



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CIVIL CASE NO. 620 OF 2016

DAVID KOROGO WANGUNYU.....1ST PLAINTIFF

CHARLES MUKOMA CHIIRA.....2ND PLAINTIFF

PETER NJUGUNA WANGUNYU.....3RD PLAINTIFF

JANNEFFER MUENI MBITHE.....4TH PLAINTIFF

(Suing as officials of Komarock Youth Juakali Artisan Association)

=VERSUS=

JOHN MWANGI MACHARIA.....1ST DEFENDANT

PETER MARIRA GIKONYO.....2ND DEFENDANT

JOSEPH MUGWIMI MUNDIA.....3RD DEFENDANT

DANIEL KARIUKI MWANGI.....4TH DEFENDANT

SAMUEL KIARIE NDUTA.....5TH DEFENDANT

RULING

1. This is the Notice of Motion dated 9th June 2016 brought under order 40 rule 1 and 2 of the Civil Procedure rules, Sections 1A, 1B, 3A and 63 (c) and (e) of the Civil Procedure Rules.

2. It seeks orders:-

(1) Spent

(2) Spent

(3) Spent.

(4) That a temporary injunction do issue restraining the defendants whether by themselves, their sponsors, agents or anybody claiming to be under them from trespassing, occupying, developing, alienating, wasting, letting, or otherwise interfering with the plaintiffs quite enjoyment and possession of CR11344/R Komarock in Nairobi County pending the hearing and determination of the suit.

(5) The OCS Kayole police station do oversee the enforcement of the orders made in this application.

3. The grounds are on the face of the application and are.

(1) That the defendants who are not officials of Komarock Youth Jua Kali Artisans Association have purported to call for a

special general meeting for 10th June 2016 in which they intend to take drastic decisions affecting 191 members who have not elected them. They intend to verify and reallocate plots and further subdivide the same with the intention of depriving the genuine owners of their property.

(2) That the plaintiffs are the lawful and rightful officials of Komarock Youth Jua Kali Artisan Association and therefore they have a solid and arguable case against the defendants.

(3) Damages would not adequately compensate the plaintiffs for the loss they would suffer if an injunction is not granted. It is in the interest of justice that an injunction issues against the defendants.

4. The application is supported by the affidavit of Peter Njuguna Wanguny, the 3rd plaintiff and secretary of Komarock Youth Jua Kali Artisans Association, sworn on the 9th June 2016 and further affidavits sworn on the 23rd August 2016 and 3rd November 2016.

5. The application is opposed. There is a replying affidavit sworn by John Mwangi Macharia the 1st defendant/respondent sworn on the 17th August 2016.

6. On the 10th May 2017, the court directed that the notice of motion be canvassed by way of written submissions. I note that only the plaintiffs'/applicants' submissions are on record.

7. It is the plaintiffs'/applicants' submissions that, they are the bonafide officials of Komarock Youth Jua Kali Settlement Scheme. That the plots claimed by the plaintiffs are subdivisions of Plot No. 273 lawfully allocated to and to date owned by members of the said association. The said association is headed by the plaintiffs as the lawfully registered and elected officials.

8. It is the defendants'/respondents' case that they are the current officials of the association.

9. I have considered the notice of motion dated 9th June 2016, the affidavits in support and the annexures. I have also considered the replying affidavit and the annexures. I have also considered the written submissions of counsel. The issue for determination are:-

(i) Whether or not the plaintiffs' application has met the threshold for grant of temporary injunctions.

(ii) Who should bear costs?

10. The principles were laid down in the precedent setting case of **Giella vs Cassman Brown and Company Limited [1973] EA 358**. In the case of **Mrao Limited vs First American Bank of Kenya Limited and 2 others [2003] KLR 125** the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

11. I have gone through the documents annexed to the supporting affidavits and the replying affidavit respectively. Each group claims to be the bonafide officials of the Association. It appears to me that the dispute is who are bonafide officials of this association.

12. In **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557** Bosire J (as he then was) held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

13. I am not satisfied that the plaintiffs'/applicants deserve this kind of protection.

14. As stated earlier it appears that two groups are wrangling over who are bonafide officials of the Komarock Youth Jua Kali Artisans Association. It has nothing to do with who owns the suit property. It is on the interest of justice that that the hearing of this suit be expedited.

15. In conclusion I find no merit in this application and the same is dismissed the costs of the application do abide the outcome of the main suit.

It is so ordered.

Dated, signed and delivered in Nairobi on this 25TH day of APRIL 2019

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L. KOMINGOI

JUDGE

In the presence of:-

.....Advocate for the 1st & 2nd Plaintiff

.....Advocate for the 1st & 2nd Defendants

.....Advocate for the 3rd defendant

.....Court Assistant