



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI COMMERCIAL COURTS)

Civil Case 577 of 2008

AMBUI A MBARI YA NGORU

SELF HELP GROUT (*Suing through* CHAIRMAN,

SECRETARY & TREASURER *as Trustees*)

JOSEPH GACHERU KARIUKI

JOHN MWAURA KINYANJUI

LUCY NJERI NJUGUNA PLAINTIFFS

VERSUS

HURUMA NGEI II SELF HELP GROUP

JEREMIAH GITANGU NJENGA

HENRY GITAU NJOROGE

NG'ANG'A WANJU DEFENDANTS

R U L I N G

Application dated 23/3/2009 is brought under **Order VI Rule 13 (b) (c) and (d), Civil Procedure Code, Section 3A Civil Procedure Act** seeking to strike out the plaintiff suit for being scandalous, vexatious and otherwise, an abuse of court process and cost of the application on the grounds that the suit is bad in law, plaintiffs have no *locus standi*, the plaintiffs are not officials of the group called “Ambui a Mbari ya Ngoru Clan” and the provisions of **Order 1, Civil Procedure Rules** are not complied with.

The application is supported by affidavit of Henry Gitau Njoroge. It is sworn that the officials of the group “Ambui a Mbari ya Ngoru Self Help Group” are Jeremiah Gitangu Njenga, Chairman, Henry Gitau Njoroge, Secretary, Ng’ang’a Wanjuu, Treasurer as at 6/3/2008. It is to be noted that Ng’ang’a Wanjuu is in the Huruma Ngei II Self Help Group also. The plaintiffs are only entitled to sue in a representative suit.

It is sworn that the suit property has been sold and transferred to first defendant and the first defendant has taken possession. The sale was sanctioned by majority shareholders. An agreement for sale is exhibited as “SKK 1”. From the record it appears that the land L.R. Nairobi Block 126/217 measuring 18.86 hectares was registered on 13/3/1997 in the name of Samuel Kangani, Ben Mbuchi and Margaret Akumu

as trustees of Huruma Ngei II Self Help Group as leaseholders for 99 years from 1/1/1993. This information was recorded as at 21/10/2008.

The plaintiffs admit having entered into an agreement to sell the land to defendant group. Plaintiffs also admit the land was transferred to first defendant and this is evidenced by a copy of the official Search Form. The plaintiffs seek order that the Commissioner of Lands do rectify the registers in respect of that entry by deleting the name of the trustees for first defendant and substitute with first plaintiff's name.

It is to be observed here that the names of Self Help Groups (Societies) do not hold land but they hold in the name of the Registered Trustees. The other prayer is an injunction to restrain defendants from selling, alienating or in any way disposing off land parcel No. Nairobi Block/126/217. The first issue in this matter is whether Joseph Gacheru Kariuki and John Mwaura Kinyanjui and Lucy Njeri are officers or the officials and trustees of the first plaintiff society.

There is evidence to show that the officials of that society are different persons. This is a matter that can be proved by evidence. If they are not, the issue of representation, action has to be investigated (**Order 1 Rule 8) Civil Procedure Code**. A suit by trustees of a society is not a representative suit and **Order 1 Rule 8** is not applicable. The other issue is whether the prayers in the plaint are capable of enforcement.

There are allegations that the transfer of the land was authorized by only 3 persons who attended the meeting and therefore it was obtained by fraud. This is not a case that can be decided on the strength of affidavits filed by the parties. The matter should be tried before a proper determination can be made. It is not for defendant to say the suit be struck out because the defendant has taken possession or that the land has been registered in another's name. The plaintiff ought to be given a chance to prosecute his case. Whether the plaintiffs are or are not officials or trustees is a matter to be proved by evidence.

I have perused the submissions filed by the defendants and it is my opinion that no reasons are demonstrated to dismiss the suit at this stage. The plaintiff's case is not so weak that it cannot be sustained, if necessary by amendments. I therefore dismiss the application with costs and order that the matter be set down for trial soonest.

Orders accordingly.

DATED, SIGNED and DELIVERED at Nairobi this 5th day of October 2009.

JOYCE N. KHAMINWA

JUDGE