



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

E.L.C. CASE NO. 14 OF 2019

SAMUEL RUNJI NDETHA.....1ST PLAINTIFF

RUNJI NJIRU.....2ND PLAINTIFF

DAVID NJIRU IRIMA.....3RD PLAINTIFF

ELIUD NYAGA MIRICHU.....4TH PLAINTIFF

DEDAN NYAGA NJUE.....5TH PLAINTIFF

DAVID NJIRU NYAGA.....6TH PLAINTIFF

VERSUS

FRANCIS NJERU GICHICHE.....1ST DEFENDANT

MICHAEL N. MATE GICHICHE.....2ND DEFENDANT

FREDRICK IRERI NYAGA GICHICHE.....3RD DEFENDANT

EMBU COUNTY GOVERNMENT.....4TH DEFENDANT

RULING

1. By a notice of motion dated 10th May 2019 brought under **section 3A of the Civil Procedure Act (Cap. 21), Order 40 Rule 1 of the Civil Procedure Rules and all enabling provisions of the law**, the Plaintiffs sought the following orders:

a) Spent

b) Spent

c) Spent

d) Spent

e) *That the Defendants/Respondents, their agents and servants and anybody claiming through the Defendants or acting under the instructions of the Defendants be restrained by an order of injunction from subdividing or in any other way interfering with land parcels No. Evurore/Evurore/1267 and 1268 until this suit is heard and determined.*

f) *That the Defendants/Respondents, their agents and servants and anybody claiming through the Defendants be restrained by an order of injunction from interfering with the Plaintiffs'/Applicants user and occupation of land parcels No. Evurore/Evurore/ 1267 and 1268 until this suit is heard and determined.*

g) *That a prohibitory order do issue and be registered against land parcels Evurore/Evurore/1267 and 1268 pending the hearing and determination of this suit or until further court orders.*

h) *That costs of this application be provided for.*

2. The said application was based upon the grounds set out on the face of the motion and the supporting affidavit sworn by the 2nd Plaintiff on 10th May 2019. It was contended that the suit properties were held by the County Government of Embu in trust for members of Mururi, Nyonga and Mukera clans. It was further contended that the 1st-3rd Defendants had imposed themselves as leaders of Mururi clan and forwarded a doctored list of beneficiaries to the 4th Defendant for the purpose of processing allocations in their favour to the detriment of genuine members of Mururi clan.

3. The 1st Defendant filed a replying affidavit sworn on 2nd July 2019 on his own behalf and on behalf of the 2nd & 3rd Defendants in opposition to the said application. It was contended that the application was merely intended to delay or stall the process of giving land to lawful beneficiaries of Mururi clan. It was further contended that the suit properties belonged to the 3 named clans and that two of them had not been joined in the proceedings. It was also contended that there were several members of Mururi clan who were in occupation but had not been joined in the proceedings.

4. When the said application was listed for hearing on 2nd July 2019 the Plaintiffs were granted leave to file a further affidavit and written submissions within 30 days whereas the Defendants were granted 30 days to file their submissions upon the lapse of the time granted to the Plaintiffs. By the time of preparation of the ruling, however, none of the parties had filed written submissions. The Plaintiffs had also not filed any further or supplementary affidavit.

5. The court has considered the Plaintiffs' said application, the Defendants' replying affidavit in response thereto as well as the material on record. It would appear that the suit properties are held by the 4th Defendant on behalf of members of Mururi, Nyonga and Mukera clans. It would further appear that the suit was instituted by the Plaintiffs who are members of Mururi clan against the 1st-3rd Defendants who also belong to the same clan. It would further appear to be a case of intra-clan fighting over leadership and allocation of resources.

6. The court is of the opinion that since what the Plaintiffs have brought before court involves members of their clan only, there is no legal justification for halting the entire process of land allocation and distribution since that would affect members of Mukera and Nyonga clans who were not joined in the proceedings. The court is not prepared to make any orders which might adversely affect members of those two clans without according them a hearing.

7. The court is further of the opinion that an intra-clan dispute within Mururi clan on the list of the genuine beneficiaries is not sufficient reason to halt the entire process of allocation of the suit properties by the 4th Respondent. Members of Mururi clan are better placed to know their leaders and the genuine or deserving allottees of the suit properties. The court and the 4th Defendant are not well equipped to determine such matters. The court would be reluctant to impose or dislodge leaders of Mururi clan and to determine which members are deserving of land allocations.

8. The court is thus of the opinion that the Plaintiffs have failed to demonstrate that they have a prima facie case with a probability of success at the trial within the principles enunciated in the case of **Giella Vs Cassman Brown & Co Ltd [1973] EA 358**. Since the Plaintiffs' case has failed at the first hurdle, it shall not be necessary to consider the 2nd and 3rd principles for the grant of an injunction. The court also finds no sufficient legal basis has been demonstrated by the Plaintiffs to warrant the issuance of a prohibitory order as sought in the application.

9. The upshot of the foregoing is that the court finds no merit in the Plaintiffs' notice of motion dated 10th May 2019. The same is accordingly dismissed. Costs of the application shall be in the cause.

10. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 21ST DAY of NOVEMBER 2019.

In the presence of Ms. Muthoni for the Plaintiffs, Ms. Nzekele holding brief for Mr. Andande for 1st, 2nd & 3rd Defendants and in the absence of 4th Defendant.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

21.11.19