



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. CASE NO. 31 OF 2019**

**DANIEL KINYANJUI GITAU & 227 OTHERS.....PLAINTIFFS**

**VERSUS**

**MARY RUGURU NJOROGE.....DEFENDANT**

**RULING**

1. In the Notice of Motion dated 22<sup>nd</sup> March, 2019, the Plaintiffs are seeking for the following orders:

***a. That the Defendant/Respondent be prohibited from conducting and carrying out the eviction of the Plaintiffs/Applicants from their land parcels in L.R. No. 7340/34 located in Mavoko within Machakos pending hearing and determination of this suit.***

***b. That status quo be preserved pending hearing and determination of this suit.***

***c. That a temporary injunction be and is hereby issued restraining the Defendant/Respondent, her servants and/or agents, contractors and workmen from trespassing and damaging; any house, structure or building of any description, perimeter wall on property known as L.R. No. 7340/34 Ol-Donyo Sabuk located in Mavoko within Machakos pending the hearing and determination of this suit.***

***d. That a temporary injunction be and is hereby issued restraining the Defendant/Respondent, from transferring L.R. No. 7340/34 Ol-Donyo Sabuk located in Mavoko within Machakos to any third party pending the hearing and determination of this suit.***

***e. That the OCS of Athi River Police station be ordered to ensure the orders granted by this Honourable Court are enforced.***

***f. That the Defendant/Respondent be condemned to pay the costs.***

2. The Application is supported by the Affidavit of the 88<sup>th</sup> Plaintiff who has deponed that he has the authority of the rest of the Plaintiffs to plead on their behalf; that the Plaintiffs are residing on plot number 228, Block 55, L.R. No. 7340/34 Donyo Sabuk and that the initial owner of the land was one Njoroge Wainaina Housing Company.

3. According to the 88<sup>th</sup> Plaintiff, L.R. No. 7340/34 was sub-divided into small parcels of land by the initial owner who sold them to the Plaintiffs; that he purchased plot number 228 and was issued with a Certificate of Lease; that Plaintiffs Nos. 15 to 55 obtained a sub-division scheme which was approved by the Ministry of Lands and that Plaintiffs number 56 to 228 have Certificates of Ownership from N.W Housing Company issued in respect of their respective parcels of land.

4. The 88<sup>th</sup> Plaintiff deponed that after the purchase of their respective plots, the Plaintiffs took possession of their respective plots; that on 1<sup>st</sup> January, 2019, an advertisement was put up in the Nation Newspaper requiring them to vacate the suit land and that they are *bona fide* Purchasers of the suit property.

5. It is the Plaintiffs' case that they are not aware of any orders that was issued by the court in respect of the suit property and that the Defendant should be restrained from evicting them from the suit land.

6. In response, the Defendant deponed that she is the administrator of the Estate of the late Njoroge Wainaina (*deceased*); that her late husband entered into a Sale Agreement with Gladys Wambui Mbocha on 17<sup>th</sup> June, 1993 at a consideration of Kshs. 2,688,000 and that her late husband paid to the Vendor the entire purchase price and obtained the consent of the Masaku Donyo Sabuk Land Control Board to

transfer her interest in the land to the deceased.

7. The Defendant deponed that the Plaintiffs did not buy land from Wainaina Njoroge and Housing Company as claimed and that the Certificates of Ownership they are relying on are forgeries.

8. The Defendant finally deponed that her late husband registered his own land buying firm in the name and style of Njoroge Wainaina Housing Company which he registered as a sole proprietor; that for business convenience, the share certificate bears his initials N.W Housing Company and that the Plaintiffs are trespassers on the suit land.

9. In his submissions, the Plaintiffs' advocate submitted that the initial owner of L.R. No. 7340/34 was one Njoroge Wainaina (*deceased*) of Njoroge Wainaina Housing Company, which name was later changed to N.W Housing Company; that the said Njoroge Wainaina caused the sub-division of the property into several small pieces of land which he sold to the Plaintiffs and that the said Wainaina he issued to the Plaintiffs with ownership documents in respect of their respective parcels of land. The Defendant's submissions are not on record.

10. It is not in dispute that the late Njoroge Wainaina purchased a parcel of land known as 7340/34 Ol-Donyo Sabuk measuring 24 acres. The Agreement dated 17<sup>th</sup> June, 1993 shows that the late Njoroge Wainaina bought the suit property from one Gladys Wambui Mbocha for Kshs. 2,688,000.

11. The deceased incorporated a business name known as Njoroge Wainaina Housing Company on 3<sup>rd</sup> June, 1993, a few days before he entered into the Sale Agreement with the Vendor in respect of the suit property.

12. The Plaintiffs have deponed that after the late Njoroge Wainaina purchased the suit property, he sub-divided it into small parcels of land which he sold to them. According to the Plaintiffs, some of the Plaintiffs have since been issued with Certificates of Leases, others have Certificates of Site Ownership from N.W Housing Company while the remaining Plaintiffs have approved sub-division schemes.

13. The Plaintiffs have annexed numerous copies of the Certificates of Leases, the Certificates of Site Ownership and the sub-division schemes. The copies of the Certificates of Leases in respect of the 1<sup>st</sup> to 14<sup>th</sup> Plaintiffs shows that the suit land converted from its initial number to Mavoko Town Block 55, an assertion that the Defendant has not denied.

14. The documents annexed on the Plaintiffs' Affidavit further shows that the Ministry of Lands and Housing approved a sub-division scheme relating to Land Reference number 7340/34 and transferred the portions thereof directly to some of the Plaintiffs. The Plaintiffs have annexed numerous Sale Agreements in respect to the sub-division of L.R. No. 7340/34 purportedly between themselves and the late Njoroge Wainaina.

15. The Defendant has alleged that the Plaintiffs did not buy the land from Wainaina Njoroge and Housing Company, and that the Certificates of Ownership annexed on the Plaintiffs' Affidavit are forgeries.

16. Considering that the Plaintiffs have annexed on their Supporting Affidavit Leases, Certificates of Leases, Certificates of Ownership and receipts evidencing the payments they made to N.W Housing, they have established a prima facie case with chances of success showing that they bought the suit properties from the N.W Housing, or Njoroge Wainaina Housing Company.

17. Indeed, if all, or any of the Plaintiffs, forged the documents in respect of the suit property, then the Defendant will have to lead evidence to that effect at trial. For now, and until the court holds otherwise, the Plaintiffs have ownership documents in respect of the suit property. In addition, it is the Plaintiffs who are in occupation of the suit land. The eviction of the Plaintiffs before the hearing of the suit will occasion them irreparable injury that may not be compensated by way of damages.

18. In the circumstances, the Application by the Plaintiffs dated 22<sup>nd</sup> March, 2019 is allowed as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 13<sup>TH</sup> DAY OF MARCH, 2020.**

**O.A. ANGOTE**

**JUDGE**