



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

THIKA LAW COURTS

ELC CASE NO.168 OF 2017

VEELAND HOUSING COMPANY LTD.....1ST PLAINTIFF/APPLICANT

FAJ CONSULTANTS LTD.....2ND PLAINTIFF/APPLICANT

GLORIA NYAWIRA WAMBUGU.....3RD PLAINTIFF/APPLICANT

-VERSUS-

DAVID WAWERU KAHINGA.....1ST DEFENDANT/RESPONDENT

KAMAU CHEGE.....2ND DEFENDANT/RESPONDENT

KAGUNYI NJUGUNA.....3RD DEFENDANT/RESPONDENT

LEE MUCHIRI KAMAU.....4TH DEFENDANT/RESPONDENT

PATRICK MACHARIA.....5TH DEFENDANT/RESPONDENT

CALVARY LEMALKAT.....6TH DEFENDANT/RESPONDENT

LONAH NYAKHAMA.....7TH DEFENDANT/RESPONDENT

GEORGE KIARIE ZIPPORAH.....8TH DEFENDANT/RESPONDENT

AILEEN KANJIRU JAPHER.....9TH DEFENDANT/RESPONDENT

RULING

There are two applications herein for determination. The **1st application** is the one dated 22nd February 2017, brought by the Plaintiffs/Applicants under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 40 Rules 1, 2 and Order 51 Rule 1 of the Civil Procedure Rules and all enabling provisions of law. The Applicants have sought for the following orders.

1) Spent

2) That the Defendants, their servants and/or agents be restrained from selling, demolishing, harassing, alienating and/or in any way interfering with Plaintiffs quiet possession of premises known as plots Nos.1,2,3,4,5, 6,8,12,13,14,15,16,20,21,22,23,24,25,72,73,74,75,88,90,93,94,95 being part of LR.No.7969 Kiambu off the Thika Superhighway, pending the hearing and determination of the application and the suit herein.

3) That the Defendants meet the cost of this application

The application is premised on these grounds stated on the face of the application:-

1. That the Applicants/Plaintiffs are purchasers for value having purchased way back in 2015, from the 1st Defendant a property

described as plots Nos.1,2,3,4,5,6,8, 2,13,14,15,16,20,21,22,23,24,25,72,73,74,75,88,90,93, 94,95 being part of LR.No.7969 in Kiambu off the Thika Superhighway as per the sale agreement enclosed herewith.

2. That the Plaintiffs paid for the purchase price agreed save for the balance that was to be paid for the processing of the titles as and when advised to do so by the Defendants.

3. That the 1st Defendant duly put the Plaintiffs in possession of the suit premises and gave authority to the Plaintiffs to develop the suit premises as per the letters of authority and affidavit sworn by the 1st Defendant and filed herewith.

4. That the Plaintiffs duly took possession of the suit premises in 2014 and 2015 and have extensively been developing the same.

5. That suddenly without any justification other than for greed, the 1st Defendant together with the 2nd and 3rd Defendants have begun a campaign demanding that the Plaintiffs must pay for more for the properties bought, failure in which they would remove them from the suit premises.

6. That the 1st, 2nd and 3rd Defendants have ultimately sent the 4th, 5th, 6th, 7th, 8th and 9th Defendants together with other unknown goons to forcefully break structures and housing being developed by Plaintiffs, harassing the Plaintiffs in their quiet possession of the premises and inviting prospective buyers to the suit premises.

7. That the actions by the Defendants is callous, devoid of any humanity, driven by greed and meant to economically destroy the Plaintiffs.

8. That it is meet and just for the orders sought herein to be given to protect the Plaintiffs in their possession because the Plaintiffs stand to lose irreparably if their long earned savings which they have put in the purchase and development of the suit premises is destroyed.

9. That no prejudice can be suffered by the Defendants if the orders sought herein are given.

The application is also supported by the **Supporting Affidavit of Josephine Mwoi Wambugu**, one of the **Directors** of the 1st and 2nd Plaintiffs/Applicants with authority from the 3rd Plaintiff/Applicant to swear on her behalf. It was her averment that the 1st and 2nd Plaintiffs are Property Development Companies, who purchase land from land owners and develop the same into housing units as is evident from **JMW-1**. She also averred that the Plaintiff bought the suit property **LR.No.7969, Kiambu** off Thika Superhighway which property was owned by the 1st Defendant and **Christine Mbogua** as is evident from **annexture JMW-2**. The Plaintiffs executed 26 sale agreements for property described as **Plots**

Nos.1,2,3,4,5,6,8,12,13,14,15,16,20,21,22,23,24,25,72,73,74,75,88,90,93,94 and **95** being subdivisions of **LR.No.7969 Kiambu**, as is evident from **annexture JMW-3 (1-26)**. Further the 3rd Plaintiff also purchased **plots Nos.88** and **90** being subdivisions too from **LR.No.7969, Kiambu** as per **annexture JMW-4** copies of the Sale Agreements. She also averred that all the sale agreements were prepared by the **Law Firm of Kamau Chege & Kagunyi Advocates** and the purchase price was received by the said advocates on behalf of the 1st Defendant. Further that some other monies were deposited directly in the account of the 1st Defendant as is evident from **JMW-5**. She also alleged that after paying the purchase price, they were allowed to take possession of the said premises as is evident from letters of authority to enter the premises and develop, signed on **20th April 2016**, **2nd August 2016** and affidavits to that effect sworn on **5th February 2016** marked as **JMW-6 (a),(b),(c)** and **(d)**. It was her allegation that they also paid for processing of titles which was paid when demanded.

Further that upon paying purchase price and taking possession, they commenced extensive development of the suit premises which venture was being undertaken by the 1st, 2nd and 3rd Plaintiffs jointly. They therefore sought for finances from financiers through use of collateral and other means.

It was her further allegations that in **January 2017**, without any

right, reasons or justification the 4th and 5th Defendants shut out the gate to the premises and she was referred to the advocates for the Defendants who are the 2nd and 3rd Defendants herein who had acted for both parties in the sale transaction. That the said advocates through **Mr. Kamau Chege**, told her that they wanted the Plaintiffs to pay extra purchase price for the properties which they had already purchased being the suit premises or else they would resell the said properties for twice the price already sold to the Applicants. The 1st Defendant confirmed having instructed the said advocates to kick them out unless they paid more money.

However, the co-proprietor of the suit premises **Christine Mbogua** said she did not agree with the 1st Defendant and advocates on the variation of the terms and conditions of sale set out in the earlier agreements. She contended that in the last week of January and first week of **February 2017**, the 1st, 2nd and 3rd Defendants sent the 4th, 5th, 6th, 7th, 8th and 9th Defendants/Respondents together with a squad of goons using crude weapons wherein they went and demolished the structures on site but their workers managed to repel the said demolition squad. The Applicants reported the matter to **Kiambu Police** and **CID Headquarters vide OB.Nos.96/26/11/2016** and **6/11/2016**.

Therefore the Applicants are seeking for the instant orders to protect

them from further harassment from the Defendants/Respondents and allow them quiet enjoyment and possession of the suit property. She further contended that having taken possession and paid colossal sums as purchase price and having commenced development, they would suffer irreparable loss and damage if the orders sought are not granted. She urged the Court to allow their application.

The application is contested and **David Waweru Kahinga** swore a **Replying Affidavit** on **8th March 2017**, for himself and on behalf of the other 2nd – 9th Defendants/Respondents with their authority. He averred that he has been advised by his advocates on record that the application is **scandalous, frivolous, bad in law** and an **abuse** of the court process and that the same ought to be struck out as it does not meet the basic threshold for grant off injunctive orders. He admitted that he sold the named plots by the 1st and 2nd Plaintiffs from **LR.No.7969 Kiambu**, but not **plots Nos.88 and 90** to the 3rd Plaintiff as alleged. He also denied that he sold the entire parcel of land **LR.No.7969, Kiambu**. He averred that the two plots **Nos.88 and 90** were sold to 7th, 8th and 9th Defendants as per a different subdivision plan which had been approved and registered on **29th January 2013**. It was his averment that according to the said former subdivisions, plots **Nos. 88 and 90** were known as **LR.No.7969/43** and **LR.Nos.7969/44**. He also averred that there were no sale agreements in respect of the two plots.

It was his allegation that the Plaintiffs only paid part of the purchase price but not the entire of it. He also averred that he has been advised by his advocates on record that the sole purpose of the Plaintiffs'/Applicants' application herein is to defeat the ends of justice and well-orchestrated by the Plaintiffs/Applicants to refuse to pay the balance of the purchase price. They urged the Court to dismiss the instant application with costs.

The **2nd application** is dated **17th March 2017**, brought by the Defendants herein under Order 40 Rules 1,2 and 3 of the Civil Procedure Rules and Sections 1A,1B,3A and 63(c)&(e) of the Civil Procedure Act and Section 216 of Act No.17 of 2015 Companies Act and all the enabling provisions of the law. The Applicants have sought for the following orders:-

1) Spent

2) That in the first instance, this Honourable Court be pleased to lift the Corporate Veil of the 1st and 2nd Plaintiffs/Respondents and issue summons against one Josephine Mwoi Wambugu and Francis Wambugu Miano, the Directors therein, in their personal capacity, and the 3rd Defendant Gloria Nyawira Wambugu, to appear in court and show cause why action should not be taken against them for disobedience of the Orders of the Court issued on 9th March 2017. The summons herein be served through the Respondents' advocates.

3) That upon such appearance and upon hearing the Respondents/Contemnors or their Counsels, this Court does direct the Respondents/Contemnors be jailed for a period of 6 months for contempt of court, disobeying court order and/or breach of an injunction issued on the 9th March 2017.

4) That pending the hearing and determination of the suit herein the Plaintiffs/Respondents either by themselves, servants and/or agents or otherwise howsoever be restrained from entering, evicting, developing, blockading, obstructing, constructing and/or otherwise interfering with the 7th,8th and 9th Defendants' quiet and peaceful possession on plot Nos.88 and 90 within Land Parcel known as LR.7969 Kiambu the subject matter herein.

5) That the Officer Commanding Kasarani Police Station do supervise the execution of the Orders to ensure compliance.

6) That the costs of the application be borne by the Plaintiffs/Respondents.

This application is premised upon these grounds which are stated on the face of the application.

a) That this court issued an Order on the 9th March 2017, declaring that status quo on plots Nos.88 and 90 on LR.7969 Kiambu be maintained, thereby restraining the Plaintiffs/

Respondents, their agents, servants, or any other party acting at the Respondents' behest from interfering with the current status of the said plots and/or quiet possession of the said plots by the current occupants.

b) That the order was made by this Honourable Court in the presence of Counsel for the Plaintiffs/Respondents, and later served upon the same Counsel and later upon the Respondents' agents at the subject premises of this suit.

c) That in spite of service and knowledge of the Court Order, the Plaintiffs/Respondents entered upon and/or caused their agents to deliver building materials on plot Nos.88 and 90 in LR.7969 Kiambu, caused trenches to be dug, illegally begun to develop and construct therein, and blocked the 7th,8th and 9th Defendants/Applicants from accessing the plot Nos.88 and 90 in

LR.7969 Kiambu by placing goons therein, thereby forcefully evicting the said Defendant from the said plot and denying her access to her property.

d) That the said actions by the Plaintiffs/Respondents are against the Orders of this Court intended to destroy the sub strum of the subject matter herein and to defeat the outcome and/or the decision of the Honourable Court and in contempt and breach of this Honourable Court's Orders.

e) That the Plaintiffs/Respondents ought to be punished for disobeying orders of the court.

f) That the 7th,8th and 9th Defendants/Applicants have suffered loss and damage as a result of the actions of the Plaintiffs/Respondents and continues to suffer such loss and damage.

g) That unless sanctioned by an order of the Honourable Court, the said Applicants are apprehensive that the Plaintiffs/

Respondents will proceed with the obstruction, construction and forcible eviction all calculated towards defeat of the current proceedings.

h) That the Plaintiffs/Respondents actions are tainted with all motives yet they approached this Court to seek refuge and sought Conservatory Orders which the Defendants/Applicants have religiously obeyed.

The application is further supported by the affidavit of **David Waweru Kahinga**, the 1st Defendant herein who reiterated the contents of the grounds in support of the application and further averred that the *status quo* order issued by this Court restrained all the parties herein including the Plaintiffs from interfering with the current occupation and status of

Plots Nos.88 and 90 on **LR.No.7969 Kiambu** which plots are occupied by 7th -9th Defendants. That despite service of the said Order and knowledge of the same, the Plaintiffs/Respondents and their agents have disregarded the same and have instructed goons to enter and occupy the said plots **Nos.88 and 90** on **LR.No.7969, Kiambu** and have commenced construction this in total disregard of the existing *status quo* Order. That the said conduct of the Respondents is a breach of the Court Order calculated to lower the dignity and sanctity of the court and the Respondents should thus be punished for contempt of court. He urged the Court to protect its integrity and sanctity of its orders and dignity by allowing the prayers sought. Further that the continued disobedience of the Court Orders means that the Plaintiffs/Respondents have intention to continue with the said acts of destruction and thus the need for interim Orders of injunction to restrain them from further actions of destruction and construction. He urged the Court to allow the said application.

The application is vehemently opposed by the Plaintiffs/Respondents who filed three **Replying Affidavits** by **Gloria Nyawira Wambugu, Josephine Mwoi Wambugu** and **Christine Imbosa Mbogua** in opposition to the said application.

In her **Replying Affidavit, Gloria Nyawira Wambugu**, averred that she owns **plots Nos.88 and 90** which she bought from **Christine Imbosa**

Mbogua and **Alex Apoko** which were part of **LR.No.7969 Kiambu** as per the Sale Agreement **annexture GNW-1**. She averred that she paid the purchase price to **Christine Imbosa Mbogua**, as per **annexture GNW-4**, affidavit confirming the same. She therefore alleged that the said plots **Nos.88 and 90**, are owned by her and not the 1st and 2nd Plaintiffs as alleged by the Applicants. It was her allegation that she fenced the said plots and put up a gate long before the matter was brought to court. That the court directed that *status quo* on plots **Nos.88 and 90** be maintained and she has continued to maintain the said *status quo*. She alleged that no evidence was availed by the Applicants. She further averred that her plots are **Nos.88 and 90**, but not **plot Nos.43 and 44** that are allegedly owned by the 7th – 9th Defendants/Applicants. She urged the Court to dismiss the instant application.

Josephine Mwoi Wambugu also swore her **Replying Affidavit** and averred that she is one of the Directors of the 1st and 2nd Plaintiffs/Respondents, and that the said Plaintiffs (1st-2nd) are not owners of **plots Nos.88 and 90** as claimed by the Defendants/Applicants. Further that they have no claim over the said two plots which plots belong to the 3rd Plaintiff and therefore they have no activities on the said plots. It was her contention that the 3rd Plaintiff has maintained the *status quo* in as far as the two properties are concerned as directed by the court. She urged the Court to dismiss the instant application.

Christine Imbosa Mbogua also filed a **Replying Affidavit** and averred that she is a co-owner of the suit property, **LR.No7969, Kiambu** which is **approximately 10.21 acres** which they bought for the purpose of development by selling part of the property to raise monies to develop the rest. That they subdivided the land into **99 plots** and sold various plots to the Plaintiffs herein and many other individuals. However, the 1st Defendant out of greed started to arbitrary repossess some of the plots that they had sold to some purchasers notably the Plaintiffs herein. She averred that she was not part of such unethical conduct of selling property to purchasers and then seeking to repossess them and sell to other purchasers for a higher price. She therefore confirmed that plots **Nos.88 and 99**, belong to 3rd Plaintiff having purchased the same from her as per the sale agreement produced in court. She urged the Court to dismiss the instant application.

At first the parties attempted to settle the matter out of court. However, the said negotiations out of court collapsed and parties were directed to canvass the two application together by way of written submissions.

In compliance thereto, the **Law Firm of F. N. Njanja & Co. Advocates**, for the Plaintiffs filed their two sets of submissions on **23rd May 2017**. They further filed an affidavit by **Patrick Macharia**, the 5th Defendant who averred that he once resided on the suit premises which is co-owned by the 1st Defendant and one **Christine Imbosa Mbogua**. He further averred that the 1st Defendant and **Christine Imbosa Mbogua**, sold the plots referred to by the Plaintiffs in their application including plot **Nos.88 and 90**, which plots were sold to 3rd Plaintiff herein. That the Plaintiff took possession of the said plots and started developing them. However, the 1st Defendant started to campaign to the Defendants to bring them on board and dispossess the Plaintiffs of their plots. That after the Plaintiffs moved to court, he decided not to proceed with the said unlawful scheme and thus his affidavit. He alleged that the Defendants actions are illegal and he does not wish to participate in the said scheme.

This Court has now carefully considered the pleadings in general the annexures thereto, the written submissions and the relevant provisions of law and it will render itself as follows:-

There are two applications. One is for injunction and the other is for contempt of court.

The Court will first deal with the **Notice of Motion**, dated **22nd February 2017**, seeking for injunctive orders brought by the Plaintiffs/Applicants. In the instant **Notice of Motion** application dated **22nd February 2017**, the Applicants are seeking for injunctive orders

which are equitable reliefs granted at the discretion of the court. As usual, the said discretion must be exercised judicially. See the case of Nyutu & Others...Vs...Gatheru & Others (1990) KLR 554, where the Court held that:-

“Whether or not to grant an injunction is in the discretion of the Court and the discretion is a free one but must be judicially exercised. It must be based on common sense and legal principles.”

Further as the court determines whether to grant the injunctive orders sought or not, it will take into account that at this juncture, it is not supposed to determine contested issues with finality. All the court is supposed to do is to determine whether the Applicants are deserving of the injunctive orders sought based on the usual criteria. See the case of Edwin Kamau Muniu..Vs..Barclays Bank of Kenya Ltd Nairobi HCCC No. 1118 of 2002, where the court held that:

“In an Interlocutory application, the Court is not required to determine the very issues which will be canvassed at the trial with finality. All the Court is entitled at that stage is whether the Applicant is entitled to an Injunction sought on the usual criteria....”

The criteria to be considered is the one established in the case of Giella...Vs...Cassman Brown & Co. Ltd 1973, EA 358. These criterias are:

- a) **The Applicant must establish that he has a prima facie case with probability of success.**
- b) **That the Applicant will suffer irreparable loss which cannot be adequately compensated in any way or by an award of damages.**
- c) **When the Court is in doubt, to decide the case on a balance of convenience.**

Therefore the Applicants herein had a duty to establish the above stated threshold or criteria.

Firstly, the Applicants needed to establish that they have a *prima-facie* case with probability of success as was described in the Mrao Ltd... Vs...First American Bank of Kenya Ltd & 2 Others 2003 KLR 125, the Court held that:-

“so what is a prima facie case----- In civil cases it is a case which on the material presented to the Court or a tribunal properly directing itself will conclude that there exist a right which has apparently been infringed by the opposite party so as to call for a explanation or rebuttal from the latter”

Have the Applicants herein established that they have a *prima-facie* case with probability of success?

From the available evidence there is no doubt that the Plaintiffs herein and the 1st Defendant who co-owns the suit property with one **Christine Imbosa Mbogua**, entered into various sale agreements for sale and purchase of various plots being subdivisions of **LR.No.7969, Kiambu**. There is also no doubt that the vendors did receive various payments towards settlement of the agreed purchase price. It is also evident that vide the **two affidavits**, dated **5th February 2016** sworn by **David Waweru Kahinga** and **Christine Imbosa Mbogua**, the vendors, acknowledged receipt of the full purchase price from the 1st and 2nd Plaintiffs. Further it

is evident through **Sale Agreements** dated **26th February 2016**, and **4th March 2016**, that the vendors also sold **plots Nos.88 and 90** to **Gloria Nyawira Wambugu**, the 3rd Plaintiff/Applicant herein. The Plaintiffs have averred that after the payment of the purchase price, the vendors gave them vacant possession of the suit plots and they began construction thereon. However, the 1st Defendant has now reneged on the said sale agreements and had demanded for more money using their joint advocates who are the 2nd and 3rd Defendants and have also brought on board the other Defendants to claim ownership of the suit property. The Applicants have urged the Court to protect their interest.

The 1st Defendant has averred that he indeed sold the stated plots to the 1st and 2nd Plaintiffs in his paragraph 6 of the Replying Affidavit. However he alleged that they did not pay the full purchase price and thus the 1st Defendant demand to them. He further averred that the Plaintiffs' application is only meant to defeat end of justice. Indeed the 1st Defendant raised some issues in his Replying Affidavit which are issues that can only be canvassed in the full trial. However for now, what is evident is that the 1st Defendant and one **Christine Imbosa Mbogua**, sold various plots to the 1st and 2nd Plaintiffs and they acknowledged receipt of the full purchase price vide their affidavit dated **5th February 2016**. Further, the 3rd Plaintiff bought plots **Nos.88 and 90** from one **Christine Imbosa Mbogua** as is evident from the affidavits of **Gloria Nyawira Wambugu** and **Christine Imbosa Mbogua**. It is also evident that the Plaintiffs have started construction on the suit property. The other co-owner of the suit property **Christine Imbosa Mbogua** alleged that the suit herein arose due to the greed of the 1st Defendant who started demanding for more money from the purchasers. The Court finds that the issues raised by the 1st Defendant can only be canvassed at the full trial.

However, from the available evidence, the Plaintiffs/Applicants have established that they purchased the suit plots and paid the full purchase price and were given possession. The Defendants acts of demolishing of the structures on the suit plots goes against the understanding between the parties. The Applicants have established that they have a *prima-facie* case with probability of success at the trial.

On whether the Applicants will suffer irreparable loss which cannot be compensated by an award of damages. It is evident that the Applicants have taken possession of the suit plots and are constructing thereon. The actions of the Defendants will indeed deprive them of the suit property and given that the 1st Defendant is threatening to sell the said plots to other purchasers at a higher price, the Plaintiffs/Applicants will indeed lose the said plots before this matter is heard and determined. Even if the said plots can be quantified, the

payment of compensation cannot be equated to rights of parties which have crystallized. See the case of *Joseph Siro Mosioma...Vs...Housing Finance Corporation of Kenya & 3 Others, Nairobi HCCC No.265 of 2007 (4R)*, where the Court held that:-

“On my part let me restate that damages is not automatic remedy when deciding whether to grant an injunction or not. Damages is not and cannot be substituted for the loss which is occasioned by a clear breach of the law. In any case, the financial strength of a party is not always a factor to refuse an injunction more so a party cannot be condemned to take damages in lieu of his crystallized right which can be protected by an order of injunction”.

The Court finds that the Applicants have demonstrated that they will suffer irreparable loss which cannot be compensated by an award of damages.

On the balance of convenience, the Court finds that it is not in doubt. However, if this Court is to decide on the balance of convenience, the same will tilt in favour of maintaining the *status quo*. The *status quo* herein means maintaining the *status quo* that was existing before the wrongful acts complained of had occurred. See the case of *Agnes Adhiambo Ojwang...Vs...Wycliffe Odhiambo Ojijo, Kisumu HCCC No.205 o 2000*, where the Court held that:-

“the purpose of injunction is to preserve the status quo and the status quo to be preserved is the one that existed before the wrongful act”.

The Court finds that the balance of convenience herein tilts in favour of maintaining the existing *status quo* which means allowing the Plaintiffs/

Applicants to continue being in possession and carrying on with what they were doing before the acts complained of had occurred.

Having now carefully considered the available evidence, the Court finds that the Plaintiffs/Applicants herein have established the threshold criteria for grant of injunctive orders. For the above reasons, the Court allows the Plaintiffs’/Applicants’ **Notice of Motion** application dated **22nd February 2017**, entirely in terms of **prayer No.3** with costs to the Applicants.

On the second application for Contempt of Court dated **17th March 2017**, the Defendants/Applicants had urged the Court to lift the corporate veil of the 1st and 2nd Respondents and issue summons to **Josephine Mwoi Wambugu** and **Francis Wambugu Miano**, the Directors of the 1st and 2nd Plaintiffs herein. The Applicants had averred that the said Directors had disobeyed the Court Orders wherein the Court had directed that *status quo* be maintained on plots **Nos.88 and 90**. However, it is evident that the two plots were sold to the 3rd Plaintiff/Respondent and not the 1st and 2nd Plaintiffs. The person who was supposed to maintain *status quo* was the 3rd Plaintiff herein **Gloria Nyawira Wambugu**, and not the 1st and 2nd Plaintiffs. There is no reason why this Court should lift the corporate veil of the said 1st and 2nd Plaintiffs/Respondents.

Further, it was alleged that the Plaintiffs are in contempt of Court Order which Court Order stated that *status quo* existing on **plots Nos.88 and 90** be maintained. As the Court held earlier, **plots Nos.88 and 90** were sold to the 3rd Plaintiff by **Christine Imbosa Mbogua**, and she was given possession. The existing *status quo* is that the 3rd Plaintiff is in possession. If she remained in possession of the same, that was maintaining of the existing *status quo* and there is no disobedience of any Court Order.

On whether **Plots Nos.88 and 90** were referred to as plot **Nos. 43 and 44** in the earlier subdivision plans, that is an issue to be decided at the full trial but not at this interlocutory stage based on affidavits evidence of the parties herein.

On whether the Defendants are entitled to injunctive orders as prayed in **prayer No.4**, the Court finds that there is no evidence that the 7th – 9th Defendants were ever in possession of the said suit property. The Court has injuncted the Defendants from interfering with the Plaintiffs use and possession of the suit plots that they purchased from the 1st Defendant and **Christine Imbosa Mbogua**. The Court cannot injunct the Plaintiffs in a separate application. That would be tantamount to issuing conflicting orders and this causing confusion.

The Defendants have prayed that the Court do cite the Plaintiffs for contempt of Order and do jail the contemnor for a period of 6 months for such contempt. Contempt of court is a quasi - criminal in nature in that there is a possibility of sending the contemnor to prison and thus curtailing his/her freedom. Therefore allegations of Contempt of Court are serious allegations which must be proved on a higher standard than balance of probabilities. See the case of *Mutitika...Vs...Baharini Farm Ltd, Civil Appeal No.24 of 1985*, where the Court held:-

“The standard of proof in contempt proceedings must be higher than proof on the balance of probabilities, almost but not exactly beyond reasonable doubt...”

Recourse ought not be had through process of contempt in aid of a civil remedy where there is other methods of doing justice. The jurisdiction of committing for contempt being practically arbitrary and unlimited should be most jealously and carefully watched and exercised with the greatest reluctance and the greatest anxiety on the part of Judge to see whether there is no other mode which is open to the objectives of arbitrariness, and which can be brought to bear upon the subject.”

Applying the above standard herein, the Court finds that the Defendants/Applicants have not proved that the Plaintiffs herein were in contempt of the Court Order issued on **9th March 2017**.

For the above reasons, the Court disallows the Defendants’/

Applicants' **Notice of Motion** application dated **17th March 2017** entirely with costs to the Plaintiffs/Respondents.

For avoidance of doubt, the **Notice of Motion** application dated **22nd February 2017**, is allowed entirely with costs to the Applicants. The **Notice of Motion** application dated **17th March 2017** is dismissed entirely with costs to the Respondents.

Further, the Defendants should file their Defences expeditiously and not later than 14 days from the date hereof and after close of the pleadings, parties to comply with Order 11 within a period of 30 days from the date thereof, so that the matter can be set down for hearing of the main suit and have the disputed issues resolved at once.

It is so ordered.

Dated, Signed and Delivered at Thika this 2nd day of **March 2018.**

L. GACHERU

JUDGE

In the presence of

No appearance for Plaintiffs/Applicants

Mr. Mwihi for Defendants/Respondents

Lucy - Court clerk.

Court – Ruling read in open court.

L. GACHERU

JUDGE

2/3/2018