NJUE MATI.....2ND PLAINTIFF

JOSEPHAT MICHIRA MOGAKA.....3RD PLAINTIFF

GEORGE WAMBIRI NDAMAIYU.....4TH PLAINTIFF

=VERSUS=

ANNE WAIRIMU NDUNG’U (As the Chairman of URUTAGWO

MWIRUTI WOMEN GROUP.....DEFENDANT

RULING

1. The Defendant/Applicant filed A notice of motion dated 16th October 2020 in which she seeks the following orders:

1) Spent

2) Spent

3) *The Plaintiff society, its members including one Andrew Gitonga its agents or servants all those claiming under it be restrained from interfering, entering, constructing and/or remaining or in any way interfering with the suit properties pending the hearing and determination of this suit.*

4) *Costs be provided for.*

2. The Applicant contends that one Andrew Gitonga and the officials of Emmaus welfare Society sued her claiming among other plots plot Nos.123, 124 and 125 which are all on LR No. 6845/67. The Applicant contends that plot Nos 123, 124 and 125 were sold to Lucy Nunga Chege, Simon Ngutu Ngugi and Mary Wairimu Maigwa. The Applicant’s contention is that the Respondents and particularly Andrew Gitonga are continuing with construction on the three properties and that as a result of that, those who purchased the three plots are demanding for alternative plots or compensation. It is on this basis that the Applicant is praying for injunctive reliefs.

3. The Respondent’s officials have opposed the Applicant’s application based on grounds of opposition dated 12th May 2021. The Respondents contend that the Applicant’s application is an abuse of the court process, is frivolous, vexatious and is res judicata. The Respondents further contend that the filing of the application is an attempt to delay the conclusion of this matter which is set for hearing on 31st May 2021.

4. I have considered the Applicant’s application as well as the opposition to the same by the Respondents. I have also considered the submissions by the Applicant. The Respondents indicated that they did not wish to file submissions. The only issue for determination is whether an injunction should be given in the manner prayed for. To begin with, the Applicant has no counter-claim which can be the basis of asking for injunctive reliefs. The Applicant seems to be litigating on behalf of some third parties who are alleged to have purchased three plots.

5. The Applicant had filed an application dated 28th April 2020 in which the Applicant sought to enjoin Andrew Gitonga as an interested

party in this suit. In the same application, the Applicant sought to restrain the said Andrew Gitonga from interfering with one of the plots that is plot No.123 or any other plots within LR No.6845/67. This application was heard and it was dismissed on 30th September 2020. The Applicant has not come before the court seeking same relief which had been rejected. This application is res judicata and is actually an abuse of the process of the court. The same is dismissed with costs to the Respondent. It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 15TH DAY OF MARCH 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Omondi for Mr Gachie for Plaintiff

Court Assistant: John

E.O.OBAGA

JUDGE