



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. CASE NO.166 OF 2017

BENSON M. KABIA.....1ST PLAINTIFF

PATRICK M. KAGUNDU.....2ND PLAINTIFF

CHRISTOPHER W. KAGOTHO.....3RD PLAINTIFF

VERSUS

FRANCIS MAINA KANUMBI.....1ST DEFENDANT

NGUGI MWANGI.....2ND DEFENDANT

RULING

1. In the Application dated 4th November, 2015, the Plaintiffs are seeking for the following orders:

a. That the Defendants be restrained jointly and severally either by themselves, their servants, employees and or agents from entering, remaining thereon, developing, transferring, charging, disposing, trespassing, or in any way whatsoever from otherwise interfering with the Plaintiffs' enjoyment and occupation of Plot Numbers 3, 48, 49, 50, 51 and 52 on title number Donyo Sabuk/Komarock 1/7794 pending the hearing and determination of this Application.

b. That costs of this Application be borne by the Defendants.

2. The Application is supported by the Affidavit of the 1st Plaintiff who has deponed that he is one of the members of Mwanzo Self Help Group which comprises 79 members; that the group was formed in 1996 and that the group purchased the suit land in 1997.

3. According to the 1st Plaintiff, the Plaintiffs were the officials of the group until the year 2014 when the Defendants took over the mantle of leadership; that the suit land was sub-divided into 52 plots measuring 41 by 118 feet each and that members agreed to ballot for the plots after paying Kshs. 10,000 per plot, together with the costs of procuring a title of Kshs. 3,500.

4. It is the Plaintiffs' case that they had also agreed that members who had contributed at least Kshs. 8,000 would be entitled to ballot for a plot; that the 1st Plaintiff contributed a total of Kshs. 8,415, the 2nd Plaintiff contributed Kshs. 20,515 and the 3rd Plaintiff contributed Kshs. 12,810; that they all balloted for plots and that the 1st Plaintiff was allotted plot numbers 51 and 52, the 2nd Plaintiff was allotted plot numbers 48, 49 and 50 while the 3rd Plaintiff was allotted plot numbers 1, 2 and 3.

5. The Plaintiffs finally deponed that the 1st Defendant did not ballot for any plot; that since August, 2000, they have been the beneficial owners of their respective plots and that it later on transpired that the 1st Defendant had started fencing and developing plot numbers 51, 52, 48, 49, 50 and 3, all belonging to the Plaintiffs.

6. The Plaintiffs filed a Supplementary Affidavit in which they deponed that it is not true that they grabbed the 1st Defendant's plots when they took office; that the list of shares and members attached on the Defendants' Affidavit does not show the plot numbers allotted to each member and that the 1st Plaintiff never sold plot numbers 51 and 52 to one David Kingsley Kinyanjui as alleged.

7. In response, the Defendants deponed that the Plaintiffs were the former officials of Mwanzo Self Help Group who refused to vacate office after being voted out; that the 1st Defendant paid for three plots which were grabbed by the Plaintiffs and that Plot Nos. 51 and 52 were sold

to one David Kingsley Kinyanjui while plot numbers 48, 49 and 50 were sold by the 2nd Plaintiff to David Kingsley Kinyanjui.

8. It is the Defendants' case that according to the records of the Group, plot numbers 50, 51 and 52 are owned by Margaret Wambura Mwangi who bought them from the family of David Kingsley and that the 2nd Defendant has since constructed a house on one of the suit properties.

9. The Defendants lastly deponed that the 2nd Defendant was allocated plot numbers 30, 31 and 32 and bought two (2) other plots from the 3rd Plaintiff and other members.

10. Both the Plaintiffs and the Defendants filed brief written submissions which I have considered.

11. Both the Plaintiffs and the Defendants are claiming to be the owners of plot numbers 3, 48, 49, 50, 51 and 52 on parcel of land known as Donyo Sabuk Komarock Block 1/7794.

12. From the copy of the Title Deed annexed on the Plaintiffs' Affidavit, parcel of land known as Donyo Sabuk Komarock Block 1/7794 was registered in the names of the Plaintiffs "as trustees for Mwanzo Self Help Group". The Plaintiffs have annexed on their Affidavit a sub-division scheme showing how the suit property was sub-divided.

13. The Plaintiffs have also annexed on their Affidavit a list of members of the Group, together with a list of how the said plots were allocated to each member. It is the Defendants' depositions that the plots that the Plaintiffs are claiming were either grabbed from them or that the same had been sold to third parties.

14. The Defendants also brought to the notice of the court the fact that there is a pending suit being Milimani CMCC No. 1910 of 2014 in which the Defendants herein sued the Plaintiffs. In the said matter, the court gave the following orders:

"2. That a temporary order of injunction be and is hereby issued restraining the Defendants/Respondents... from purporting to exercise the functions or carrying out as duly elected officials of Mwanzo Self Help Group or in any manner dealing with the Self Help Group Land Parcel L.R. No. Donyo Sabuk Komarock Block 1/7794 pending the hearing and determination of this suit."

15. In the same matter, the Plaintiffs herein were compelled to surrender the Title Deed for L.R. No. Donyo Sabuk Komarock Block 1/7794 and all documents to the Defendants herein.

16. The above orders of the court therefore restrained the Plaintiffs herein from dealing with the entire parcel of land, including the purported sub-divisions which they own until the hearing of the suit.

17. There is no indication that the orders of the lower court were set aside, or that indeed the said suit was heard and determined. Considering that the Plaintiffs herein were enjoined from dealing with the entire land known as Donyo Sabuk Komarock Block 1/7794, they cannot vary that order by filing a fresh suit and Application in this court.

18. In any event, the issue of ownership of the plots that the Plaintiffs purport to own can only be determined at trial. Having not obtained Title Deeds for the said plots, and in view of the order of the court in Milimani CMCC No. 1910 of 2013, I find the Application dated 4th November, 2015 to be not only unmeritorious, but also an abuse of the process of the court.

19. For those reasons, I dismiss the Application dated 4th November, 2015 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 7TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE