

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

H.C.CIVIL CASE NO.1508 OF 1994

NYOKABI KARANJA & OTHERS PLAINTIFFS

VERSUS

KAMUINGI HOUSING COMPANY LIMITED DEFENDANT

R U L I N G

By application dated 20/4/1995 the applicant pray for interlocutory injunction under Order 39 rule 2 and section 3A of Civil Procedure Rules and Civil Procedure Applicant respectively to restrain the defendant its agents or servants from evicting them from plot No.36/V/01 in Mathare, Nairobi. Nyokabi's Karaya's affidavit was missing so she gave oral evidence saying she is a member of Kamungi Housing Company and she stays in Mathare. She says she has been given a plot in Njiru although she stays in mathare. She says, however she has not been shown that plot. It is because of this, she does not want to be evicted from Mathare where she has her house. And this is what is refuted by James Ndegwa, Chairman of the Company in his un-dated affidavit filed on 17/5/1994. He says the land 36/V/01, which was acquired on behalf of the members, has not been sub-divided and title deed issued to the owners. That before subdivisions some members had built temporary structure there. These people have been allocated plots elsewhere. It is within the category of these people that the applicant belongs.

I see that the main issue linged on the omission by the company to point out to the applicants, which plots, they had been allocated. Before that, they would rather cling to those plots they are now occupying although respondent says those have been issued, no title was exhibited to show that. It would be fair to present the status quo not so much to have the case heard but to give the defendant time and opportunity to show the plot. I think the applicants have no the evidence before me, a prima facie case which probability of success; and I also think the balance of convenience is in granting the injunction to preserve status quo. If I refuse the injunction, the applicants would suffer an injury that compensation may not satisfy. These being the land, I therefore grant the prayers with costs to applicant.

Given by me this 26th day of October, 1995.

A. I . HAYANGA

JUDGE