



Maina - Chairman & 2 others (Suing as the legal representatives of Kiirungi Posho Mill Self Help Group) v Nyaga & 3 others (Environment and Land Case 97 of 2014) [2025] KEELC 8446 (KLR) (4 December 2025) (Judgment)

Neutral citation: [2025] KEELC 8446 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE 97 OF 2014
JO OLOLA, J
DECEMBER 4, 2025

BETWEEN

HASSAN MAINA - CHAIRMAN 1ST PLAINTIFF
WANGUI MUBIA - SECRETARY 2ND PLAINTIFF
KAHOTIA KAMAU - TREASURER 3RD PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVES OF KIIRUNGI POSHO MILL SELF HELP GROUP

AND

JAMES MURIITHI NYAGA 1ST DEFENDANT
FRANCIS MWANGI NGIRI 2ND DEFENDANT
EZEKIEL MWATHA MURAYA 3RD DEFENDANT
JOHN KOGI 4TH DEFENDANT

JUDGMENT

Background

1. The instant suit was consolidated with ELC No. 71 of 2014; John Kogi –vs- James Muriithi Nyaga & 2 Others.
2. By a Plaint dated 7th May 2014, Hassan Maina, Wangui Mubia and Kahothia Kamau, suing as the Legal Representatives of Kiirungi Posho Mill Self Help Group (the Plaintiffs) pray for judgment against the five (5) Defendants jointly and severally for the following:



1. A declaration that the Sale Agreement between the 1st three Defendants with the 4th Defendant dated 12th March, 2012 is null and void and therefore unlawful;
 2. A declaration that the said Sale Agreement date 12th March, 2012 was not entered by the first three Defendants as representing Kiirungi Posho Mill Self Help Group but in their personal capacity;
 3. A permanent injunction restraining the Defendants from interfering with the Plaintiffs' proprietary rights over Plot No. 15 Gikondi Market;
 4. Cost of the suit;
 5. General damages;
 6. Interest on a, b, c, d & e above at Court rates; and
 7. Any other relief this Honourable Court deems fit and just to grant.
3. Those prayers arise from the Plaintiff's contention that at all times relevant to this suit, Plot No. 15 Gikondi situated in Mukurweini is the property of Kiirungi Posho Mill Self Help Group. It is the Plaintiffs' case that on or about 12th March 2012, the 1st, 2nd and 3rd Defendants unlawfully entered into a sale agreement for the sale of the said plot No. 15 Gikondi in their personal capacities while being officials of the said Self Help Group.
 4. The Plaintiffs aver that the 1st, 2nd and 3rd Defendants thereafter proceeded to unlawfully open a joint account in their personal capacity and deposited the purchase price of Kshs. 400,00/= thereon. It is their case that the sale was wrongful as it was not sanctioned by the members of the Self Help Group.
 5. James Muriithi Nyaga, Francis Mwangi Ngiri and Ezekiel Mwatha Muraya (the 1st, 2nd and 3rd Defendants) are opposed to the claim. In their joint Statement of Defence dated 10th July 2014, the three Defendants admit to have entered into the sale agreement dated 12th March 2012. It is their case that they were the sanctioned officials of the Plaintiffs' Self Help Group and that they had the consent of the Group to act as they did.
 6. John Kogi (the 4th Defendant) is equally opposed to the claim. In his Statement of Defence dated 4th May 2015, the 4th Defendant denies that the Plaintiffs are the proprietors of Plot No. 15 Gikondi. It is his case that he did execute a proper sale agreement dated 12th March 2012 with his Co-Defendants who were the officials of the Plaintiffs' Group with authority to do so.

Analysis and Determination

7. At the trial herein, the Plaintiffs called three (3) witnesses who testified in support of their case. The Defendants on the other hand called two (2) witnesses.
8. I have carefully perused and considered the pleadings filed herein by the parties, the testimonies of their witnesses and the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties herein.
9. This matter arises out of a consolidation of two suits. By the first suit the current officials of Kiirungi Posho Mill Self Help Group sued the three outgoing officials of the Group accusing them of illegally selling Plot No. 15 Gikondi Market to one John Kogi (the 4th Defendant in the said suit). It was the Plaintiffs' case that the three outgoing officials had acted in their personal capacities and that hence their actions were null and void as the Group had not made any resolution to sell the land to the 4th Defendant.



10. The second suit (ELC No. 71 of 2014) was instituted on 2nd April 2014 by the said John Kogi against the same three outgoing officials of Kiirungi Posho Mill Self Help Group. In the second suit the trio were accused of renegeing on a sale agreement that they had entered into with the Plaintiff over the same Plot No. 15 Gikondi Market. It was the Plaintiff's case that after selling the said plot to him, the Defendants were now trying to reverse the same unilaterally and claiming more consideration for the plot that they had transferred. The Plaintiff therefore sought to compel the Defendants to finalize the transfer of the said Plot No. 15 Gikondi.
11. Upon consolidation of the two suits, the new officials of the Self Help Group were considered as the Plaintiffs while the Plaintiff in the second suit was deemed to be the 4th Defendant.
12. From the record herein, it was evident that the Plaintiffs were elected in office on 14th April 2014 and one of the items on the agenda was to find out what happened to the said Plot No. 15. As it were, there was no dispute that the said parcel of land had belonged to the Self Help Group. While the 1st, 2nd and 3rd Defendants held out that they did sell the same to the 4th Defendant acting in their official capacity, the Plaintiffs asserted that they had not sanctioned any such sale.
13. At the trial herein, it became clear that the dispute was a result of wrangles that the members of the Self Help Group were having in regard to the management of its affairs. The Plaintiffs testified herein through their officials. The Groups current Chairman Hassan Maina (PW1) conceded at the trial that there was a resolution that was passed earlier on that the plot be sold. According to him however, priority was to be given to the members of the Group first before outsiders like the 4th Defendant could be allowed to buy.
14. PW1 further told the court that the proper sale price for the suit property was Kshs. 2 Million and not the sum of Kshs. 400,000/= at which the 1st, 2nd and 3rd Defendants had sold the same.
15. According to the Group's current Treasurer Petro Kahuthia Kamau (PW2) and its Secretary Grace Wangui Mubia (PW3) the property that was sold belonged to people who are now deceased and the 1st to 3rd Defendants could not dispose of the same without succession proceedings having been conducted.
16. I was however unable to find the basis of those contentions. From the material placed before the court, Kiirungi Posho Mill Self Help Group is an unincorporated entity. As such an entity, the Group can only act through its officials in a representative capacity as the Plaintiffs have done herein. While in their pleadings the Plaintiffs had held out that there was no resolution to sell the said plot No. 15 Gikondi, their current Chairman (PW1) as I have appointed herein conceded at the trial that there was such a resolution passed to sell save that he claimed the first priority was to be given to the Group's members.
17. Challenged to produce the Minutes of the meeting that resolved that priority would be given to members PW1, did not produce any. Again while PW1 purported that the right sale price was Kshs. 2,000,000/= and not Kshs. 500,000/= for which the plot was being sold to the 4th Defendant, he could not produce any valuation report that had cited such value or state the reason for his assumption that the right price should be Kshs. 2 Million.
18. There was no dispute that from the time of the sale agreement on 12th March 2012 upto the time the same was transferred to the 4th Defendant, the first set of officials, the 1st, 2nd and 3rd Defendants were the officials of the Group through which the Group could transact. The Defendants have produced a resolution of the Group passed on 6th March 2012 allowing them to sell the property.



19. It was also evident that the fact that the 1st, 2nd and 3rd Defendants had been trying to sell the property pursuant to the said resolution had been in the public domain for some time. When they first tried to sell the property, one Ruga Gituku tried to stop them. That fact compelled the Defendants to institute Nyeri CMCC No. 161 of 2012; James Muriithi Nyaga & 2 Others suing as the Representatives of Kiirungi Posho Mill Self Help Group –vs- Ruga Gituku. On 28th August 2013, having heard the case, the Honorable W. Juma, PM ordered and deemed as follows:

- “ 1. That a declaration be and is hereby made that the Defendant’s act of inhibiting the sale and transfer of Plot No. 15 Gikondi Market by the Plaintiffs is illegal;
2. That the Counter-Claim be and is hereby dismissed; and
3. Costs of the claim and the counterclaim to the Plaintiffs.”

20. It was further apparent to me that while the Plaintiffs’ claim is predicated on a tort of fraud, the Plaintiffs did not bother to plead the detailed particulars as required by the law. Save for the claim that the purchase price was deposited in an account in the individual names of the Defendants, the Plaintiffs did not again bother to substantiate the alleged fraud. The Defendants have clearly stated that they opened an account in their name to where the 4th Defendant remitted the purchase price which remains therein.

21. In the premises herein, it was clear to me that the Plaintiffs’ suit was merely actuated by the leadership wrangles within the Group. This court is not properly equipped to resolve such wrangles.

22. It follows that I am not persuaded that there was any merit in the Plaintiffs’ suit. On the other hand, it was clear to me that the 1st, 2nd and 3rd Defendants had properly entered into a sale agreement with the 4th Defendant who was eventually registered as the proprietor of the suit property. The 4th Defendant was compelled to file the suit when there was an attempt to reverse the transfer of the property in his name.

23. Accordingly, I hereby make orders as follows:

- a. The Plaintiff’s suit is hereby dismissed with costs.
- b. A declaration is hereby made that the 4th Defendant is the rightful owner of Plot No. 15 Gikondi Market and therefore there should be specific performance of the sale agreement dated 12th March 2012
- c. A mandatory order of injunction is hereby issued directing the Plaintiffs to hand over the possession of Plot No. 15 Gikondi Market to the 4th Defendant.

24. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF DECEMBER, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.



No appearance Advocate for the Plaintiff

Ms Ngari holding brief for Nderi Advocate for the 1st, 2nd and 3rd Defendant

No appearance for the 4th Defendant

