



REPUBLIC OF KENYA



KENYA LAW
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**Ndegwa & 5 others v Mathenge & 5 others (Environment & Land Case
E21 of 2023) [2023] KEELC 17972 (KLR) (6 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 17972 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E21 OF 2023
FM NJOROGE, J
JUNE 6, 2023**

BETWEEN

**MATHERI NDEGWA 1ST PLAINTIFF
SOSPETER KABUBA KARIUKI 2ND PLAINTIFF
DANIEL MUCHOKI THUO 3RD PLAINTIFF
PAUL DOUGLAS MACHARIA 4TH PLAINTIFF
MICHAEL NJOROGE KINYANJUI 5TH PLAINTIFF
NDEFFO COMPANY LTD 6TH PLAINTIFF**

AND

**ELIUD MUGO MATHENGE 1ST DEFENDANT
PETER MUGI KIMERE 2ND DEFENDANT
JOSEPH MACHARIA NGAHU 3RD DEFENDANT
PETER MWANGI MAINA 4TH DEFENDANT
WAI THANJI MWAURA 5TH DEFENDANT
CHARLES ANDERSON RONGO 6TH DEFENDANT**

RULING

1. The plaintiffs through a Notice of Motion dated March 14, 2023 seeks the following orders:
 - a. ... spent.
 - b. ... spent.



- c. ... spent.
 - d. That pending the hearing and determination of this suit, this Honourable Court be pleased to restrain the defendants from running the affairs of the 6th plaintiff.
 - e. That the costs of this application be provided.
2. The application is premised on the grounds set out at the foot of the application and in the 2 supporting affidavits of the 2nd applicant who has been authorized by the rest. They are that the respondents have announced through posters that they will be holding a meeting on March 17, 2023 at a named venue and that the members of the 6th plaintiff stand to suffer irreparable loss and damage particularly because the defendants have been engaging in illegal sale of the 6th plaintiff's land and have misappropriated the members' monies.
 3. It has emerged from the supporting affidavit that the 1st - 5th plaintiffs are claiming to be directors of the 6th plaintiff and they concede that the defendants are their fellow directors and a CR12 has been exhibited in proof thereof. The public poster advertising the meeting has been attached though by now the issue of whether the meeting should be enjoined has been overtaken by events. The copies of registers of parcels alleged to be hived from public utilities on the farm which the defendants are alleged to have sold or to be in the process of selling to third parties are also exhibited.
 4. The application is opposed by the defendants vide the sworn affidavit of the 2nd defendant. He states therein that the 1st -5th plaintiffs are not directors of the 6th plaintiff as they have never been elected as such and have fraudulently imposed their names into the list of directors and so they have no authority to act for the 6th plaintiff; that a report of the forgery of the 1st -5th defendants was reported to the police; that the defendants are not involved in any illegal land sales or misappropriation of the 6th plaintiff's funds; that there are pending suits over the sale of some of the properties; that the 6th plaintiff's accounts are dormant as it does not receive any funds from the shareholders or third parties; that the alleged till number and account number for mobile payments provided by the applicants does not belong to the 6th plaintiff; that it is not true that the defendants do not convene annual general meetings; that the defendants called for a meeting in 2021 but the applicants went to court to challenge the same and obtained a court order; that the meeting of March 17, 2023 actually proceeded; that the applicants have no mandate or resolution of the 6th plaintiff to file the present suit.
 5. I have considered the issue of management of the company and even assuming that this court had jurisdiction to issue such orders, I am of the view that upon the material presented at the moment by the applicants this court can not issue any blanket orders to bar the running of the 6th applicant. However, the court would entertain any specific plea by the applicants regarding dealings with any of the 6th defendant's lands or the proceeds thereof if it is presented in the appropriate mode. This means that the only remaining prayer, no (4) in the motion dated March 14, 2023 is incapable of being granted and the entire application is dismissed.
 6. This court can not tell from the available evidence at this stage the utility to the company of the flurry of activities being carried out by the defendants including meetings; it can not know who among the two factions is the true guardian angel of the 6th plaintiff's members' interests. It can not even decipher how conclusive the alleged findings of the DCI regarding the alleged forgery attributed to the 1st to 5th defendants are; in brief, these proceedings are at such an early stage and the material on the drafted documents so brief yet from experience the history of land buying companies disputes predictably involve so much that this court can not in the present draw any firm conclusions on anything before it.



7. However, I have noted that this case relates to alleged bad governance within a land buying company, a constant theme in many a case in this country today. It can not be understood why certain conduct on the part of individuals leads to their attempts to try and override company and company members' interests with such disastrous consequences to the extent that decades after the companies were formed for the acquisition of land for members, members are still awaiting title. This court examined the same issue in the case of *Peter Njogu Karanu & 4 others v Nyakinyua Mugumo Tree Co Ltd & 2 others* [2017] eKLR where it stated as follows:

“24. Before I pen off I observe that the submissions by the applicant eloquently speak of what may have transpired over the years preceding this petition: the directors of the 1st respondent engaged in a protracted leadership wrangles and were thus unable to subdivide the land and issue the title deeds to the individual members.

25. In this our beloved country today, it is a regrettable reality that urgently requires to be specifically addressed by stringent policy and possibly legislative measures, that some land buying firms some incorporated about fifty years ago, have failed to promptly deliver what their now old, wizened, bent over and walking-stick wielding shareholders expected in their youth: land or title documents to land. It is even more regrettable where that delay was occasioned by leadership wrangles. This is a serious omission in an economy where land is one of the most cherished capital assets...

26. The consequence is that investors may have been denied access to billions of shillings worth of assets, their securitization and other potential that comes along with land and land ownership documents.

27. Turning to the instant case, some 27 years after LR No 1803 was bought to benefit the shareholders of the 1st respondent a group of shareholders are in court seeking to bar at an interlocutory stage of these proceedings, the completion of the title issuance process on the basis that another survey had been conducted earlier, yet they are unable to demonstrate any prejudice that would be occasioned them by the re-survey, that is, if there is indeed any such exercise going on.”

8. This court later on in the same ruling also stated as follows:

“30. Another concern this court has considered is delay. When this matter came up before this court under certificate of urgency on September 19, 2016, the court ordered that the petition be set down for hearing on September 27, 2016. Much time has passed since then, yet the petitioners still insist on proceeding with the notice of motion rather than have the substantive petition tried on its merit.

31. In matters where some good citizens of this republic (including the applicants) have been awaiting titles for 27 years, it is improper that any ordinary shareholder, without any concrete evidence of wrong doing on the part of the respondents, would attempt to have issuance of title to his and other shareholder's land entitlements delayed any further.



32. I think that in the circumstances, such long delay is itself a self-inflicted denial of rights on the part of the company leadership and members. In view of the need for the realization of rights and entitlements of the shareholders, the court would only be ready to issue conservatory orders on the basis of sound evidence of possible breach of rights by the 2nd, 3rd and 4th respondents and not on the basis of unsupported allegations. This court would therefore not hesitate to issue appropriate conservatory orders upon presentation of the proper evidence. Such evidence is lacking in this case at this stage...”

9. As stated earlier, this court can not know who among the individuals named is acting in the interests of the 6th plaintiff until evidence is adduced inter partes. I do not need add much else save to state that just as in the petition cited hereinabove, this matter should be expedited so that the correct state of affairs with regard to the management and assets of the 6th plaintiff ought to be known and the rights of members of the 6th plaintiff adjudicated with finality in a hearing. For this reason, this matter will be mentioned on June 20, 2023 for directions.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 6TH DAY OF JUNE 2023.

MWANGI NJOROGE

JUDGE, ENVIRONMENT & LAND COURT, NAKURU.

