



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**HCC No. 57 OF 2014**

GEOFFREY KIIRU KINYANJUI .....1<sup>ST</sup> PLAINTIFF

DAUD MOHAMMED .....2<sup>ND</sup> PLAINTIFF

**VERSUS**

SAYID MOHAMMED AMIN.....DEFENDANT

**AND**

JOSEPH NJOROGI MWANGI .....1<sup>ST</sup> APPLICANT

JOSEPH NJOROGI MWANGI, JAMES KAMAU MBUGUA AND

PAUL KAMAU KARIUKI AS OFFICIALS/TRUSTEES OF LIFE

REFORMATION CHURCH .....2<sup>ND</sup> APPLICANT

GODFREY MWANGI NDIANGUI .....3<sup>RD</sup> APPLICANT

ROSE WAITHIEGENI GICHUHI .....4<sup>TH</sup> APPLICANT

MARCELLUS MARIETA OANG'I.....5<sup>TH</sup> APPLICANT

HOSEA MUITA NJOROGI ..... 6<sup>TH</sup> APPLICANT

**RULING**

1. This ruling is in respect of two applications: Notice of Motion dated 6<sup>th</sup> February 2017 and Notice of Motion dated 14<sup>th</sup> July 2017. Though some of the parties have referred to the former application as being dated 16<sup>th</sup> January 2017, the copy in the court file is dated 6<sup>th</sup> February 2017. We will therefore go by that date.

2. The following orders are sought in Notice of Motion dated 6<sup>th</sup> February 2017:

**1. Spent.**

**2. That the applicant herein be joined as an interested party and thereafter be allowed to file such pleadings that may be necessary for the effective, efficient and final determination of this matter.**

**3. That costs of this application be in the cause.**

3. The applicant in Notice of Motion dated 6<sup>th</sup> February 2017 is Mr John Githui, an advocate of this court. He swore the affidavit in support of the application. He deposed that he bought the property known as Naivasha/Maraigushu Block 10/992 (Kedong) at an auction staged by KCB Bank as a chargee. Upon paying the purchase price, he sought a Certificate of Search from the Land Registrar but was informed that records of the property could not be availed owing to an Order issued in this matter on 2<sup>nd</sup> March 2016.

4. In Notice of Motion dated 14<sup>th</sup> July 2017, the following orders are sought:

**1. Spent.**

**2. The applicants herein be joined as interested parties to the suit herein and thereafter be allowed to file such pleading/processes as may be necessary for the effective, efficient and just determination of the matter.**

**3. That upon being enjoined in the suit, the applicants be granted orders directed at the District Land Registrar, Naivasha District Land Registry directing him to release the Green Cards and carry out all his statutory obligations requisite for the registration of the transfers of the titles to the Land Parcels Naivasha/Maraigushu Block 10/220, 260, 262, 268, 610, 810, 602, 293, 692, 751, 828, 243 and 210 in the applicant's favour.**

**4. The costs of this application be in the cause.**

5. The application is supported by an affidavit sworn by Rose Waithiegeni Gichuhi on her own behalf and on behalf of her co-applicants. She deposed that she and her co-applicants bought the properties known as Naivasha/Maraigushu Block 10/220, 260, 262, 268, 610, 810, 602, 293, 692, 751, 828, 243 and 210. They were however unable to have transfers to themselves registered owing to an order issued by the court.

6. The plaintiffs did not file any response to the applications. On the other hand, the defendant opposed the applications through a replying affidavit sworn on 15<sup>th</sup> March 2017 and another sworn on 17<sup>th</sup> October 2017. In regard to Notice of Motion dated 6<sup>th</sup> February 2017, he deposed that he is the owner of Naivasha/Maraigushu Block 10/992 (Kedong) which according to him forms part of Naivasha/Maraigushu Block 10/2 (Kedong). As regards Notice of Motion dated 14<sup>th</sup> July 2017, he similarly deposed that the parcels referred to by the applicants in the said application all form part of Naivasha/Maraigushu block 10/2 (Kedong). He deposed that the applicants in both applications did not validly purchase the respective plots and that they should not be allowed to join the case.

7. The applications were heard by way of written submissions. Mr John Githui filed his submissions on 11<sup>th</sup> April 2017, the applicants in Notice of Motion dated 14<sup>th</sup> July 2017 filed the submissions on 23<sup>rd</sup> November 2017 while the defendant filed two sets of submissions: one on 9<sup>th</sup> May 2017 and the other on 6<sup>th</sup> February 2018. The plaintiffs did not file any submissions. I have considered the applications, the affidavits filed and the submissions.

8. The defendant who has opposed both the applications states that the applicants' plots are part of Naivasha/Maraigushu Block 10/2 (Kedong). He seems to take the position that the applicants have not validly acquired the plots. That obviously is a matter that would have to be determined upon a trial. Nevertheless, a perusal of the plaint herein reveals that Naivasha/Maraigushu Block 10/2 (Kedong) is the subject matter of the suit.

9. To the extent that the applicants claim an interest of the respective plots which are said to be part of Naivasha/Maraigushu Block 10/2 (Kedong), they have a valid interest in the litigation herein. At this point, the court is not called upon to determine the merits of their case. All they have to show, which they have done, is that their presence before the court is necessary to enable the court to determine all the questions in dispute.

10. The applicants can be joined to the proceedings pursuant to Order 1 rule 10 (2) of the Civil Procedure Rules which provides:

***The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.***

11. The applicants therefore fit the description of an interested party.

12. In view of the foregoing discourse, the applicants have established a case for their joinder in these proceedings as interested parties. Regarding prayer 3 of the Notice of Motion dated 14<sup>th</sup> July 2017, whereas I see no bar to the registrar providing records in respect of the plots, it would be premature to order the registrar to carry out obligations leading to registration.

13. In the end, I make the following Orders:

a) John Githui is joined to the matter as 1<sup>st</sup> Interested Party.

b) Joseph Njoroge Mwangi is joined to this matter as 2<sup>nd</sup> Interested Party.

c) Joseph Njoroge Mwangi, James Kamau Mbugua and Paul Kamau Kariuki as officials/Trustees of Life Reformation Church are jointly joined to this matter as 3<sup>rd</sup> Interested Party.

d) Godfrey Mwangi Ndiangui is joined to this matter as 4<sup>th</sup> Interested Party.

- e) Rose Waithiegeni Gichuhi is joined to this matter as 5<sup>th</sup> Interested Party.
- f) Marcellus Marieta Oang'i is joined to this matter as 6<sup>th</sup> Interested Party.
- g) Hosea Muita Njoroge is joined to this matter as 7<sup>th</sup> Interested Party.
- h) Subject to payment of relevant charges, the District Land Registrar Naivasha is hereby ordered to supply to the 2<sup>nd</sup> to 7<sup>th</sup> interested parties certified copies of green cards for Land Parcels Naivasha/Maraigushu Block 10/220, 260, 262, 268, 610, 810, 602, 293, 692, 751, 828, 243 and 210.
- i) Costs of Notice of Motion dated 6<sup>th</sup> February 2017 and Notice of Motion Dated 14<sup>th</sup> July 2017 shall be in the cause.

14. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 13<sup>th</sup> day of July 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Ms Mathenge holding brief for Mr Ndumia the applicants

Mr Githui present for himself

Mr Karanja for the plaintiffs

Mr Odhiambo for the defendant

Court Assistants: Gichaba & Lotkomoi