



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 185 OF 2016**

**PIUS MUSEMBI KIVINDU, SIMON MUIA NGUI,**

**MUNYAKA MATHULA MUASA NTHULA,**

*Suing on their own behalf and as officials of SYOKIMAU*

**MAVOKO COMMUNITY ASSOCIATION.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**PETER KYUASYA MWANDIA, ANTHONY KIVUNA**

**MUTHOKA, BENARD KITHUKA MUINDE**

*suing on their own behalf and as officials of*

**KATHAMA WELFARE ASSOCIATION.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**BENEDICT NYAMAI NZEKI, GEORGE MUOKI,**

**ELIZABETH KANINI BOZO**

*suing on their own behalf and as officials of*

**LUKENYA WELFARE ASSOCIATION.....3<sup>RD</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**THE EAST AFRICAN PORTLAND**

**CEMENT COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE CABINET SECRETARY**

**MINISTRY OF INDUSTRIALIZATION AND**

**ENTERPRISE DEVELOPMENT.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**THE ATTORNEY GENERAL.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**AND**

**THE NATIONAL LAND COMMISSION.....1<sup>ST</sup> INTERESTED PARTY**

**THE COUNTY GOVT. OF MACHAKOS.....2<sup>ND</sup> INTERESTED PARTY**

**RULING**

1. In the Application dated 13<sup>th</sup> November, 2018, the Plaintiffs are seeking for the following orders:

***a. That there be an order of temporary injunction directed at the Respondents jointly and severally barring the Respondents, their undisclosed principals, agents, employees, servants and any other persons acting on their behalf from sub-dividing, selling, leasing or otherwise entering into any Agreements or arrangements for disposal or encumbering all those properties known as L.R. No. 8784/144, L.R. No. 8784/145, L.R. No. 8784/146, L.R. No. 8784/4 and L.R. No. 8786 pending the hearing and determination of this Application and the suit herein.***

***b. That there be an order of temporary injunction directed at the Interested Parties barring the Interested Parties, their undisclosed principals, agents, employees, servants and any other persons acting on their behalf from registering any transfer of land, lease, encumbrances or otherwise registrable interests in all those properties known as L.R. No. 8784/144, L.R. No. 8784/145, L.R. No. 8784/146, L.R. No. 8784/4 and L.R. No. 8786 and any other properties exercised therefrom pending the hearing and determination of this Application and the suit herein.***

***c. That the Respondents' and the Interested Parties bear the cost of this Application.***

2. The Application is supported by the Affidavit of the 1<sup>st</sup> Plaintiff's Chairman who has deponed that the Plaintiffs are registered Associations representing approximately 19,220 members; that the Plaintiffs' members reside on the suit premises together with their school going children and that the Defendants are sub-dividing the suit land and selling portions thereof to third parties.

3. It is the Plaintiffs' case that unless the said sub-division and sale of the suit properties is stopped, the Plaintiffs stand a real threat and risk of being evicted. The 1<sup>st</sup> Plaintiff's Chairman sought the leave of the court to adopt the annexures on his Affidavit sworn on 24<sup>th</sup> October, 2016 in support of the Application dated 24<sup>th</sup> October, 2016.

4. Although the Defendants were served with the Application, they never filed a response. The Plaintiffs' counsel relied on the Affidavits on record.

5. The Application dated 13<sup>th</sup> November, 2018 is seeking for injunctive orders. A similar Application dated 24<sup>th</sup> October, 2016 was filed by the Plaintiffs. However, on 26<sup>th</sup> June, 2017, the parties herein informed the court that this matter was similar to Machakos ELC. No. 116 of 2014. On that ground, the Plaintiffs' advocate withdrew the Application for injunction dated 24<sup>th</sup> October, 2016.

6. The record shows that after the Plaintiffs withdrew the Application dated 24<sup>th</sup> October, 2016, the parties agreed to have this matter consolidated with Machakos ELC No. 116 of 2014. The order for consolidation of the two matters was made on 28<sup>th</sup> September, 2017.

7. I have perused the file for Machakos ELC. No. 116 of 2014. In that matter, the 1<sup>st</sup> Plaintiff herein sued the 1<sup>st</sup> Defendant herein. By way of an Application dated 11<sup>th</sup> October, 2014, the 1<sup>st</sup> Plaintiff herein sought for an injunction restraining the 1<sup>st</sup> Defendant from denying its members from accessing land known as L.R. No. 8784/146.

8. The Application for injunction dated 11<sup>th</sup> October, 2014 was heard by Kariuki J. In his Ruling of 24<sup>th</sup> April, 2014, the court dismissed the 1<sup>st</sup> Plaintiff's Application. The 1<sup>st</sup> Plaintiff never filed an Appeal in respect to that Application.

9. The court having dismissed the 1<sup>st</sup> Plaintiff's Application for injunction in Machakos ELC Case No. 116 of 2014, and the two matters having been consolidated, a similar Application cannot be raised. Indeed, any Application by the 1<sup>st</sup> Plaintiff for an injunctive order in respect to L.R. No. 8784/146 is *res judicata*.

10. Furthermore, the 1<sup>st</sup> Plaintiff's Chairman has purported to rely on all the annexures in the Application dated 24<sup>th</sup> October, 2016. That Application was withdrawn. To the extent that the Application dated 24<sup>th</sup> October, 2016 was withdrawn, the Plaintiffs cannot rely on it to support the prayers in the current Application. Indeed, the current Application dated 13<sup>th</sup> November, 2018 is not supported by any annexures.

11. In the absence of any document or evidence to support the proprietary interests of the Plaintiffs in the suit properties, I find that the Plaintiffs have not established a prima facie case with chances of success.

12. For those reasons, I dismiss the Plaintiffs' Application dated 13<sup>th</sup> November, 2018 with no order as to costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 31<sup>ST</sup> DAY OF MAY, 2019.**

**O.A. ANGOTE**

**JUDGE**