



1 REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC.NO.6 of 2017

THOGOTO UKAI SELF HELP GROUP.....1ST PLAINTIFF

PETER KENI KANUNE.....2ND PLAINTIFF

-VERSUS-

JOSEPH GACHOKI GITARU

T/A GEO ACRE SURVEYS.....1ST DEFENDANT

THE DIRECTOR OF SURVEYS.....2ND DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD DEFENDANT

THE NATIONAL LAND COMMISSION.....INTERESTED PARTY

RULING

The 1st and 2nd Plaintiffs herein *Thogoto Ukai Self Help Group* and *Peter Keni Kanune* filed this suit on **19th January 2017**, and sought for various orders among them;

a) An Order nullifying all approvals issued and all entries made in respect of property known as LR.No.2256/8 (originally 2256/7/1) and any subdivisions thereof on the strength of any document or information provided by the 1st Defendant.

b) An Order directing the 2nd and 3rd Respondents to revoke and expunge from their records all approvals issued and all entries made in respect of the property known as LR.No.2256/8 (originally 2256/7/1) and any subdivisions thereof on the strength of any documents or information provided by the 1st Defendant.

In the Pleadings, the Plaintiffs averred that on **31st March 2009**, the 1st Plaintiff applied to the **Commissioner of Lands** for allocation of the subject parcel of land and subsequent registration of the suit property in the name of the 1st Plaintiff.

Further that for the 1st Plaintiff to secure approval of its application, a **Survey Plan** had to be submitted which was indeed submitted by the 1st Plaintiff on **24th March 2010** and subsequently made payments of the requisite **survey charges** and/or **fees**. It was further averred that upon fulfilment of all the relevant requirements, a gang of men unknown to the Plaintiffs trespassed and entered upon the suit property and purported to survey it. That the said survey and purported subdivision of the suit property was being fraudulently conducted by the 1st Defendant herein and his agents and therefore the 1st Defendant and his agents are intruders, and conspirators acting in a bid to curtail the Plaintiffs legitimate expectation and to dispose and/or disenfranchise the Plaintiffs of the suit property.

Simultaneously, the Plaintiffs filed a **Notice of Motion** application even dated and sought for various temporary orders among them:-

1) That a temporary injunction do issue restraining the 1st Defendant whether by himself or through his principals, servants, employees and/or agents or whosoever from entering upon, taking possession, evicting the Applicants, selling, destroying any property on or interfering in any way with the Applicants' occupation and quiet possession of the property known as LR.No.2256/8 (originally 2256/7/1) or any subdivisions thereof, pending the hearing and determination of the main suit herein.

2) That a temporary injunction do issue restraining the 2nd and 3rd Respondents whether by themselves or through servants, employees and/or agents by whatever name called from making any further entry based on any document or information

provided by the 1st Defendant or any other person other than the Applicants in respect of the property known as LR.No.2256/8 (originally 2256/7/1) and any subdivision thereof, pending the hearing and determination of the main suit.

However, the application was opposed by the 1st Defendant who averred that he was given instructions to carry out the stated works by the members of the 1st Plaintiff and he was duly issued with instructions by **Mr. Protus Inziani Majanje**, the **Chairman** of **Thogoto Ukai Self Help Group**, the 1st Plaintiff herein. The said instructions were contained in a letter dated **15th January 2016**, marked **JGG-4** to proceed and survey the suit property as advised by the **County Physical Planning Office Kiambu**. He therefore complied with the given conditions and on **30th April 2016**, he submitted **149 Deed Plans** for checking, signing and sealing to the 2nd Defendant/Respondent herein as per **annexture JGG-7**.

However, before the Notice of Motion application could come up for hearing and before the other parties could file their responses, the **Law Firm of Maina & Maina Advocate** filed a **Notice of Change of Advocate** alleging that the 1st Plaintiff, **Thogoto Ukai Self Help Group** had instructed them to act for them in place of **EKN LLP Advocates** who had filed the suit. Further, the said **Law Firm of Maina & Maina Advocates** sought to withdraw the whole suit on behalf of the 1st Plaintiff. The court had on **9th February 2017** issued **orders for maintenance of status quo** to preserve the suit property.

The filing of **Notice of Change of Advocates** on behalf of 1st Plaintiff was vehemently opposed by **Mr. Munawa** for **EKN LLP Advocates**, who alleged that the said Firm was properly instructed by the legal and rightful office bearers of 1st Plaintiff herein. The court gave the **two Law Firms**

time to sort out the issue of legal Representation which unfortunately they failed to do so.

Further, the **Law Firm of Maina & Maina Advocates** had on **8th April 2017**, filed a document from the **District Social Development Office**, which stated that from their records, the current office bearers of the 1st Plaintiff were:-

1) Chairman – Protus Inziani Majanje

2) Secretary – Joseph Nduati Ngobu

3) Treasurer – Peter Muthee Kihunyu

The said production of the above letter prompted **Mr. Munawa** to seek for **Summons** to issue against the author of the said letter **Rose Mwangangi**, the **District Social Development Officer**.

Indeed the said **Rose Ndunge Mwangangi** appeared in court on **6th November 2017**, and confirmed that as per their records, the official office bearers of 1st Plaintiff were:-

1) Protus Inziani Majanje - Chairman

2) Joseph Nduati Ngobu - Secretary

3) Peter Muthee Kihunyu - Treasurer

She produced the file for the 1st Plaintiff on **19th February 2018**. However, she confirmed that before the above group came into office, the initial Directors were:-

1) Chairman – Protus Inziani Majanje

2) Secretary – Peter Keni Kanuna (2nd Plaintiff herein)

3) Treasurer – Peter Muthee Kihunyu

The **only change** in the officials therefore was the **Secretary** from **Peter Keni Kanuna** to **Joseph Nduati Ngabu**.

However, from the 1st Plaintiff's file, the court also noted existence of a letter dated **3rd October 2017**, wherein some officials had written to **Ethics and Anti-Corruption Commission** complaining about the conduct of **Rose Ndunge Mwangangi**. The said letter was signed by:-

1) James Wahome Kibaki – Chairman

2) Peter Keni Kanuna – Secretary

3) Cassius Mumo Muringo – Treasurer

From the above letter, it is very clear that there are leadership wrangles in this **Thogoto Ukai Self Help Group**, 1st Plaintiff. The **Law Firm**

of **EKN LLP Advocates** was instructed by the group of **James Wahome Kibaki, Peter Keni Kanuna** and **Cassius Mumo** through a **Special General Meeting** allegedly held on **10th January 2017**.

From the **Self Help Group** file produced in court by **Rose Mwangangi**, the court has also seen **Minutes** of **Special Extra Ordinary Meeting** of the 1st Plaintiff, which meeting was chaired by **Protus Inziani Majanje**, and which meeting denounced the present case in court. It is therefore very clear that there is conflict as to who are the genuine office bearers of the 1st Plaintiff and who would have the legal capacity to instruct an advocate on behalf of the 1st Plaintiff.

However, it is clear that the officials who gave instructions to the **Law Firm of EKN LLP Advocates** have been charged with Criminal charges among them **Giving False Information contrary to Section 129 of the Penal Code** and **Making Documents Without Authority contrary to Section 357(a) of the Penal Code**. The documents allegedly made are the

Minutes that culminated in giving instructions to the **Law Firm of EKN LLP Advocates**.

Much as the above are just charges and/or allegations, and the said persons are presumed to be innocent until proven guilty, the court is not certain what would be the outcome of the said Criminal charges. It would therefore, be very difficult at this juncture to declare or confirm that the group of **Protus Inziani Majanje** is in the office legally since most of the other crucial documents relating to this group are with the CID. Equally, it would be difficult too to confirm the group of **James Wahome Kibaki** as the official office bearers or masqueraders since their Criminal case is still pending.

For the above reasons, the Court would have to **stay** the making of any decision on who is the rightful legal representative of the 1st Plaintiff herein. Without having made a decision on who is the rightful legal representative of the 1st Plaintiff herein, it would be impossible to proceed with the case since one group wishes to have the matter withdrawn and the other group would wish to proceed with the suit as it is.

For the above reasons, the **Court proceeds to stay this suit until the Criminal Case No.271 of 2017, against Peter Keni Kanuna and James Wahome Kibaki is heard and determined**. The said determination will unlock the stalemate on who are indeed the rightful office bearers of the 1st Plaintiff and also shed light as to whether the group that gave instructions to **EKN LLP Advocates**, acted without authority. Further, most of the documents taken by the investigating officer would have been returned to the **District Social Development Officer, Kikuyu** and those documents especially the **Minutes** and **List of Members** would shed light on whether the group of **Protus Inziani Majanje** was properly elected by the members as the current office bearers. Consequently, the **Court stays this matter until Criminal Case No.271/2017 at Milimani Law Courts is heard and determined**.

However, the suit property herein **LR.No.2256/8 (original 2256/7/1)** needs to be preserved. The said **suit property can only be preserved by maintaining the prevailing status quo** and **directing that there should be no further subdivision, alienation, charging or transferring of the suit property until further orders of this court**. The said **status quo order to be registered on the said title** by the **Kiambu Land Registrar**. However, the **members of 1st Plaintiff to continue using, cultivating and or living on the suit property as they have always done and that is the status quo that should be maintained**.

It is so ordered.

Dated, Signed and Delivered at Thika this 28th day of September 2018.

L. GACHERU

JUDGE

In the presence of

Mr. Munawa for Plaintiffs

M/S Maitai for the 1st Plaintiff

No appearance for 1st Defendant

No appearance for 2nd Defendant

No appearance for 3rd Defendant

No appearance for Interested Party

Lucy - Court clerk

L. GACHERU

JUDGE

Court – Ruling read in open court in the presence of the above advocates.

ii) Further, the *suit is stayed until the final determination of Criminal Case No.271 of 2017* pending at *Milimani Law Courts*.

L. GACHERU

JUDGE

28/9/2018