



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 265 OF 2017

(FORMERLY NAIROBI ELC NO. 278 OF 2008)

ESTHER MURUGI MUHOI

PETER CURURU KAMAU

JANE WANGUI MBIRO

JOSPHINE WANJUKU KURIA

SOPHIA NJERI BORO

JOSPHINE WANGUI KIMANI

BENSON NGARUIYA KIHU

VERONICA WANJIRU NDIINGIRU

PAULINE ORESI ASIGE.....PLAINTIFFS

VERSUS

JANE WANJIRU KAMAU

TERESIAH MUMBI KIARIE

AGNES WANJIKU MWARERI

(Sued in their individual capacity and on behalf of IKINU 42 Women Maendeleo Group.....DEFENDANTS

JUDGMENT

By an Originating Summons dated 7th August 2008, the Plaintiffs herein sought for the determination of the following questions and orders;

1. A declaration and determination on whether the Defendants hold the properties known as L.R NO. GITHUNGURI/GATHANGARI /T.180 measuring 0.096 Ha building at Ikinu trading Centre, GITHUNGURI IKINU WOMENS GROUP 4953/1229 in Thika Municipality , KIAMBU/MUNICIPALITY BLOCK 11/89, and a plot in Limuru, upon trust for the Plaintiffs and other members of Githunguri Ikinu Women's Group.

2. A declaration and determination that members of Githunguri Ikinu Women's Self Help Group both jointly and severally are the beneficial owners of the properties known as L.R NO. GITHUNGURI/GATHANGARI/T.180 measuring 0.096 Ha Building at Ikinu Trading Centre, Githunguri Ikinu Women's group L.R 4953/1229 in Thika Municipality, KIAMBU/MUNICIPALITY BLOCK 11/89, and a plot in Limuru.

3. A declaration and determination for the dissolution of Githunguri Ikinu Women's Self Help Group and appointment of 1st to 4th Plaintiffs as trustees of the property known as Ikinu Womens Group Building at Ikinu Trading Centre pending establishment and / or registration of either a co-operative society or limited company by the group members to take over the ownership and management of Ikinu Womens Group Building at Ikinu Trading Centre.

4. **THAT a declaration be issued declaring that the properties known as Land Parcel in Githunguri/ Gathangari/T.180 measuring 0.096 Ha, Building at Ikinu Trading Centre, Githunguri Ikinu Women's Group 4953/1229 in Thika Municipality , Kiambu/Municipality Block 11/89, and a plot in Limuru, respectively belong jointly and severally to Ikinu 42 Women's Self Help Group's members.**

5. **That accounts be taken in respect of sale by the Defendants of properties known as L.R Githunguri/ Gathangari/T.180 measuring 0.096 Ha, Building at Ikinu Trading Centre, Githunguri Ikinu Women's Group 4953/1229 in Thika Municipality , Kiambu/Municipality Block 11/89, and income from Ikinu Women's Group Building at Limuru Trading centre.**

6. **THAT Ms. Lloyd Masika Ltd or any other Estate agents be appointed receivers of Ikinu 42 Women's Maendeleo group to take charge and management of the assets, liabilities and operations of Ikinu 42 Women's Maendeleo Group and do pay debts of the said group and the surplus of the income to the members of the group in the ratio of their contribution to the capital of the group.**

7. **THAT a permanent injunction do issue restraining the Defendants whether by themselves, their agents and/or servants from interfering, selling, charging, pledging as security and or dealing with the properties specified above namely Land Parcel in Githunguri/ Gathangari/T.180 measuring 0.096 Ha, Building at Ikinu Trading Centre, Githunguri Ikinu Women's Group 4953/1229 in Thika Municipality , Kiambu/Municipality Block 11/89, and a plot in Limuru.**

8. **THAT a mandatory injunction do issue compelling the Defendants whether by themselves, their agents and / or servants to return to the Plaintiffs or to deposit in Court the titles to the properties known as Land Parcel in Githunguri/ Gathangari/T.180 measuring 0.096 Ha, Building at Ikinu Trading Centre, Githunguri Ikinu Women's Group 4953/1229 in Thika Municipality , Kiambu/Municipality Block 11/89, and a plot in Limuru pending the establishment of a society or company to take over the same upon dissolution of Ikinu Women's Group.**

9. **THAT a mandatory injunction be issued to compel the Defendants to carry out an inquiry under supervision of a Court appointed auditor to determine the members of Ikinu 42 Maendeleo Women's Group.**

10. **THAT the Defendants be restrained permanently by themselves, their servants and agents from selling or otherwise disposing of the said properties namely Land Parcel in Githunguri/ Gathangari/T.180 measuring 0.096 Ha, Building at Ikinu Trading Centre, Githunguri Ikinu Women's Group 4953/1229 in Thika Municipality , Kiambu/Municipality Block 11/89, and a plot in Limuru.**

11. **THAT costs of this suit be borne by the Defendants.**

The Originating summons is premised on the following grounds;- That the suit properties belong to **Ikinu 42 Women's Self Help Group** to which the Plaintiffs belong to and have beneficial rights and interests. Further that the Defendants have continued to use and damage the properties belonging to the Group as their own to the detriment of the

Plaintiffs and so the appointment of a receiver is necessary in order to stem further loss and wastage. That the Defendants as officials and trustees of the said Group have dealt with the said properties fraudulently and in a manner inconsistent to their position as trustees by selling, disposing and / or transferring to themselves some of the suit properties and the Applicants have reasonable cause to fear that the Respondents will tamper with, damage or waste the said suit properties.

Further that in order to stop exploitation of the Plaintiffs and other members of the Women's Group by the Defendants, it is prudent and necessary that the Group be dissolved in order to allow for the establishment of a substitute of the legal body that permit members to agitate for their rights and protect their interests efficaciously and the Plaintiffs stand to suffer irreparable loss if the properties are tampered with.

In her supporting Affidavit, the 1st Plaintiff **Esther Murugi Muhoi** averred that the Defendants have assets in their possession which are held on behalf of the self-help group. She averred that Ikinu 42 Women Maendeleo Group owns various assets which were purchased through the contributions of members and or received as gifts being **L.R No. Githunguri/Gathanagari/T.180**, measuring 0.096 Ha, Building at

Ikinu Trading Centre, **Githunguri Ikinu Women Group, L.R 4953/1229**, in Thika Municipality, Kiambu Municipality **Block 11/89**, and a plot in Limuru. It was her contention that the Defendants have jointly or severally appropriated to themselves proceeds from the groups building situated at Ikinu Trading Centre and fraudulently sold the **Limuru Plot** for **Kshs. 500,000/=**, **Githunguri plot** for **Kshs. 300,000** and the two storeyed building for **Kshs.3,000,000/=** . She further averred that the 1st Defendant has also transferred to herself **L.R Githunguri/Gathangari/T.180** despite the fact that the same is owned by the group. She further averred that the Defendants in collusion with one **Ruth Nyambura Njau** have also fraudulently sold **L.R No. Kiambu/Block 11/89**. Further that the Defendants have turned themselves into permanent leadership of the group in the course of which they have appropriated to themselves ownership and income from the group's property. She averred that some members of the group had already reported the embezzlement to the relevant authorities, but no investigations have been done. She further averred that they had learnt that the Defendants were in the process of selling the groups plots and obtain loan from Equity Bank using the groups building and it was therefore necessary that an Estate agent be appointed in respect to the groups building to manage the same in order to avoid further wastage and misappropriation.

The suit is contested and the 1st Defendant **Jane Wanjiru Kamau** swore a Replying Affidavit dated **1st December 2008**, and denied holding any assets on behalf of **Ikinu 42 Women Maendeleo Group**. She contended that she was not aware of any registered self-help group that operated under the said name and averred that she is the Chair Lady of **Ikinu Location Maendeleo Women Group**. It was her contention that the Defendants were only in control of the building at Ikinu. She denied that the properties were ever owned by **Ikinu 42 Women Maendeleo Group** and averred that **Githunguri/ Gathangari/ T.180** was formally owned by **Meri Na Mururi** Self Help group and through

a resolution passed by members of **Kanyore Meri Na Mururi Women Group** it was sold to **Wanjiru Kamau**. Further that **L.R 4953/1229** Thika Municipality was formally owned by Githunguri Ikinu Women Group but that the same was disposed off through a resolution of members, **Kiambu/Municipality Block 11/89** was formally owned by **Githunguri Investment Company** and the Plaintiffs have no *locus standi* to bring any action over it. The Defendants denied selling any plot and the two storied buildings and averred that the 1st Defendant is the purchaser for value of **Githunguri/ Gathangari/ T.180** and that **L.R Kiambu/Block 11/89** was an exclusive property of **Githunguri Women Investment Company** and Plaintiffs were not shareholders of.

The Defendants further denied making any loan applications to Equity Bank and averred that the Plaintiffs Originating Summons is malicious and the demand for a receiver is farfetched as the group's leadership is effectively in control. She averred that she had been advised by her advocates that the order sought and/ or obtained are incapable of being enforced because the Defendants are not in control

of the said properties.

The suit proceeded by way of viva voce evidence wherein the Plaintiffs called 3 witnesses and the Defendants called one witness and closed their case.

PLAINTIFFS CASE

PW1 Peter Cururu Kamau adopted his witness statement dated **21st July 2014**, and testified that he is the 2nd Plaintiff. He produced the Plaintiff's bundle of documents as exhibit 1. He further that the management of the group were running the office in a manner that was not proper and that the Chairlady took the assets of the group being **Ikinu 42 Women Maendeleo Group**. He further testified that he is a member of the group that was formed in **1982** and that the number **42** stands for other groups which were 42 in number. It was his testimony that there were 42 groups and that he was a member of a small group

called **Kwaya group** which was also a member of **Ikinu 42 Maendeleo group**. That the group owned several properties and that he had attached the exhibits that proved ownership. It was his evidence that for the period between **1982 and 2006**, the Defendants used the said properties wrongly and that they sold some of the properties and failed to account to the members. He stated that one of the properties was sold during the pendency of the instant suit and that the Defendants held the properties in trust and the trustees were registered on the titles

of the properties.

He further testified that **L.R Limuru/Kamarithu/1056**, was bought by the three locations and the title was for the joint members. Further that **L.R T.180** was purchased by **Githunguri Women Group** which he was not a director nor a member. It was his further evidence that he paid **Kshs. 500/=** for subscription and **Kshs. 1200/=** for membership of **Ikinu 42 Maendeleo Women Group** which he paid through the **Kwaya group**. He denied being an official of the **Ikinu 42 Women Group** and stated that the Chairlady ought to have informed them about the constitution. He confirmed that he was not the only male member of the group and stated that one **Teresiah Mumbi Kiarie** was the Chairlady of **Kwaya Group**. He denied that the Ikinu 42 Women group was a group for the chairladies only and testified that all members were entitled to attend and since the chairladies never called for the meetings that was the reason why there were problems.

PW2 Josephine Wanjiku Kuria adopted her witness statement and relied on the list of documents produced by PW1. She testified that she was a member of one of the 42 groups being **Meri na Mururi** and that their chairlady was one **Jane Wanjiru Kamau**. She further testified that her group together with other 42 groups came together to form Ikinu 42 and that they were joined together by one **Arthur Magugu**, who was their then Member of Parliament. That a constitution was then enacted and in the election every group had to give up one member and the elected members formed the Executive of the Ikinu 42 Women Group who would then elect their own officials. She further informed the Court that the 42 members then represented the 42 women group of Ikinu. It was her testimony that the 42 officials were to make decisions on their behalf and act as trustees over their various properties. It was her testimony that **L.R T.180** was owned by members of **Meri Na Mururi** and that **Jane Wanjiku** was their trustee. However, she later sold the property to **Jane Wanjiru** without the members approval. She further testified that though the group had a building at **Ikinu trading Centre**, which had rooms that were rented out, they did not get dividends for the sale and their consent was not sought before

the sale. It was her evidence that **Ikinu 42 women group** bought the land in **Kiambu** which was sold by the trustees and they were never given any dividends. She told the Court that she had given out monies as contribution for **Meri na Mururi** which monies were later taken out to **Ikinu 42 women Group** and urged the Court to order that every member be given their share as they do not get any shares.

PW3 Veronicah Wanjiru Ndinguri adopted her witness statement and testified that she is a member of **Ikinu 42 women group** and that she was first a member of **Ukiriria Women group** and that their Chair lady was **Jane Wanjiku Njuguna** who represented them at **Ikinu 42 Women Group**. Further, that the chairladies of the small groups formed the **Ikinu 42 Women Group** and that they acted as trustees. That the chairladies then elected **Jane Wanjiru** as leader of the **Ikinu 42 Women Group**. That though the group was supposed to be for all members, the leaders sold all the properties without the members, consent and members did not get any dividends. She further testified that their Chairlady died and that they were 62 members. It was her evidence that the **Ikinu 42 Women group** had land in **Kiambu Municipality, Thika** and **Limuru** and that she contributed through her local group.

DEFENCE CASE

DW1 Jane Wanjiru Kamau adopted her witness statement dated **6th November 2014**, and testified that she is the Chairlady of the group. It was her testimony that the Ikinu 42 group consisted of 42 groups and that there were 42 Chair ladies and that they were the 42 members who represented the groups. She further testified that the group was for Investment and Development. She denied that she squandered the group's money or that the group had a plot in **Thika Municipality**. She further testified that the **Limuru** plot did not belong to the group nor was the **Kiambu** plot. It was her evidence that the group had a plot known as **Thika Municipality plot No. 4953/1229** and they sold the plot after consensus and that they further agreed that the proceeds would be used to develop the plot in **Ikinu Township**. It was her further evidence

that the same was an agreement between the chairladies and that they had a resolution to that effect. She told the Court that when they got the money, they divided **Kshs. 20,000/=** per group from which each member was to get their share. That the remainder of the monies was used to expand the house. She further testified that the Plaintiffs in Court are disgruntled members as PW1 wanted them to sell the plot in Ikinu and the members refused. She confirmed that she had been the group's Chairlady since the year 1982.

It was her testimony that she was a member of **Meri na Mururi** and confirmed that the Chairladies in the group were to represent members in the village groups. She further testified that they bought properties after coming together and that members used to contribute from their groups. She acknowledged that they were given a plot at Ikinu township and that all other plots were for Ikinu 42 groups. It was her testimony that the plot in **Thika Municipality** and **Limuru/Kamirithu** was an investment by **Githunguri Women Investment Group**. She told the Court that the **Githunguri Investment Group** was incorporated earlier and that she was a member of the said group and that she was a director and that they sold their property. It was her further evidence that **Limuru/Kamirithu plot** was sold by 20 people. She testified that the plot in Thika Municipality belonging to the Ikinu 42 group had not been sold. She further testified that the 42 elected Chairladies were the ones who passed the resolution to sell the plot and that they were the executive. She told the Court that the 42 Chairladies came with monies from their groups and they then purchased the plot, She confirmed that the group had a Constitution that stipulated who were the members and the purpose for which the group was incorporated. Further that the group was to be made of 42 members and not 42 chairladies. She further testified that the **Githunguri plot** that belonged to the **Ikinu 42 Women group** was also sold after the resolution of the members. Ikinu Township belonged to **Ikinu 42** and the Plaintiffs are not members and therefore they are not owners. She confirmed that the 42 chairladies are trustees of their respective groups and that they carry elections after every 3 years. Further that she bought **Githunguri/Gathangari plot**, from **Meri na Mururi** after members had made a resolution and denied that PW2 was one of their members.

After close of viva voce evidence, the parties filed written submissions to which the court has carefully read and considered.

It is not in doubt that there exists one large group known as **Githunguri Ikinu 42 Women Maendeleo Group**. That this group comprised of 42 small group that came together to form the said one large group and that each small groups had to front a member to the said group in order to be represented. Further from the group's Constitution that has been produced as an exhibit by both parties, the said **Githunguri Ikinu 42 Women Maendeleo Group** was to have 42 members and those members had to choose from themselves an Executive. Though it has been the Defendants contention that the 42 members had to be chairladies of the small groups, having gone through the Constitution, the Court notes that the said Constitution provided for election of members from the smaller groups and not the Chairladies.

Further it is also not in doubt that the members of this group were supposed to be women, if this Court is to go by the name of the group. However it would seem at some point they allowed men to join the group. This has been demonstrated by the fact that PW2 testified that he was a member of the group and the list of members who approved the sale of various properties that has been produced as an exhibit before this Court indicate that various other members were men including one **Fredrick** who seconded the adoption of minutes of a previous meetings.

It is also not in doubt that the aim of the said group was to come together and own various properties. that the members of the various groups had to make their own contributions in their various smaller groups and then their contributions would then be remitted to the **Githunguri Ikinu 42 Women Maendeleo Group** and the same would be used for the activities of the said group and including buying of properties in the group's name which would then be held in trust for the said group by various trustees. Further as per the group's Constitution, it is also not in doubt that the 42 members who had been elected from each group formed the committee and that the Committee's duties included policy making, project control of funds and management and the appointment of the subcommittee. However that the General Meeting had been given the mandate to give resolutions and a resolution to sell a property solely rested on the hands of the General Meeting which was to be attended by and included all the members of the small groups. Further the Constitution also provided for how the dissolution of the said group shall be passed.

Those being the uncontested facts of this case, the Court will now lay down the issues for determination which are;

- 1. Whether the Plaintiffs had locus standi to bring the instant suit.**
- 2. Whether the Properties claimed by the Plaintiffs are owned by the Githunguri Ikinu 42 Women Maendeleo Group**
- 3. Whether the Plaintiffs are entitled to the orders sought**

1. Whether the Plaintiffs had locus standi to bring the instant suit.

The Defendants have submitted that the Plaintiffs have no **Locus Standi** or **capacity** to institute this suit as they are not members of the **Ikinu 42 Women Group** or any of the smaller groups that represent them. It was further submitted that only the Chairladies of the smaller groups that represent their various groups have the capacity to sue on their own as, members of the **Ikinu 42 Women Group** or sue on behalf of their various small groups. That due to the lack of the said capacity, the suit is incompetent and should be struck out.

In the case of **Law Society of Kenya ...Vs... Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000**, the Court held that:-

“Locus Standi signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of **Alfred Njau and others Vs City Council of Nairobi (1982) KAR 229**, the Court also held that:-

“ the term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.

It is therefore evident that *Locus Standi* is the right to appear and be heard in Court or other proceedings and literally, it means a place of standing. Therefore if a party is found to have no *locus standi*, then it means he/she cannot be heard, even on whether or not he has a case worth listening to. Therefore, it is evident that if this Court was to find that the Plaintiffs have no *Locus Standi*, then the Plaintiffs cannot be heard and that point alone may dispose of the suit.

First of all it has been the Defendants submissions that only a Chairlady representing a respective women group can bring a suit on her behalf or on behalf of the respective group. This goes by the assumption by the Defendants that only the 42 Chairladies that have been nominated by their individual groups form the **Githunguri Ikinu 42 Women Maendeleo Group**. Having gone through the groups Constitution, this Court notes that the 42 elected nominees by the smaller groups only form the Committee and that the membership of the group is the 42 groups registered with the Ministry. Therefore it means that if someone is a member of one of the 42 groups then that person automatically becomes a member of the **Githunguri 42 Women Group** as their share also forms part of all the group.

While from the group's Constitution, it is clear that the **Ikinu 42 Women Group** is formed as a constituent of 42 community based women groups, it would appear that men were absorbed into the smaller women groups, As already noted above, they appeared in their meetings and even made resolution. Further this Court has seen a receipt dated **8th February 1991**, being payment of shares of Ikinu Location Maendeleo Women Group in the name of **Peter Gacuru Kamau**. Further in her evidence DW1 testified that the Plaintiffs were disgruntled members of the group and therefore acknowledging that they were members of the group. A list of members of various groups has also been produced in this Court and given that the said list has not been rebutted or been denied and the fact that the Plaintiffs names features as members of the group, this Court holds and finds that indeed they are members of various smaller groups that are within the larger group thereby making them members of the Ikinu 42. Being members of the group they had interest over the activities and affairs of the group, and therefore the Court holds and finds that they had *locus standi* to bring this suit.

2. Whether the Properties claimed by the Plaintiffs are owned by the Githunguri Ikinu 42 Women Maendeleo Group.

As already pointed out above, the **Githunguri Ikinu 42 Women Maendeleo Group** comprise of 42 constituent smaller groups that each stand as its own group before it is further joined to become part of the **Githunguri Ikinu 42**. The Plaintiffs have laid claim to various properties but it has been the Defendants contention that some of the properties that the Plaintiffs are laying claim to were not part of the properties that belonged to the **Ikinu 42 Women Group** and that some of the properties belonged to the smaller groups within the **Ikinu 42 Women Group**. This Court will therefore then determine whether the said properties belonged to the **Ikinu 42 Women Group**.

The first property is **L.R Githunguri/Gathangari T.180**. While the Plaintiffs have laid claim to this property as part of that that belonged to the **Githunguri Ikinu 42 Women Maendeleo Group**, there is evidence that the said property belonged to one of the smaller group being **Kanyore Meri na Mururi B Women Group**. This is as per the official search dated **27th February 1998**, that has been produced before the Court. There is no evidence that has been produced in Court to rebut the said evidence and therefore the Court will have no difficulty in holding and finding that the said property was not part of the properties of Ikinu 42 group though the same has since been sold to a third party.

The Plaintiffs have also laid claim to **L.R 4953/1229** situate in Thika Municipality as being part of the assets of **Githunguri Ikinu 42 Women's Group**. While there is no documentation in terms of title or a search, adduced and produced in Court to indicate the ownership of the said property, the Court is guided by the minutes of the **Management Committee of Ikinu Location Maendeleo Women Group** held on **8th October 2005**, which indicates that the said group owned the property and thereby passing a resolution to sell it upon adopting resolution that had been passed at a General Meeting. Therefore the Court, finds that though the property has since passed to a third party, the same belonged to the **Ikinu 42 Women Group** and Consequently the Plaintiffs had rights over it.

The Plaintiffs have further laid claim to **L.R Kiambu/Municipality Block 11/89**. As per the evidence produced in Court, the property was held by **Teresiah Mumbi, Ruth Nyambura and Wanjiru Kamau** as trustees of **Githunguri Investment Company Limited**. The defendants have averred that the said group was one of the smaller groups and therefore acquired the property separately from the **Ikinu 42 Women Group** and therefore they had no obligation to inform the other group of the said sale of the suit property. While the Plaintiffs did produce a certificate of incorporation of the said **Githunguri Investment Company Limited** having been incorporated in the year **1982**, this Court does not know the relationship between it and the **Ikinu 42 Women Group** as the Court has not seen any evidence that suggest that the **Githunguri Investment Company Group** was part of the 42 smaller groups. However it is noted that as at **1992**, the Ikinu Location Maendeleo Group was registering properties in its own name and therefore any claim that it would register any property as **Githunguri Investment** or that any property in the name of **Githunguri Investment** belonged to it would not be tenable. It is this Court's considered view that the said property therefore did not belong to the **Githunguri Ikinu 42 Maendeleo Women's Group**.

The Plaintiffs have also laid claim to a plot in **Limuru** and a **Building at Ikinu Trading centre**. However without any proper description of these properties, it is this Court's considered view that it is unable to make any finding as to whether or not the said buildings belonged to the **Ikinu 42 Women's Group** and would be unable to make any orders pertaining to the said properties

3. Whether the Plaintiffs are entitled to the orders sought

In their Originating Summons, the Plaintiffs had sought for a declaration that the Defendants hold the suit properties in trust for the **Githunguri Ikinu Women's Group** and that the said members were beneficial owners of the said properties both jointly and severally. As already held above, this Court finds that with regards to the plot in Limuru and the Building at Ikinu trading Centre without any proper description of the said properties, the Court is unable to make a proper finding as the Court would not just say a building since a question would arise, on which building was meant by the Court.

Further in the case of **L.R Githunguri/Gathangari/ T.180**, the Court has already held and found that the said property belonged to **Kanyore Meri na Mururi** and on **Kiambu/ Municipality Block 11/89**, the Court has further found and held that the same belonged to **Githunguri Investment Company** which groups are not the same as the **Ikinu 42 Women Group** and therefore their properties could not be held as part of the **Ikinu 42 Women Group**.

In the case of **L.R 4953/1229**, the Court held that initially the same was held in trust for the **Ikinu 42 Women Group** this is as per the minutes of the group that had been produced in Court as evidenced. However the same have since changed hands to third parties. In this case, as per the minutes of the **Management Committee** held on **8th October 2006**, the Committee was only adopting the resolution of the General Meeting that was held on **16th October 2003**. The Constitution of the Ikinu 42 Group provides that a resolution of sale of any property was to be made in a General Meeting. Further, the Constitution also gives the Committee the responsibility of project control of funds and management. As per the requirements of the said Constitution, the Court finds that the General Meeting passed a resolution to sell the property and being that the property was then sold in accordance with the resolution, the same cannot be faulted. In the absence of any evidence to the contrary, the Court finds and holds that the said property having been sold to a third party lawfully, means that the group members lost all the rights and privileges and any interests that appertain to it.

With the above in mind, the Court finds prayers **No.1,2,4,7,8,10** of the Originating Summons dated **7th August 2008**, by the Plaintiffs are therefore not merited.

The plaintiffs had also sought for the dissolution of the **Githunguri Ikinu Women's Group** and the appointment of a receiver to manage the said assets. As per the Constitution of the group it is clear that a dissolution of the group shall be passed at a General Meeting. Given that the Constitution has provided for the manner on which the group ought to be dissolved, the Court will not interfere with the same as parties should only come to the Court after all the internal mechanisms have been exhausted. Therefore, the Court finds that prayers no. 3 and 6 of the claim are not merited. Further the jurisdiction of this court is limited to deal with issues related to Environment and Land issues. See **Section 13 of the Environment and Land Court Act** outlines the jurisdiction of the court as follows:

“1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with

Article 162(2)b of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes-

a. relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources.

b. relating to compulsory acquisition of land;

c. relating to land administration and management;

d. relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land; and

e. any other dispute relating to environment and land.

3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and health environment under Articles 42, 69 and 70 of the Constitution.

4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court

5) Deleted by Act No. 12 of 2012

6) Deleted by Act No. 12 of 2012

7) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including-

a) interim or permanent preservation orders including injunctions;

b) prerogative orders;

c) award of damages;

d) compensation;

e) specific performance;

f) restitution; or

g) declaration; or

h) costs

With regards to prayer no 5 seeking for accounts, this Court notes that there is a property known as **Gthunguri/ Githunguri/ 1267**, that belonged to the said group being **Githunguri Ikinu Location Maendeleo Women group**.DW1 in her evidence acknowledged that the same was sold after the chairladies made a resolution to that effect. However, this court has already held that only the General Meeting was empowered to make such a resolution.

On the issue of Costs, **Section 27 of the Civil Procedure Act** gives the Court discretion to grant Costs. In this regard since the Plaintiffs have only succeed in terms of one prayer only, each [party should bear its own costs.

Having now carefully considered the available evidence and the written submissions, the Court finds that the Plaintiffs have failed to prove their case on the required standard of balance of probabilities on all the prayers save for taking accounts in respect of the sale by the

Defendants of **L.R 4953/1229**. However, each of the party herein to bear his/her own costs.

Judgment accordingly

Dated, signed and Delivered at Thika this 15th day of June 2020.

L. GACHERU

JUDGE

15/6/2020

Jackline - Court Assistant.

ORDER

In view of the declaration of measures restricting court operations due to the **COVID-19** Pandemic and in light of the directions issued by His Lordship, the Chief Justice on **15th March 2020**, this **Judgment** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court

By Consent of:

No consent for the Plaintiffs

No consent for the Defendants

L. GACHERU

JUDGE

15/6/2020