



**REPUBLIC OF KENYA**

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

**MILIMANI LAW COURTS**

**ELC. CASE NO. 134 OF 2011**

**DANIEL NJOROGE NG'ANG'A & 58 OTHERS**

**(Suing for & behalf of Members of**

**Manna Self Help Group.....PLAINTIFF**

**-VERSUS-**

**JULIUS MWATHI MUNUVE.....1<sup>ST</sup> DEFENDANT**

**BONIFACE M. MUTHUNGA.....2<sup>ND</sup> DEFENDANT**

**ELPHANTUS MUCHIRI.....3<sup>RD</sup> DEFENDANT**

**COUNCILOR ABDI ABRAHIM H. GUYO.....4<sup>TH</sup> DEFENDANT**

**MARY WAMBUI KIGURU.....5<sup>TH</sup> DEFENDANT**

**DENNIS MAWEU MUSYOKA.....6<sup>TH</sup> DEFENDANT**

**MARY NYAMBURA KARANJA.....7<sup>TH</sup> DEFENDANT**

**SAMUEL WAWERU NG'ANG'A.....8<sup>TH</sup> DEFENDANT**

**CITY COUNTY OF NAIROBI.....9<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiffs filed this suit on behalf of Manna Jua Kali Resettlement Scheme also known as Manna Jua Kali Self Help Group. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants started a parallel group going by the same name. The Plaintiffs applied to the City Council of Nairobi for allocation of plots within Kayole. The allocations were approved, a subdivision scheme prepared and individual plot numbers designated and their owners identified. The City Council commenced issuance of letters of allotment and issued letters to a majority of the Plaintiffs before the Defendants disrupted the process. The Plaintiffs claim that they have been in physical occupation of their plots since the allocation and have built permanent and temporary structures where they reside.

2. The Plaintiffs contend that the Defendants started issuing parallel share certificates to other persons who invaded the Plaintiffs' plots demolishing their structures and started developing their own structures leading to anarchy on the ground. The Plaintiffs reported the matter to the City Council of Nairobi which did not take any action. The Plaintiffs accused the Defendants of breaching and disobeying court orders in a brazen manner by invading the Plaintiffs land using thugs.

3. The Plaintiffs seek a declaration that the plots being part of L.R. No. 11344/R Kayole off Kangundo Road, which was subdivided and allotted plots numbers 1 to 380 as well as Plots 1C up to 22C; 4B, 19B, 30B, 70B to 72B, 164B, 166B to 169B and 235B in Kayole North known as Manna Jua Kali Settlement Scheme lawfully belong to members of the Plaintiff group. They seek an order to restrain the 5<sup>th</sup> to 8<sup>th</sup> Defendants or persons claiming through them from evicting the Plaintiffs from their plots, demolishing the buildings on the plots, putting up other structures or in any manner interfering with the Plaintiff's rights and interests in the plots. They also sought to restrain the 5<sup>th</sup> to 9<sup>th</sup>

Defendants from issuing new share certificates in the name of Manna Jua Kali Self Help Group to any persons claiming to be members of the parallel group.

4. They seek an order directing the 9<sup>th</sup> Defendant to revoke any allotment letter or books of ownership issued to any one claiming ownership. They seek an order directing anybody who has invaded or occupied any of their plots or those excised from land Block Q being part of L.R. No. 11344/R to vacate the land. They also seek damages for trespass and illegal occupation of their plots as well as the costs of the suit. The Plaintiffs seek these orders in the Amended Plaint dated 7/7/2015.

5. Loise Warigia, one of the Plaintiffs gave evidence. Manna Jua Kali Association was registered under the Kenya National Federation of Jua Kali Associations in 2000. The group was also registered with the Ministry of Gender, Sports Culture and Social Services in 2006. The Plaintiffs applied to be allocated a vacant piece of land on the outskirts of Kayole by the City Council of Nairobi. Their application was approved and they were authorised to carry out subdivision. They engaged a surveyor who prepared a subdivision scheme with plot numbers and presented it to the City Council of Nairobi. The Council started issuing allotment letters to the Plaintiffs. The Plaintiffs engaged the Kenya Power and Lighting Company on the issue of the way leave since the main electricity supply line passed through the land allocated to the Plaintiffs.

6. The Plaintiffs claim that the Defendants registered a group similar to theirs on 12/11/2009 and invaded the Plaintiffs plots with the collaboration of the City Council of Nairobi, who the Plaintiffs claim were involved in the scheme to deprive them of their land. The 4<sup>th</sup> Defendant wrote to the Director of Housing and Development, City Council of Nairobi on 22/12/2009 claiming that the letters of allotment filed by the Plaintiffs were fake. The Defendants started issuing parallel certificates in respect of the Plaintiffs plots to strangers who started invading the Plaintiff's plots.

7. The Plaintiffs sought the intervention of the City Council of Nairobi and other government agencies to no avail. The Plaintiffs came to court and obtained an order to restrain the Defendants but the Defendants have continued to harass the Plaintiffs and to destroy their property despite court orders being issued. The Plaintiffs witness produced the documents including the letter of allotment issued in August 1997.

8. The matter was heard without the Defendants participation. They did not file any defences. The court has looked at the letters of allotment tendered in evidence by the Plaintiffs together with the part development plans showing the subdivided plots and it is satisfied on a balance of probabilities that the Plaintiffs are the *bona fide* owners of the suit plots.

9. The Plaintiffs submitted that they are entitled to general damages of Kshs. 5 million to remedy the loss and destruction caused by the Defendants. They relied on various authorities which the court has considered. They did not lead any evidence on the value of the structures on the suit land before and after the Defendants' invasion.

10. The court agrees with the Plaintiffs that the Defendants invaded their land which was an act of trespass. The court awards the Plaintiffs general damages in the sum of Kshs. 500,000/=.

11. The court grants prayers 1, 2, 3, 4, 5, 6, 7 and 10 of the amended plaint.

Dated and delivered at Nairobi this 6<sup>th</sup> day of December 2018.

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Mukeli holding brief for Mr. Namada for the Plaintiffs

Ms. Wathuti holding brief for Mr. P. Mwangi for the 1<sup>st</sup> to 8<sup>th</sup> Defendants

Mr. V. Owuor- Court Assistant

No appearance for the 9<sup>th</sup> Defendant