



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**ELC CASE NO. 362 OF 2012**

**EMMA WAMBUI MBUCHU.....1<sup>ST</sup> PLAINTIFF**

**MONICA WANJIRU GITHINJI.....2<sup>ND</sup> PLAINTIFF**

**JOHN MUNGAI NJUGUNA.....3<sup>RD</sup> PLAINTIFF**

**-VERSUS-**

**ALPHA LAND INVESTMENTS.....1<sup>ST</sup> DEFENDANT**

**PETER KIMANI KAMAU.....2<sup>ND</sup> DEFENDANT**

**NANCY MUMBI KIMANI.....3<sup>RD</sup> DEFENDANT**

**RULING**

The plaintiffs filed this suit on 21<sup>st</sup> June 2012 seeking the following orders:-

- a. A declaration that the plaintiffs are innocent purchasers for value
- b. The plaintiffs are the owners of the plots they purchased.
- c. The defendants compensate Hellen Muthoni Kirera for the plots disposed without her knowledge/consent.

That on 16<sup>th</sup> July, 2012 the plaintiffs filed a Notice of Motion that inter alia sought to enjoin Hellen Muthoni Kirera as an interested party in the suit and further sought to restrain the said interested party her servants and/or agents from interfering with the plaintiff's occupation in Plot No. 2, 3, 4 and 5 on title number Nairobi Block 118/1415 (the suit property) pending the hearing and determination of the suit. The plaintiffs also sought an order that the defendants do deposit the sum of Kshs. 10,000,000/= in court pending hearing and determination of the suit. The order to enjoin the interested party to the suit was granted by consent and what turns to be determined by this ruling is whether the interested party should be enjoined and whether the defendants should be ordered to deposit the sum of Kshs. 10,000,000/= as sought by the plaintiffs.

The plaintiff's application is based on the grounds that are set out on the face of the application and the supporting affidavit by Emma Wambui Mbuchu sworn on 16<sup>th</sup> July, 2012.

The 2<sup>nd</sup> Defendant, Peter Kimani Kamau has sworn a replying affidavit dated 24<sup>th</sup> September, 2012 on his behalf and on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> defendants in opposition to the plaintiffs application whereas the interested party Hellen Muthoni Kirera has sworn a replying affidavit dated 19<sup>th</sup> October, 2012 in opposition to the plaintiff's application.

On the material placed before the court it is apparent that the plaintiffs purchased parcels of land from the defendants on the basis of ownership certificates that the defendants held which they claimed had been issued to them by Drumvale Farmers Cooperative Society Ltd from whom they claimed to have purchased the land. The defendants state the Firm of M/s Congo & Company Advocates represented the said Cooperative Society in the sale transactions. On the other hand the interested party has deposed in her replying affidavit that she purchased the suit property from Drumvale Farmers Cooperative Society way back in 1992 and that she paid for the title processing fees and she had her title processed and she is now the registered proprietor of Title Number Nairobi/Block 118/1415 as per the certificate of lease annexed and marked as "HMK1" in her replying affidavit.

The defendants have made application seeking to enjoin Drumvale Farmers Cooperative Society Ltd which it is stated by the interested party to be in liquidation as a party to this suit though it is not apparent what role the said society will play in the suit when the same defendants have complained against the Firm of M/s Congo & Company Advocates for having fraudulently acted in the sale transactions on behalf of Drumvale Farmers Cooperative Society Ltd leading to the arrest and charging of the Advocate of the Firm involved. The interested party has opposed the enjoinder of the said society as a party to the suit on the basis that it cannot be a necessary party and besides the Society is in liquidation and of necessity the leave of the court will be required to bring the action against the Society.

The plaintiffs perhaps appreciating their remedy could be in damages have sought an order as against the Defendants for the deposit of Kshs. 20,000,000/= to provide as security for the applicants claim as per paragraph 8 of the 1<sup>st</sup> Plaintiffs supporting affidavit. This in my view is a clear acknowledgement that the plaintiffs can be appropriately compensated by an award of damages should the injunctive relief be not granted and they are successful in the trial.

The interested party it is not denied is the registered proprietor of the suit land and has set out how she acquired the property and got to be registered as the owner. It has not been suggested that she acquired her title fraudulently and thus in terms of Section 26(1) of the Land Registration Act 2012 her title is indefeasible and she is entitled to enjoy all the rights and interests conferred by such title.

Having regard to all the material placed before the court the affidavits and submissions made on behalf of the parties I am not persuaded that the plaintiffs have made out a prima facie case with a probability of success and/or demonstrated that damages would not be an adequate remedy in event they were to succeed in the case finally.

The court further in evaluating the matter to determine whether the plaintiffs have established a prima facie case has had to look and consider the plaint filed by the plaintiffs in this case.

The plaint is court stamped 21<sup>st</sup> July, 2012 but the same is neither dated and/or signed by the advocate for the plaintiffs or by the plaintiffs. The question therefore arises whether or not there is a valid plaint on record.

To answer that issue I make reference to order 2 Rule 16 whose marginal note states "Pleadings to be signed" rule 16 provides thus:-

***16. Every pleading shall be signed by an advocate or recognised agent (as defined by order 9 Rule 2) or by the party if he sues or defends in person.***

My view is that a pleading must be signed for it to be owned by the party presenting it otherwise a party could disown that which is not signed.

The wording of Rule 16 Order 2 is couched in mandatory terms and I therefore cannot see how a pleading that is not signed can form part of the court record and the court proceeds to act on it. The plaint by the plaintiffs on the court file is neither signed and/or endorsed by the advocate of the plaintiffs and clearly this renders the plaint incompetent. It would be futile to proceed with a suit whose originating documentation is faulty and therefore void ab initio. Failure to present to court a signed plaint is fatal and it is my view that the suit cannot be sustained on the basis of unsigned plaint as in essence there is no pleading before the court.

In the premises I dismiss the plaintiff's application and order the plaintiffs suit to be struck out for being incompetent with costs to the defendants and the interested party.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2013.**

**J. M. MUTUNGI**

**JUDGE**

In the presence of:

..... for the Plaintiffs

..... for the Defendants