



REPUBLIC OF KENYA



**Mworia & 3 others v New Roysambu Housing Company Limited
& 3 others; Huma (Interested Party) (Environment & Land Case
631 of 2017) [2023] KEELC 621 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 621 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 631 OF 2017
MN GICHERU, J
FEBRUARY 9, 2023**

BETWEEN

**STEPHEN KINYANJUI MWORIA 1ST PLAINTIFF
SAMUEL CHEGE KARANJA 2ND PLAINTIFF
HUMPREY MUCHUGIA 3RD PLAINTIFF
LEAH WANGARI MAKO 4TH PLAINTIFF**

AND

**NEW ROYSAMBU HOUSING COMPANY LIMITED 1ST DEFENDANT
ELIZABETH WARUGURU KANGETHE 2ND DEFENDANT
THE DISTRICT LAND REGISTRAR, NGONG 3RD DEFENDANT
THE COMMISSIONER OF LANDS 4TH DEFENDANT**

AND

JOHN IRUNGU HUMA INTERESTED PARTY

RULING

1. This ruling is on the Notice of Motion dated 15/5/2022. The motion which is brought under Section 1A, 1B and 3A of the *Civil Procedure Act*, Section 73(1) of the *Land Registration Act*, 2012 and Order 51, Rule 1, *Civil Procedure Rules* and other enabling provisions of the law seeks three prayers as follows.
3. That the Court do grant an order directing the land registrar Ngong to remove the caution and injunction registered by the Plaintiffs on L.R. Ngong/Ngong/14941 currently Ngong/Ngong/35715 pending the hearing and determination of the suit.



4. That the injunction and caution lodged by the Plaintiffs to remain in force in respect to L.R. Ngong/Ngong/66D, 87D, 55D and 94D pending the hearing and determination of the suit.
 5. Costs of the application be provided for.
2. The motion is supported by two affidavits dated 16/6/2022 and 24/6/2022 and sworn by Joseph Mugo Kangethe, annexures and five grounds.

In brief the Applicant is saying that he is one of the directors of the first Defendant and that the caution and injunction issued by the Land Registrar and the court at the behest of the Plaintiffs are oppressive to the bonafide purchasers of part of the suit land who are unable to obtain title deeds.

The Plaintiffs do not claim the entire portion of land but only Plot Numbers 55, 66, 87 and 94D.

3. In addition to the above, the deponent adds that the Plaintiffs do not have an arguable case because they purported to purchase plots without the knowledge of the first Defendant and became victims of fraudulent dealings by Martha Wairimu and Bernard Miako who were convicted in Nairobi Criminal Case No. 1046/99 and 1425/99. The deceased Bernard Joseph Miako is the deceased husband of the fourth Plaintiff.

Finally, the Interested Party is a land grabber who has purported to join this suit through the back door yet he is a director of Roysambu Housing Cooperation Society which is not the same as the first Defendant.

4. The motion is opposed by the second Plaintiff, Samuel Chege Karanja, and the Interested Party, John Irungu Huma, who have sworn replying affidavits dated 11/10/2022 and 21/6/2022.

In the two affidavits, the two deponents accuse the Applicant of being a stranger to these proceedings as he has never been a director of the first Defendant and the only nexus between him and the first Defendant is that he is a son of the late John Kaburu Kangethe who died in the year 2002 and who was the chairman of the first Defendant.

5. Further to the above; it is deponed that the Applicant is involved in fraudulent dealings with the first Defendant's land. He has been charged in Kajiado Criminal Case No. 1332 of 2017 where the first Defendant is the complainant. It is further deponed that the injunctions sought to be lifted in this application were actually lodged against the Applicant's mother who like the Applicant, while masquerading as a director of the first Defendant illegally subdivided L.R. 14941 to Ngong/Ngong/35715, 35716 and 35717.

6. I have carefully considered the Notice of Motion dated 15/5/2022 including the affidavits by both sides, annexures and the grounds. I find that the motion should not be allowed for now for the following reasons.

Firstly, as at now, it is not clear to me who the directors of the first Defendant are. There seems to be a contest between the Applicant and the Interested Party. There could be other parties as well.

Secondly, the outcome of Kajiado Criminal Case No. 1332 of 2017 is not certain. The impact that the outcome may have on this case is also unknown as of now.

Finally, the status of the parcel(s) in dispute is not clear. It is uncertain to me who is in occupation of which parcel and whether such occupation is lawful or not.

With all the above uncertainties, I find it will be wrong to issue any orders that might disturb the status quo. The motion dated 15/5/2022 is dismissed. Costs in the costs.

It is so ordered.



DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF FEBRUARY, 2023.

M.N. GICHERU

JUDGE

