



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 389 OF 2017**

**JAMES JOSIAH MUCHIRI.....PLAINTIFF**

**VERSUS**

**KENYA ANGLICAN MEN'S ASSOCIATION SACCO.....1<sup>ST</sup> DEFENDANT**

**JOHNSON KURIA MWANGI.....2<sup>ND</sup> DEFENDANT**

**PATRICK MACHARIA.....3<sup>RD</sup> DEFENDANT**

**AARON WANYAHORO.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. In the Amended Notice of Motion dated 16<sup>th</sup> April, 2018, the Plaintiff is seeking for the following orders:

**a. That a permanent injunction be issued preventing the Defendants from partitioning and transferring the property Land Reference Number 8826/6 pending hearing and determination of the suit.**

**b. That a mandatory injunction be issued compelling the Defendants to recognize the Plaintiff as the legal purchaser of Plots No. 121 and 122 in Land Reference Number 8826/6.**

**c. That the costs of this Application and of the entire suit be awarded to the Plaintiff/Applicant.**

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that he bought two ½ acre plots from the 1<sup>st</sup> Defendant; that he was allocated plot numbers 121 and 122 by way of balloting and that he made all the required payments towards purchasing the plots.

3. The Plaintiff finally deponed that despite his continued requests for the Application forms, the 1<sup>st</sup> Defendant has refused to issue him with the same.

4. In reply, the 2<sup>nd</sup> Defendant deponed that the 1<sup>st</sup> Defendant is not the registered owner of land known as L.R. No. 8826/6 (*the suit property*); that the Plaintiff never bought two plots from the 1<sup>st</sup> Defendant as alleged; that the payments that the Plaintiff is alluding to were made by all the members of the 1<sup>st</sup> Defendant in an effort to pool funds together for purposes of purchasing land and that the allotment of the plots was on a first come first served basis.

5. According to the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Defendant had set specific dates being 11<sup>th</sup> July, 2016 and 2<sup>nd</sup> July, 2016 for purposes of submitting certain documents by the members of the 1<sup>st</sup> Defendant and that the 1<sup>st</sup> Defendant allocated plots to members who had met the required conditions, including being a paid up member.

6. According to the 2<sup>nd</sup> Defendant, the Plaintiff did not attend any of the meetings that were convened by the 1<sup>st</sup> Defendant, neither did he submit the requisite documents; that the Plaintiff was left out as all the plots available were allocated to other members who had fulfilled the required conditions and that the Plaintiff's contributions are available for a refund at any time.

7. In his submissions, the Plaintiff's advocate submitted that the Plaintiff has annexed on his Supporting Affidavit the ballot cards for plot numbers 121 and 122 together with receipts issued by Kenya Anglican Men's Association Sacco and that the receipts shows that the Plaintiff

is member number 729.

8. Counsel submitted that the Plaintiff risks losing out on plots he had balloted for and that the Plaintiff will suffer great injustice unless the orders of injunction are issued.

9. On his part, the Defendants' advocate submitted that the Application is defective because it is supported by an incompetent Affidavit; that the Plaintiff has filed an Amended Affidavit instead of filing a Supplementary Affidavit and that there is no evidence to show that the 1<sup>st</sup> Defendant is the registered proprietor of L.R. No. 8826/6.

10. Both the Plaintiff's and the Defendants' counsels relied on authorities which I have considered.

11. The Plaintiff has deponed that he purchased two plots from the 1<sup>st</sup> Defendant and was allocated plot numbers 121 and 122 by way of balloting. According to the Plaintiff, the 1<sup>st</sup> Defendant allowed him to ballot for the two plots after making full payments for the same.

12. The Plaintiff annexed on his Affidavit a copy of the ballot paper from "Kenya Anglican Men's Association Sacco" for membership number 729. The said ballot paper shows that the Plaintiff balloted for plot numbers 121 and 122.

13. In addition to the ballot paper, the Plaintiff has exhibited receipts showing the payment of Kshs. 230,000 to Kenya Anglican Men's Association Sacco on diverse dates between 2<sup>nd</sup> December, 2009 and 30<sup>th</sup> September, 2010. The said receipts are on account of member number 729 of Kenya Anglican Men's Association Sacco.

14. The letter dated 1<sup>st</sup> September 2010 by the 1<sup>st</sup> Defendant informed the Plaintiff that he was required to pay "the additional sum of Kshs. 25,000 per plot". In the letter dated 27<sup>th</sup> June, 2010, the 1<sup>st</sup> Defendant informed all its members that in order for them to get their Title Deeds, they must be enrolled into the Nairobi Kenya Anglican Men's Association Sacco.

15. The 1<sup>st</sup> Defendant has not denied that the Plaintiff is its member number 729, and that he balloted for plot numbers 121 and 122 which is within L.R. No. 8826/6. Although the 2<sup>nd</sup> Defendant deponed that L.R. No. 8826/6 is not registered in the name of the 1<sup>st</sup> Defendant, he did not deny that the said land was purchased by the 1<sup>st</sup> Defendant with a view of sub-dividing it and allocating it to its members on terms.

16. The 1<sup>st</sup> Defendant having agreed that the Plaintiff is one of the members who contributed money for the purpose of purchasing land, then the Plaintiff has a recognized interest in the land. Indeed, until the Defendants show at trial that the Plaintiff breached fundamental terms that he had with the 1<sup>st</sup> Defendant in respect to the two plots, and in view of the ballot paper that the 1<sup>st</sup> Defendant issued to the Plaintiff for the two plots, the Plaintiff has established a *prima facie* case with chances of success.

17. The 2<sup>nd</sup> Defendant has stated in his Affidavit that the 1<sup>st</sup> Defendant is in the process of allocating plots to members, and that in fact, all the plots available have been allocated to other members who had fulfilled the requisite conditions. The 2<sup>nd</sup> Defendant did not however state if a fresh balloting for the plots was undertaken so as to disentitle the Plaintiff the two plots that he had already balloted for.

18. Considering that the Plaintiff is likely to suffer irreparable damage in the event the title documents in respect to the two plots that he balloted for are issued in the name of another person, and having shown that he has a *prima facie* case with chances of success, I shall, which I hereby do, allow the Amended Notice of Motion dated 16<sup>th</sup> April, 2018 as follows:

**a. That an injunction be and is hereby issued preventing the Defendants from partitioning and transferring the property Land Reference Number 8826/6 pending hearing and determination of the suit.**

**b. The Defendants to pay the costs of the Application.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 21<sup>ST</sup> DAY OF FEBRUARY, 2020.**

**O.A. ANGOTE**

**JUDGE**