



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC SUIT NO. 670 OF 2017**

**SIMON NJIHIA MBATIA & 3 OTHERS.....PLAINTIFFS**

*(Suing for and on behalf of Hopeland Welfare Drive Association)*

**VERSUS**

**LIBERATTA NJERI KAMARU T/A NAWEL BUSINESS.....1<sup>ST</sup> DEFENDANT**

**HANNAH GATHONI KIMANI T/A NGEI II KUGERIA.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The four Plaintiffs/Applicants who are suing on behalf of Hopeland Welfare Drive Association filed a Notice of Motion dated 18<sup>th</sup> October 2017 in which they seek the following orders against the defendants/respondents.

**1. Spent**

**2. Spent**

**3. That the honourable court be pleased to issue a temporary injunction order restraining the defendants , whether acting by themselves or through their agents, servants and/or workers from advertising ,offering for sale, leasing, mortgaging, charging, transferring or assigning and/or otherwise dealing in any other manner inconsistent with peaceful occupation ,use and possession with the suit premises known as LR No.6845/88 by the plaintiffs/applicants pending the hearing and determination is this suit.**

**4. That costs of this application be provide for.**

2. The applicants contend that they purchased their respective plots from the respondents in the 90's . The plots are comprised in title known as LR No.6845/88. They purchased their portions when title had not been registered in the names of the respondents. The applicants have obtained titles in their names but have been unwilling to transfer the individual titles to the applicants. The applicants argue that the respondents are demanding more money than had been agreed and that the respondents have verbally threatened to evict the applicants from their plots which they have extensively developed.

3. The applicants' application was opposed by the second respondent based on a replying affidavit sworn on 14<sup>th</sup> November 2017. The second respondent contends that she has been wrongly enjoined in this suit. She contends that she has never traded under the name of *Ngei II Kugeria* as alleged by the applicants. She states that she is an employee of a company called *Ngei Two Kugeria Company Limited* where she is not a director. The second respondent further contends that the applicants' suit was filed prematurely before the titles were transferred from the mother title a copy of which she annexed to the replying affidavit.

4. I have carefully considered the applicants application as well as the opposition to the same by the second respondent. I have also considered the submissions by the applicants and the second respondent. This being an application for injunction the only issue for determination is whether the applicants have demonstrated that they are entitled to injunctive orders. In seeking to restrain the respondents from in any manner dealing with LR No. 6845/88. This property appears to be the mother title from where the applicants would have had their titles upon sub-division .

5. The applicants have not annexed a copy of title in respect of LR No.6845/88 to confirm ownership. There is also no copy of certificate of title either issued in the name of the first or second respondent to confirm whether the two respondents have been issued with their individual titles. In the absence of this, it will be difficult to issue orders of injunction against a title whose ownership is not known.

6. The principles for grant of an injunction are very clear. An applicant has to demonstrate that he has a prima facie against the respondent for an injunction to issue. In the instant case, the applicants are making allegations which are not supported. What the applicants have exhibited are certificates of ownership which were issued on various dates. There is no evidence that the suit property is in the name of either the first or second respondents. In the replying affidavit by the second respondent, a copy of certificate of title has been annexed. This certificate shows that LR No.6845/16 belonged to Githunguri Njiru Farm (1966) Ltd which owned 552.9 hectares. This property has since been subdivided severally. Some of the subdivisions have been transferred to *Ngei Two Kugeria Company Limited*. This company is not the same as *Ngei II Kugeria* in whose name the second respondent is alleged to operate. The first respondent is a beneficiary of one of the subdivisions. She is one among three other transferees who own LR 6845/89 which is not the property targeted by the injunction which the applicants are seeking.

7. It is clear that the applicants have failed to demonstrate that they have a prima facie case against the respondents to warrant issuance of injunctive orders. I therefore find that the applicants' application lacks merit. The same is dismissed with costs to the second respondent.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **17<sup>th</sup>** day of **January 2019**.

**E.O.OBAGA**

**JUDGE**

In the presence of;-

M/s Wanjiku for the 1<sup>st</sup> to 4<sup>th</sup> Plaintiffs

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**