



Wanjema & 2 others (As officials of Wendo Women Group) v Kinaiya & 5 others; Nganga (Interested Party) (As Chairman of Emali Project Self Help Group) (Environment & Land Case 512 of 2017) [2022] KEELC 13411 (KLR) (5 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13411 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 512 OF 2017
MN GICHERU, J
OCTOBER 5, 2022**

BETWEEN

**REHAB WARIARA WANJEMA 1ST APPLICANT
PHILISTER NJAMBI MWAI 2ND APPLICANT
MARGARET NJERI KARONJO 3RD APPLICANT
AS OFFICIALS OF WENDO WOMEN GROUP**

AND

**LESE ENE DAVID KINAIYA 1ST RESPONDENT
MARTHA ENE DAVID KINAIYA 2ND RESPONDENT
RESINOI ENE DAVID KINAIYA 3RD RESPONDENT
PARIT NTAUTI 4TH RESPONDENT
EZEKIEL KINAIYA 5TH RESPONDENT
DISTRICT LAND REGISTRAR, KAJIADO NORTH DISTRICT 6TH
RESPONDENT**

AND

**DANIEL N THAGICHU NGANGA INTERESTED PARTY
AS CHAIRMAN OF EMALI PROJECT SELF HELP GROUP**

RULING

1. This ruling is on the Notice of Motion dated September 27, 2021. The said motion is brought under order 39 rules 1, 2, 3, and 4 of the Civil Procedure Rules and *Civil Procedure Act*.



2. The motion seeks four (4) orders namely;
- (i) That David N Thagichu Ng'ng'a the chairman of Emali Project J H G be joined to this suit as an interested party.
 - (ii) That Wendo Women Group refund a sum of Kshs 2, 808, 000/- as per the Resind (sic) agreement dated September 25, 2018 fully signed by both parties.
 - (iii) That an order be issued by the court to allow Emali Project Self Help Group to sell parcel No Kajiado/Olchoro-Onyore/2970, if Wendo Women Group fail to refund the amount of Kshs 2, 808,000/- to Emali Project Self Help Group and give them back the balance thereof.
 - (iv) That the costs of this application be paid by the first, second and third plaintiffs/respondents.
3. The application is supported by eight (8) grounds, an affidavit and several annexures whose gists can be summarized as follows. The respondents approached the applicant around the year 2016, seeking his help to access their land and restore boundary features which had been removed by the family of the person who had sold the land to the respondents.
- The applicant was agreeable to all this and he spent money towards restoring the features as agreed between him and the respondents.
- The amount spent was Kshs 5 million but the respondents accepted to pay a reduced amount of Kshs 2, 808, 000/- which they later disputed.
- It is then that the applicant filed the current application.
4. Though the respondents did not file a replying affidavit, Philister Njambi Mwai, one of the officials testified on May 30, 2022 and said that the interested party did not spend any money.
- He appeared only once and the respondents are not even sure that he spent any money.
5. I have carefully considered the Notice of Motion dated September 27, 2021 and I find that it has no merit for the following reasons;

Firstly, I find that the dispute as to how much the applicant spent cannot be resolved through the current application. It can better be resolved through a separate suit in a court of competent jurisdiction where pleadings, witness statements and documents can be exchanged between the parties.

Other questions such as the legality or otherwise of such an agreement can also be better resolved at such a forum.

Secondly, if the applicants were allowed to join this suit, it will mean that this suit which is already more than five (5) years old will be delayed further as the defendants may also be required to respond to some of the issues raised by the applicant.

Finally, the application is brought under the wrong provisions of law, namely order 39 of the Civil Procedure Rules, which primarily deals with arrest before judgment.

For the above stated reasons, I dismiss the Notice of Motion dated September 27, 2021 with costs to the respondents.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF OCTOBER, 2022.

MN GICHERU

JUDGE

