



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 407 OF 2017

GRACE WANJIRU NG'ANGA.....1ST PLAINTIFF

JENIFFER WARINGA MIARAHO.....2ND PLAINTIFF

JECINTER WANGARE NYOIKE.....3RD PLAINTIFF

VERSUS

ELIAS NGUGI NG'ANG'A.....1ST DEFENDANT

GRACE NDUTA NYOIKE.....2ND DEFENDANT

RULING

1. This ruling is in respect of Notice of Motion dated 5th June 2017 an application pursuant to which the plaintiffs seek the following orders:

1) Spent.

2) Spent.

3) That the honourable court do issue a representative order allowing the plaintiffs to proceed representing the beneficial owners of land parcel number Gilgil/Gilgil Block 1/9565 registered in the name of Naivasha Uiguano Group.

4) That the honourable court approve the annexed notice of this suit and the plaintiffs give notice to the interested individuals by reading the notice at a general meeting of members of Naivasha Uiguano Group.

5) That directions be given that the matter be disposed of by affidavit evidence and an urgent hearing date be given.

2. The application is supported by an affidavit sworn by the 1st plaintiff. It is deposed therein that the plaintiffs filed this suit on their own behalf and on behalf of 85 people who bought land parcel number **Gilgil/Gilgil Block 1/9565 (Kekopey)** (the suit property) in 1975. At the time of the transaction the 85 persons were residing with the plaintiffs at Mununga Sub-Location in Naivasha District. Owing to the large number of interested persons, the plaintiffs wish to turn the suit into a representative one. A large number of the interested persons have passed on while others have left the area but all are represented by family members in the welfare group. 76 of the interested persons attended a meeting held on 14th July 2015. The meeting resolved to change trustees.

3. At the hearing of the application, counsel for the plaintiffs/applicants informed the court that the 1st defendant passed away on 17th August 2016. He therefore urged the court to mark the claim against the 1st defendant as abated.

4. Though the application was served on the remaining defendants, no replying affidavit was filed. Accordingly, counsel for the applicants cited the case of **Daniel K. Yego & 3 others –vs- Paulina Nekesa Kode [2016] eKLR** and urged the court to allow the application.

5. I have considered the application, the supporting affidavit and the submissions. To put matters in perspective, it is important to revisit the Originating Summons (OS) which was filed at the commencement of these proceedings as well as the affidavit in support of it. The OS was brought under Sections 42 and 57 of the Trustee Act. The plaintiffs describe themselves as office bearers of Naivasha Uiguano Group, a self-help group registered by Ministry of Labour, Social Security and Services under Certificate No. 3604960. The group was formed in 1975 and comprised 85 women. The group purchased the suit property. When the title deed was issued it reflected the names of the defendants as registered proprietors as trustees of Naivasha Uiguano Group. The group met and passed a resolution revoking the appointment of the defendants as trustees and instead appointing the plaintiffs as trustees of the group. The land registrar declined to register

the change of trustees. Accordingly the plaintiffs seek the following orders in the OS:

- 1. Whether the honourable court should revoke the appointment of the defendants as trustees of Naivasha Uiguano Group.**
- 2. Whether the honourable court should appoint the current office bearers of the group as trustees in place of the defendants.**
- 3. Whether the court should order or direct the Naivasha Land Registrar to register the newly appointed trustees as holders in trust of the group's parcel of land known as land reference No. Gilgil/Gilgil Block 1/9565 (Kekopey) in place of the defendants.**

6. In essence, the plaintiffs wish to be allowed to prosecute this suit as a representative suit for themselves and on behalf of all the 85 persons who are interested in the suit property and the affairs of Naivasha Uiguano Group. From the material placed before the court, I am satisfied that the applicants have demonstrated that there are numerous persons interested in the proceedings and that pursuant to Order 1 rule 8 of the Civil Procedure Rules, the orders sought ought to issue. The said rule provides:

8. (1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under sub rule (1) may apply to the court to be made a party to such suit.

7. In view of the foregoing, I make the following orders:

- a) The plaintiffs are hereby allowed to prosecute this suit on behalf of all persons who are beneficially interested in the parcel of land known as Gilgil/Gilgil Block 1/9565 (Kekopey).**
- b) The notice of institution of the suit which is annexed to the application be read at a general meeting of Naivasha Uiguano Group.**
- c) The aforesaid notice also be published in either the Daily Nation or Standard Newspapers.**
- d) Costs of the application shall be in the cause.**

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 29th day of June 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiffs

No appearance for the defendants

Court Assistants: Gichaba & Lotkomo