



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC 720 OF 2015**

**JOHN KARUMBI GATINU & 8 OTHERS.....PLAINTIFFS**

**VERSUS**

**HENRY KARANJA NGUGI & 8 OTHERS.....DEFENDANTS**

**RULING**

1. The Plaintiffs / Applicants filed a notice of motion dated 2<sup>nd</sup> December 2015, in which they sought the following orders.

*1. That an order do issue declaring the 1<sup>st</sup> to 9<sup>th</sup> Defendants (the defendants) guilty of disobeying this honourable Court's injunctions and being in breach of their terms thereto.*

*2. That an order be issued for the attachment of the properties of the defendants for their disobedience and breach of the injunctions of this honourable Court and in the alternative thereto an order for the detention and committal of the defendants in prison upon such period and such terms as this honourable Court may determine.*

**AND OR**

*in the alternative*

*3. An order be issued directing the defendants to produce properties belonging to them to be placed at the disposal of the court and in breach thereto an order do issue for the attachment of their said properties as punishment for their disobedience and breach of this Honourable court's injunctions.*

*4. An order of inhibition be issued directing the Land Registrar , Kajiado land Registry forbidding him from registering any dealing with land title Kajiado/Ildamat/255 ( the suit property) including any sale sub-division ,transfer and or charging of the suit property until this suit is heard and determined or until further orders of this Honourable Court.*

*5. An order do issue declaring the purported sub-division by way of mutations of the suit land presented before the Kajiado Land Registry on the 17<sup>th</sup> June 2014 null and void ab initio.*

*6. An order do issue declaring that the purported and illegal transfer and sale of land parcel numbers Kajiado/Ildamat/5941,5942,5943,5944,5945,5946,5947,5948,5949 and 5950 which are the purported sub-divisional parcels of land of the suit land are null and void ab initio.*

*7. An order to issue directing the defendants to give unto the custody of the court the title documents for the purported new parcels numbers Kajiado/ Ildamat/ 5941, 5942, 5943, 5944, 5945, 5946, 5947, 5948, 5949 and 5950 which were purportedly the sub-divided parcels of land from the suit land for the court to issue appropriate orders thereto.*

*8. Any other relief and/or order that will meet the ends of justice as this honourable Court may deem just to grant.*

*9. The defendants be condemned to pay the costs of this application.*

2. The applicants had made criminal complaints against the respondents which complaints led to registration of a restriction against title number LR Kajiado/Ildamat/255 . The restriction was registered on 6<sup>th</sup> June 2012. In October 2012 the applicants filed a suit against the respondents. They contemporaneously filed an application seeking for injunctive orders against the respondents.

3. Before the application for injunction could be decided, the applicants and the respondents entered into a consent in a bid to settle the dispute out of court. This consent was dated 22<sup>nd</sup> June 2013 . The parties agreed to maintain the status quo. There was another suit which had been filed in the previous year that is High Court Civil case No. 63 of 2011. Injunctive orders had been granted restraining the defendants therein from dealing with the property in dispute until hearing and determination of the suit.

4. On 12<sup>th</sup> June 2015 a ruling in respect of the application of 17<sup>th</sup> October 2012 was delivered. An order of injunction was granted restraining the respondents from in any way dealing with the suit property (i.e LR No. Kajiado/Ildamat/225) until hearing and determination of the suit. The applicants now contend that the respondents went against the court orders by proceeding to subdivide LR No.Kajiado/Ildamat/255 and selling the subdivided portions to third parties. It is on this basis that they have come to court seeking the respondents' committal to civil jail or attachment of their properties among other prayers as shown in paragraph 1 hereinabove.

5. The applicants' application is opposed through two replying affidavits one sworn by the second respondent on 9<sup>th</sup> February 2015 and the other sworn by the sixth respondent on 26<sup>th</sup> February 2016. The sixth respondent contends that she ceased being a member of Super Micro Venture Self Help Group (the group) on 25<sup>th</sup> January 2010 and was therefore not privy to what went on after her resignation; that she was not a party to HCCC No 63 of 2011 and cannot be bound by orders given therein and in any case she was not served with any order and as such cannot be held to be in contempt of any court order.

6. The second respondent on her part has stated that part of LR No. Kajiado /Ildamat/255 was sold so as to settle debts owed by the group. The agreement of 22<sup>nd</sup> June 2013 was never made a subject of the court proceedings and its collapse was duly communicated by their lawyers. Milimani HCCC No. 63 of 2011 was concluded on 6<sup>th</sup> December 2012. There was therefore no order prohibiting sale of LR No. Kajiado/Ildamat/255 . Any such sale which occurred was in the best interest of the group. The suit property had been advertised for auction which auction was stopped to enable the group to sell part of the suit property to settle the decree in Milimani HCCC No. 63 of 2011. The second respondent denies that the group members have disobeyed any of court orders.

7. I have carefully considered the applicant's application as well as the opposition to the same by the respondents. I have also considered the submissions filed by the parties herein. The issues which emerge for determination are whether the respondents are in contempt of any court order and whether the other prayers in the application can be granted.

8. To begin with, the applicants have not specified which court orders were disobeyed. Failure to cite any specific order which was disobeyed was deliberate as the applicants were aware that no order was disobeyed. The first, second, third, fourth seventh and ninth respondents were also defendants in Milimani HCCC No.63 of 2011. In HCCC No. 63 of 2011, a ruling was delivered on 26<sup>th</sup> January 2012 restraining the defendants in that suit from disposing LR No. Kajiado/ Ildamat/ 255 pending the hearing and determination of that suit. This suit was finally determined on 6<sup>th</sup> December 2012 when summary judgement was entered in favour of the two plaintiffs in the suit.

9. The suit property that is LR No. Kajiado/ Ildamat/255 was subdivided by the group members in 2013. It was subdivided into Kajiado/Ildamat /5941 to 5950. Kajiado/Ildamat/5941 was transferred to Acumen Housing Co-operative Society on 14/8/2014 , LR No.Kajiado/ Ildamat/5942 and 5943 were transferred to Safaricom Investments Co-operative Society on 17<sup>th</sup> June 2015, LR No.Kajiado/ Ildamat /5944 was transferred to Dowicah Ltd on 4<sup>th</sup> March 2015, LR No.Kajiado/Ildamat/5945 was transferred to Solomon Mugo Mbiyo on 12<sup>th</sup> June 2015, LR No Kajiado/Ildamat/5946 was transferred to Daniel E Murithi Lukah on 6<sup>th</sup> June 2014 , LR No. Kajiado/Ildamat/5949 was transferred to Margaret Wanjiru Ndehi on 12<sup>th</sup> June 2015 and LR No Kajiado/Ildamat/5950 was transferred to Winfred Wanjiku ( Minor) on 12<sup>th</sup> June 2015.

10. It is clear that the sub-division and transfer of most properties were done before 12<sup>th</sup> June 2015 when the court issued an injunction in this case. LR No.Kajiado/Ildamat/255 had ceased to exist upon subdivision prior to the date the injunction was issued. The injunction was therefore issued against a property which had ceased to exist in the manner the injunction was given. The respondents cannot therefore be faulted for disobeying any court order. The consent which was recorded on 22<sup>nd</sup> June 2013 between the parties wherein the status quo was to be maintained was never adopted as order of court and therefore it did not become part of the court orders. In any case , the collapse of that order was communicated to the applicants' lawyers.

11. The applicants are seeking an order that the respondents be directed to produce records of properties held by them. This order cannot be given as to do so will be tantamount to the court groping in the dark as it does not know which properties the respondents have. A court can only grant an order regarding a specific property which is a subject of the suit before it.

12. The applicants are also seeking an order of inhibition to be registered against Kajiado/Ildamat/255 . As I have already stated, herein above, that property ceased to exist upon sub-division. There is no order of prohibition which can be issued against a non-existent title.

13. The applicants are also seeking orders declaring that the mutations presented before Kajiado land Registry on 17<sup>th</sup> June 2014 are null and void and that the sub-divisions arising from the suit property are illegal. These orders cannot be granted at interlocutory stage and in any case, the titles are in the hands of third parties some of whom have charged the titles to secure loans. The title holders are not parties to this suit and no order can be made for those titles to be brought to court. The only person who is a party to this suit and has title to one property is the second respondent. It is not yet determined how she got the title and it will be premature to call for that title leave alone any attempt to declare the same a nullity as requested by the applicants. I therefore find that the applicants' application lacks merit. The same is hereby dismissed with costs to the respondents. An order is hereby made transferring this suit to Kajiado ELC Court where the suit property is situate.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **24<sup>th</sup>** day of **May 2018**.

**E.O.OBAGA**

**JUDGE**

In the absence of:-

M/s Chepngeno for Mr Kamau for Plaintiff

Mr Mureithi for Mr Kimani for 2<sup>nd</sup> and 9<sup>th</sup> defendants

Court Assistant: Kevin