



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 544 OF 2012**

**PETER KAGUMU.....1ST PLAINTIFF**

**PETER NJOROGE.....2ND PLAINTIFF**

**MARGARET RUGURU.....3RD PLAINTIFF**

**Suing on behalf of NEMBU AGACHIKU SELF HELP GROUP**

**VERSUS**

**KAHAWA WEST INVESTMENT COMPANY.....1ST DEFENDANT**

**FRANCIS NGUGI.....2ND DEFENDANT**

**ESTHER WAMBUI GITHINJI.....3RD DEFENDANT**

**JULIUS MWANGI MURU.....4TH DEFENDANT**

**CHRISTINE KIVUNGA.....5TH DEFENDANT**

**JUDGMENT**

1. On 22/8/2012, Peter Kagumu, Peter Njoroge and Margaret Ruguru brought this suit on behalf of Nembu Agachiku Self Help Group (the **Group**) against the defendants. They sought the following verbatim orders:

- i. Specific performance against the 1st defendant to complete the transaction and issue a title to the plaintiff (sic).*
- ii. An injunction against the defendants from interfering with the plaintiff's right to quiet possession of the suit property (sic).*
- iii. A declaration that the plaintiff is the absolute owner of the suit property.*
- iv. Accounts for loss of rental income be paid to the plaintiff (sic).*
- v. In the alternative, the defendant refunds the monies paid by the plaintiff for the suit property with interest and at the current market value (sic).*
- vi. Costs of this suit*
- vii. Interest on (d) and (f) above*
- viii. Any other relief this honourable court may deem fit to grant.*

2. The case of the Group is that the 1st defendant is a land buying company. The 2nd defendant is a director of the 1st defendant. On or about 20/11/1993, the Group purchased three (3) shares from the 1st defendant at Kshs 36,000. In addition, the Group paid the 1st defendant Kshs 30,000 as survey fees. Pursuant to the purchase of the three shares, the Group was allocated three unsurveyed Plots: Numbers 96; 108; and 113 (the suit properties), in what the Group describes as LR No 10901/174-Ruiru East Block 2. The 1st defendant issued the Group with share certificates but has since failed and/or neglected to process and furnish the Group with titles to the suit properties. They further contend that the 1st defendant interfered with the Group's quiet possession of the three properties by purporting to sell the suit properties to the 3rd, 4th and 5th defendants. This is what triggered the suit herein.

3. In a statement of defence dated 21/1/2013 and filed in court 23/1/2013, the 1st and 2nd defendants admitted that the Group acquired the said plots from the 1st defendant through purchase of shares. They also admitted that they allocated the Group the said plots. They stated that the proposal to re-allocate the plots to the 3rd, 4th and 5th defendants was prompted by a letter issued to the 1st defendant by the local authority regarding the idle status of the three plots. They further contended that the re-allocation to the 3rd, 4th and 5th defendant aborted and the said three plots reverted to the Group and since then there has been no dispute regarding the Group's ownership of the three plots. They denied continued interference with the Group's possession of the three plots. They stated that the three plots were sub-divisions out of two larger blocks of land, Title Numbers Ruiru/Kiu/Block 7/131 and Ruiru/Kiu/Block 7/136. Further, they contended that the delay in processing titles to the suit properties was occasioned by ELC Case Number 502/2010 particulars of which are known to the plaintiffs. The 3rd, 4th and 5th defendants did not file any statement of defence.

4. At the hearing, the Group called Peter Kagumu who testified as PW1. He adopted his written statement filed on 27/8/2012 in which the Group's case is outlined as set out in paragraph 2 above.

5. In written submissions dated 6/7/2018, counsel for the Group submitted that the Group is a self-help group duly registered with the Ministry of Gender, Sports, Culture and Social Services. Counsel observed that the defendants had not contested the Group's ownership of the three plots and its right to be given title documents relating to the three plots. He noted that the 1st and 2nd defendants had failed to lead evidence to explain any hindrance they may have faced in the processing of titles to the three plots. Counsel further argued that the 1st and 2nd defendants had admitted that an attempt was made to dispossess the Group its plots, hence the Group was justified in initiating this suit. Counsel urged the court to grant the prayers sought in the plaint.

6. I have considered the plaint and the defence by the 1st and 2nd defendants. I have also considered the evidence by the plaintiffs. No evidence was led by the 1st and 2nd defendants to support their joint defence.

7. From the materials placed before the court, the three plots are now identified as Plot Numbers S-96, S-108 and S-113. They are sub-divisions out of Ruiru/Kiu/Block 7/131 and Ruiru/Kiu/Block 7/136. It is common ground that the three plots were acquired by Agachiku Self Help Group through purchase of shares. It is also common ground that the Group paid the required survey fees and is in possession of the three plots. The 1st and 2nd defendants further admitted that there was an attempt to re-allocate the plots to the 3rd, 4th and 5th defendants but the re-allocation was abandoned when the Group resisted the re-allocation.

8. It is not contested that the 1st and 2nd defendants have a duty to procure titles to the suit properties and hand the titles to the Group. They did not lead evidence to explain any challenge they may be encountering in the procurement of titles to the suit properties. In the absence of any explanation, the court will grant the prayers sought against the 1st and 2nd defendants.

9. On their part, the 3rd, 4th and 5th defendants did not raise any defence against the plaintiff's suit.

10. Lastly, the plaintiffs did not lead any evidence to support their claim for accounts. In the absence of supportive evidence, that limb of the claim fails.

11. In light of the foregoing, the finding of the court is that the plaintiffs have proved their case on a balance of probabilities. Consequently, the court makes the following disposal orders:

***i. An order of specific performance is hereby issued against the 1st defendant to complete the conveyance of the suit properties to the Trustees of Nembu Agachiku Self Help Group.***

***ii. It is hereby declared that Nembu Agachiku Self-Help Group is the beneficial owner of the suit properties.***

***iii. All the defendants are hereby restrained against interfering with the quiet possession of the suit properties by the beneficial owner, Nembu Agachiku Self Help Group.***

***iv. The 1st and 2nd defendants shall bear costs of suit.***

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF OCTOBER 2018.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

June Nafula - Court Clerk