



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC. NO. 1338 OF 2014**

**FRANCIS MBUGUA KAMAU.....PLAINTIFF**

**VERSUS**

**MWICHOKANIRIA WOMEN GROUP**

[SUED THRO' THEIR OFFICIALS]

**LEAH WAMBUI KARIITHI(CHAIRLADY).....1<sup>ST</sup> DEFENDANT**

**KANYI KURIA (TREASURER).....2<sup>ND</sup> DEFENDANT**

**WANJIRU MATHERI KAMBUTHIA (SECRETARY).....3<sup>RD</sup> DEFENDANT**

**MARGARET NDUTA NGIGI.....4<sup>TH</sup> DEFENDANT**

**CHIEFS LAND REGISTRAR.....5<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

This suit was filed by way of an Originating Summons dated 16<sup>th</sup> October 2014 seeking the following orders:

1. That the court do compel the officials of Mwichokaniria Women Group, namely the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to surrender the original title for L.R. No. 8226/21 failing which the 5<sup>th</sup> Respondent, the Chief Land Registrar, be ordered to issue a provisional certificate;
2. That the court do compel the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to sign the transfer form failure to which the Deputy Registrar to sign on their behalf;
3. That the court do compel the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to apply for consent from the Commissioner of Lands and change of user failure to which the Deputy Registrar to do so on their behalf;

4. That the 5<sup>th</sup> Respondent be directed to issue title in respect to L.R. No. 8226/183 as per the deed plan.

5. Spent.

The Originating Summons is premised on the grounds appearing on its face together with the Supporting Affidavit of the Applicant, Francis Mbugua Kamau, sworn on 16<sup>th</sup> October 2014 in which he averred that he is a beneficial owner of the parcel of land identified as L.R. No. 8226/183 otherwise described as Plot No. 46 (the “suit property”), having purchased it from the 4<sup>th</sup> Respondent, Margaret Nduta Ngigi. He annexed a copy of the Sale Agreement dated 17<sup>th</sup> January 2013 (the “Sale Agreement”). He averred further that the suit property was previously owned by Mwachokaniria Women Group who sold it to their members one of whom was the 4<sup>th</sup> Respondent. He further averred that after the first sale, the 4<sup>th</sup> Respondent did not change the name in the title to her name due to the unwillingness of the officials of Mwachokaniria Women Group, namely the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. He added that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have shown no interest in parting with the original title in order to facilitate registration of the suit property into his name. He further stated that the same officials had refused to apply for consent to transfer the suit property from the 5<sup>th</sup> Respondent. He concluded by stating that in the circumstances, he has been unable to access and develop the suit property which is now commercial in nature.

The Application is not contested. The 5<sup>th</sup> and 6<sup>th</sup> Respondents stated that they do not oppose the Originating Summons.

The Applicant is seeking for orders of specific performance compelling the 1<sup>st</sup> to 4<sup>th</sup> Respondents to take action to enable him to be registered as the proprietor of the suit property. He relies on the Sale Agreement. A parcel of land can only be transferred in writing. **Section 3(3)** of the **Law of Contract Act** provides that no suit based on a contract of disposition of interest in land can be entertained unless the contract is writing, executed by the parties and attested. Looking at the Sale Agreement upon which the Applicant relies, the description of land given is L.R. No. 46. There is nowhere that it refers to the suit property. The Applicant annexed a copy of the Deed Plan for the suit property but there is no evidence produced that he ever purchased the suit property in writing. That being the case, the Applicant has not succeeded in convincing this court that he indeed purchased the suit property from the 4<sup>th</sup> Respondent. That being the case, his claim over the suit property must fail. Accordingly, this suit is hereby dismissed with no order as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 20<sup>TH</sup> DAY OF JANUARY 2017.**

**MARY M. GITUMBI**

**JUDGE**