



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CIVIL CASE NO. 346 OF 1999

NEW KIAMAINA SELF HELF GROUP

HON. JOSEPH KUKERA KURIAPLAINTIFF

-VERSUS-

NDEFFO CO. LTD1ST DEFENDANT

WAWERU KANAI.....2ND DEFENDANT

SAMUEL GITHINJI.....3RD DEFENDANT

ONESMUS MATHERI NDEGWA.....4TH DEFENDANT

JUDGMENT

1. By a plaint dated the 23rd July 1999 the plaintiffs **New Kiamaina Self Help Group**, and the Hon. Mukora Kuria (now deceased) filed this suit against the defendants seeking

(a) *A declaration that all that piece of land formerly registered as **Title No. Bahati/Kabatini Block/4022** and subsequently subdivided into ten plots and registered as title Numbers **Bahati/Kabatini Block 1/6282– Bahati/Kabatini Block 1/6291** is the lawful property of the 1st plaintiff to the exclusion of the Defendants or any of the their members.*

(b) *A permanent injunction restraining the Defendants from interfering in any manner whatsoever with the plaintiffs peaceful and quiet enjoyment and development of the ten land parcels or by selling or carrying out any activities thereon to the detriment of the plaintiffs.*

(c) *Costs of the suit.*

2. The defendants filed a defence and counterclaim on the 17th June 2001. They denied the plaintiff's claim and stated that there was never a **Title No. Bahati Kabatini Block 1/4022**, and that the alleged seller of the plot **Joseph Ndungu Nderitu** was not a member of the 1st defendant, nor a shareholder, hence lacked capacity to sell the land to the plaintiffs or any other party.

3. In their **counterclaim**, the 1st defendant claims ownership of the land parcel which to its knowledge was never subdivided into ten sub- and further denied knowledge of the individual titles. It is their further claim that the alleged sub-titles were obtained fraudulently **and thus prayed for their cancellation, and for an order that the parcels revert back to Ndeffo Co. Ltd, as well as a permanent injunction to restrain the plaintiffs from interfering with the suit land and the defendant's quiet possession and occupation. They also pray for costs of the suit.**

Both parties filed their bundles of documents and witness statements.

4. ISSUES FOR DETERMINATION

1. *Whether the 1st plaintiff has locus standi to sue, and if not, consequences thereof.*

2. *Who is the legal and lawful owner of the suit land Parcel Bahati/Kabatini Block 1/4022.*

3. Whether sub-titles Bahati/Kabatini Block 1/6282 – 6992 were fraudulently obtained, and if so, whether the defendants' counterclaim for an order of cancellation can be availed to them.

Both the plaintiffs and the defendants filed written submissions.

5. Analysis, findings and determination

ISSUE NO 1.

Capacity of the Plaintiffs to sue

The 2nd plaintiff, Hon. Joseph Mukera Kuria, a former member of parliament is deceased. At the commencement of the suit in July 1999, he was chairman of the 1st plaintiff. No substitution was ever effected.

6. The 1st plaintiff is a Self Help Group.

It is trite that a Self Help Group is not an incorporated legal body. It operates through its trustees. The suit land parcel is registered under the Trustees, being John Bosco Muthanga Wagacha (PW1) Winnie Ngendo Kangethe - (PW2) and Harrison Njoroge Kagocho.

They are not enjoined in the suit as trustees of the 1st plaintiff. Though witnesses, they cannot be said to be parties in the suit, as a party must be stated in the pleadings, and its capacity to sue or be sued.

7. The 1st plaintiff being a Self-Help Group, has no legal personality to institute legal proceedings in its own name – See **Kipsiwo Community Self Help group –vs- Attorney General & 6 others (2013) the court (Munyao J)** and **Mombasa ELC Petition No. 2 of 2019 Senti Kirui Community Self Help –vs- Another (Yano J)** when citing the later case (Munyao J) held

“Senti Kirui Self Help Group has no capacity to institute this action in its name --- a person recognised in law had to use on behalf of members of the Group and as such members had to be named and identified with precision. The person bringing action has to demonstrate that he had permission to bring the action on behalf of the members of the Group...”

8. The court of **Appeal in Kenya Power & Lighting Co. Ltd –vs- Benzene Holdings Ltd t/a Wyco Paints (2016) e KLR**, while citing **Housing Finance Company Limited –vs- Embakasi Youth Development Project HCCC No. 1068 of 2001, Bangue Internationale De Commerce De Petrograd –vs- Goukassow (3) (1923) 2 KG 682** and **Elijah Sikano & Another –vs- Mara Conservancy & 5 Others HCCC NO. 37 of 2013** rendered that

“The courts restated the law to the effect that only a juristic person can sue and be sued, that a non-existent entity or person cannot maintain a court action, that once this fact is brought to the attention of the court, it cannot allow the action to proceed but must strike it out, and that it amounts to an abuse to the court process for a non-existent entity to consume judicial time and resources by purporting to participate in proceedings before it.”

9. The plaintiff failed to make any submissions on this issue. Without a doubt the 1st plaintiff has no legal capacity to sue or being sued, being a non-juristic person. To that end, the suit is incompetent and a candidate for striking out, regard to the learned Judges' firm decisions stated above.

The evidence adduced by the 1st plaintiff's witnesses fails by the way, as it cannot purport to support a non-existent party's pleadings and suit.

10. On those grounds, the 1st plaintiff's suit is therefore struck out, and dismissed with costs.

11. Issue No. 2 and 3.

Defendant's Counter Claim

The suit parcel in dispute is Bahati/Kabatini Block 1/4022.

The court was told that ownership of the suit property is subject of a suit in the **Environment and Land court at Nakuru, Case No 4 of 2017 New Kiamaina Self Help Group Trustee –vs- Deffo Company Ltd & 3 Others** that is pending therein for hearing and determination.

12. Under **Article 162(2) (b) of the Constitution**, matters of use, occupation of, and title to land are to be heard by the said court. This court is not the right court, as it lacks the requisite jurisdiction to hear and determine land cases – See **Supreme Court Petition No. 5 of 2015, R –vs- Karisa Chengo & 2 Others (2017) e KLR**.

13. The reliefs sought in the counter-claim are claims of ownership, title and occupation of the suit land. This court was made aware that there is a land case pending before the Environment and Land Court, being case No. 4 of 2017 between the parties over ownership of the land parcel in dispute.

That being the case, the issue of ownership is rightly before the Land Court. I decline to entertain the claim for lack of jurisdiction and leave it for determination in the ELC case stated above. Let parties pursue their claims in the said ELC case.

Orders accordingly.

Delivered, signed and dated at Nakuru this 6th Day of February 2020.

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J.N. MULWA

JUDGE