



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.198 OF 2015

JOE MWAURA1ST PLAINTIFF
BENSION MUTUERANDO.....2ND PLAINTIFF
MONICA CHEGE3RD PLAINTIFF
JOSEPHINE WAIRIMU.....4TH PLAINTIFF
BONIFACE MUKIRA5TH PLAINTIFF

VERSUS

GODFREY NJUGUNA GITHIRU1ST DEFENDANT
NANCY WAIRIMU NJUGUNA2ND DEFENDANT
ANN NJERI CHEGE.....3RD DEFENDANT

RULING

(Application for injunction; plaintiffs alleging to have purchased various plots from the defendants and alleging that the defendants are now interfering with the same; injunction issued on what has been demonstrated as having been purchased by the plaintiffs)

1. This suit was commenced by way of plaint filed on 8 July 2015. The case of the plaintiffs is that in the year 2011, they purchased portions of land out of the larger land parcels registered as LR No. 10243/16 and LR No. 10243/24 (Elementaita/Kiriko Farm) from the defendants who were trading as Kenya National Hawkers Association (KENAHA). It is averred that the defendants purchased these two parcels of land and proceeded to subdivide and sell them through a project dubbed Kiambogo/Kiriko Farm Project Phase 1. The plaintiffs have pleaded that the land was subdivided and they were shown the portions that they have purchased and they took immediate possession. It is stated that the plaintiffs have been in quiet possession until the defendants started visiting the land with unknown third parties, and the plaintiffs are afraid that the defendants intend to resell the same portions of land that they have purchased. In the suit, the plaintiffs seek a permanent injunction restraining the defendants from dealing with the land parcels LR No. 10243/16 and LR No. 10243/24 and an order compelling them to transfer the said land to the respective purchasers.

2. Together with the plaint, the plaintiffs filed an application for injunction seeking to have the defendants restrained from the land parcels LR No. 10243/16 and LR No. 10243/24 pending hearing and determination of this case. It is that application which is the subject of this ruling.

3. The supporting affidavit is sworn by Joe Mwaura, the 1st plaintiff. He has deposed that the plaintiffs did purchase various portions of the suit property. I have seen for myself that Joe Mwaura, the 1st plaintiff appears to have been allocated a commercial plot No. 31 and several 1/4 acre plots identified as Plot numbers 177, 150, 151, 155 and 156. The 3rd plaintiff, Monica Chege appears to have purchased a 1/4 acre plot being No. 182, a Plot No. 16, and a Commercial Plot which is not identified by any plot number. I have not seen any indication that the 2nd, 4th and 5th plaintiffs have purchased any land, and if so, the identity of these parcels of land. There was an annexed proposed subdivision plan but I am unable to comprehend it or relate it to the 2nd, 4th and 5th plaintiffs.

4. The defendants filed Grounds of Opposition wherein it is inter alia stated that the plaintiffs are not the registered owners of the land parcels LR No. 10243/16 and 10243/24; that the 1st defendant is wrongly enjoined since he is not the entity known as Kenya National Hawkers Association (KENAHA); that the 1st defendant is not privy to any sale agreement between the plaintiffs and KENAHA; that the payment records displayed reflect the names KENAHA as registered owner and seller; that the plaintiffs cannot purport to seek injunction for the whole of the land parcels LR No. 10243/16 and 10243/24 (Elementaita/Kiriko Farm); that the plaintiffs have not substantiated their suspicions that the purported visits which are denied, are intended to dispose of the plaintiff's parcels of land.

5. I have considered the application. It is not very clear to me whether the plaintiffs were purchasing land from the defendants or from KENAHA. The purchase receipts that they have displayed appear to have been issued by KENAHA although the name of the 1st defendant also seems to feature prominently in the sale agreements and documentation. Mr. Karanja for the plaintiffs, in his submissions, stated that the three defendants are actually the Association. Although Mr. Chege for the respondents submitted that the Association is registered, I saw no proof of this. I am not too sure if KENAHA needs to be enjoined but I leave that decision to the plaintiffs.

6. Having said that, it does appear to me that there is evidence of purchase of certain plots by some of the plaintiffs. The plaintiffs allege that the respondents are interfering by bringing in third parties. I have no replying affidavit from the respondents refuting these allegations by the plaintiffs. I am of the view that the plaintiffs deserve to be protected from interference pending the hearing and determination of this suit. I can however only issue protection to what has been displayed as having been purchased by the plaintiffs, which are, in respect of the 1st plaintiff, the commercial plot No. 31 and the plot numbers 177, 150, 151, 155 and 156, and in respect of the 3rd plaintiff, the Plot Numbers 182 (1/4 acre) and Plot No. 16 (one acre). I am unable to tell the identity of the commercial plot apparently purchased by the 3rd plaintiff and I do not make any orders on it. I am also not able to make any orders in favour of the 2nd, 4th and 5th plaintiffs who have not shown me what they purchased. I can further, only make orders affecting these plots that have pointed out and not the whole of the parcel numbers 10243/16 and 10243/24.

7. For the above reasons, I do issue an order of injunction restraining the respondents from entering into any dealings, or in any way interfering with the possession of the 1st and 3rd plaintiffs, with regard to the 1st plaintiff, the commercial Plot No. 31 and the plot numbers 177, 150, 151, 155 and 156, and in respect of the 3rd plaintiff, the Plot Numbers 182 (1/4 acre) and Plot No. 16 (one acre), pending the hearing and determination of this suit.

8. The costs of the application will be to the 1st and 3rd plaintiffs.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Tugei holding brief for Mr. Lawrence Karanja for the applicants

No appearance on the part of M/s Munene Chege & Co Advocates for the respondents

Court Assistant: Jenepher Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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