



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MACHAKOS

MISCELLANEOUS CIVIL APPLICATION NO. 188 OF 2014(O.S)

**IN THE MATTER OF SECTION OF THE LAND CONTROL ACT CHAPTER 302 LAW OF
KENYA**

AND

**IN THE MATTER OF SECTION 1(A),1(B), 3,3a OF THE CIVIL PROCEDURE ACT AND
ORDER 37 RULE (3) OF THE CIVIL PROCEDURE RULES AND ALL OTHER ENABLING
PROVISIONS OF THE LAW**

AND

IN THE MATTER OF ARTICLE 159 OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

GODFREY HARRUN OHUTSO.....1ST APPLICANT

JOHN KIBET SAMBU NDEGE.....2ND APPLICANT

DANIEL MOYAKA KAGERA.....3RD APPLICANT

MARTHA PRISCA GATHIGIA.....4TH APPLICANT

CHARITY MWENDE MWANIA.....5TH APPLICANT

NORAH NYABOKE MOSE.....6TH APPLICANT

CHARLES KYALO MUTIE.....7TH APPLICANT

GEORGE ODUOR OSORO.....8TH APPLICANT

KAVEKE NZUKI.....9TH APPLICANT

SUSAN MIRUGI.....10TH APPLICANT

WILFRED OLUOCH MIGUNDE.....11TH APPLICANT

DAVID MUGO/CATHERINE WACHIRA.....12TH APPLICANT

ANNE JUDITH ATIENO.....13TH APPLICANT
FREDRICK MAUNDU KITILI.....14TH APPLICANT
LYDEA MORAA NYAMAMBA.....15TH APPLICANT
JOSHUA WAMBUA MATIVO.....16TH APPLICANT
JOHN KIHARA MWANGI.....17TH APPLICANT
TERESA NYAMBURA.....18TH APPLICANT
MARY MUTHONI MWANGI.....19TH APPLICANT
BEATRICE MORAA MONGAKA.....20TH APPLICANT
AURA NAMBWAYA JAMES.....21ST APPLICANT
WILLIAM OMUKETI EMITARO.....22ND APPLICANT
LUCY WANGARI WAWERU.....23RD APPLICANT
JOHN EJAKAIT ADUNGOSI/RUTH
TABIA FRANCINA.....24TH APPLICANT
AGNES GATHONI WAMAE.....25TH APPLICANT
JOSEPHINE BONUKE NYAMAMBA.....26TH APPLICANT
STEPHEN MBURU KARAU.....27TH APPLICANT
STANLEY MIRITI LINGERA.....28TH APPLICANT
PENINAH MUKULU MUSAU.....29TH APPLICANT
MICHAEL MUSAU IKETU.....30TH APPLICANT
IGNITIUS MUKHALE WAFULA.....31ST APPLICANT
JOHN MURECO KARIUKI/ MARIE
LUTUPIAN WEPUKHULU.....32ND APPLICANT
NANCY WANGARI KARIUKI.....33RD APPLICANT
HELLEN JERUTO KIPTANUI.....34TH APPLICANT
KIPNGENO KOSKEY.....35TH APPLICANT
ESTHER NJERI KARIUKI.....36TH APPLICANT

JOAH ACHIENG OGOLA.....	37 TH APPLICANT
SILVIA WAITHAKA	38 TH APPLICANT
PAULINE AOKO OCHOLA.....	39 TH APPLICANT
STEPHEN MUTUKU MUEMA / RUTH	
NZEMBI NDETI.....	40 TH APPLICANT
RUTH MONYANGI OMBWORI.....	41 ST APPLICANT
AYIERO OKARU.....	42 ND APPLICANT
JOAN ACHIENG OGOLA.....	43 RD APPLICANT
DOROTHY MINOO MUTUA.....	44 TH APPLICANT
HANNAH NJERI NG'ANG'A.....	45 TH APPLICANT
CHARLES OMAYO MUUMBO.....	46 TH APPLICANT
OMBATI MAKUA.....	47 TH APPLICANT
YUNUKE MORAA KENGERE.....	48 TH APPLICANT
ELIJAH OMONYWA ONGWENO.....	49 TH APPLICANT
JOSEPH WANJAU MUGO.....	50 TH APPLICANT
JOYCE MUTIO NYILE.....	51 ST APPLICANT
MARY WANJA.....	52 ND APPLICANT
NORAH NDUNGE HENRY.....	53 RD APPLICANT
CORNEL ODHIAMBO NYAMBUGA.....	54 TH APPLICANT
NANCY WAIRIMU MUTURI.....	55 TH APPLICANT

VERSUS

DIVISIONAL INTERGRATED

PROGRAMMES LTD.....	1 ST RESPONDENT
NATHAN MUTISO.....	2 ND RESPONDENT
PAUL NGEI MUSESAYA.....	3 RD RESPONDENT
NZIOKI WAMBUA.....	4 TH RESPONDENT

JUDGMENT

1. In their Originating summons dated 2nd December, 2014, the Applicants are seeking for the following orders:

1) THAT this Honourable Court be pleased to make an Order extending the period within which each of the Applicants herein and the Respondents herein shall apply for the relevant consents from the land Control Board as provided in Section 8 of The Land Control Act Chapter 302 Laws of Kenya and in particular with regard to the various Sale Agreements made between each of the Applicants and the Respondents and the resultant sub-division and transfer of each of the Applicants' respective plot/plots.

2) THAT further to paragraph 2 above this Honourable Court be pleased to make an order extending the period within which each of the Applicants and the Respondents herein shall apply for the relevant consents from the land Control Board as provided in Section 8 of The Land Control Act Chapter 302 Laws of Kenya and in particular with regard to the various Sale Agreements made between each of the Applicants and the Respondents and the Resultant sub-division and transfer of each of the Applicants' respective plot/plots to mean SIX MONTHS from the date of the final determination of both HIGH COURT CIVIL SUIT NUMBER 38 OF 2014 and HIGH COURT CIVIL SUIT NUMBER 81 OF 2010.

3) THAT the Respondents be condemned to pay the costs of this application.

2. The Originating Summons is supported by the Affidavit of the 1st, 2nd and 3rd Applicants who have deponed that the 1st Respondent purchased from the 2nd Respondent a parcel of land known as Mavoko Block 2/195 (currently known as Mavoko Block 2/9835); that the 1st Respondent sub-divided the said land into 350 plots and that the Applicants purchased some of the plots.

3. The Applicants deponed that according to the Sale Agreements, the suit property was to be transferred from the 2nd Respondent to the 1st Respondent and thereafter from the 1st Respondent to each of the Applicants simultaneously after the payment of the purchase price; that the 1st Respondent was supposed to sell all the 350 plots before the 1st Defendant could start processing the applicants' titles and that the Applicants took possession of their plots.

4. The Applicants deponed that in February, 2014, they learnt of a pending civil suit being HCCC.No. 81 of 2010 between the 1st and 2nd Respondents; that an injunction was obtained in the said suit stopping any dealings on the suit land and that the Respondents have failed to obtain the necessary consents to sell, sub-divide and transfer to the Applicants their respective plots within the prescribed period.

5. In response, the 1st Respondent's Director deponed that there exists in this court ELC.NO. 38 of 2014; that the Applicants have sought for an order transferring the suit plots to them in that suit; that the Land Control Board declined to issue to the 1st Respondent the consents because of the objections which were raised in ELC. Case No. 81 of 2010 and that in the meantime, they do not have a control over the entire process.

6. According to the 1st Respondent, by remaining on the suit Plots, the Applicants are in breach of the Sale Agreements which provided that they can only enter the suit plots upon transfer.

7. In his submissions, the Applicants' advocate submitted that the issues raised in this suit are not the same issues raised in ELC. Case No. 38 of 2014; that the law allows a party to apply for extension of time to obtain the consent of the Board and that such a suit should be filed independently.

8. On his part, the Respondents' Advocate submitted that the Applicants filed ELC NO. 38 of 2014 seeking for an order compelling the Respondents to sign the necessary transfer documents in their favour; that the Respondents have raised the Defence of the Agreements being void for want of the consents of the Board and that this Application cannot succeed before hearing HCCC. No. 38 of 2014.

9. The Applicants herein have sued the Respondents not only in this suit but also in ELC. Case No. 38 of 2014.

10. In this suit, the Applicants are seeking for an order extending the period within which to apply for the relevant consents of the Land Control Board as provided for in section 8 of the Land Control Act.

11. According to the Applicants' deposition, they purchased the suit property from the 1st Respondent. The 1st Respondent had on the other hand purchased the said property from the 2nd Respondent.

12. According to clause 9 of the Agreement that was entered into between the Applicants and the 1st Respondent, the 2nd Respondent was to transfer the respective sub-divisions to the 1st Respondent and the 1st Respondent was then supposed to transfer the land to the Applicants upon payment of the purchase price.

13. Although the Agreement states that the 1st Respondent had sub-divided the parcel of land known as Mavoko Town Block 2/195 into 380 portions of 50 feet by 100 feet, it is not clear to this court if the consent of the Land Control Board was obtained before the said sub-division was done.

14. The other issue that is also not clear to this court is if indeed the Land Control Board gave its consent for the transfer of the land from the 2nd Respondent to the 1st Respondent.

15. If the consent by the Land Control Board to sub-divide the land and for the transfer of the suit land to the 1st Respondent has not been given, it would be pre-mature for the Applicants to seek for the extension of the time within which the Board should give its consent for the transfer of the sub-divisions from the 1st Respondent to themselves.

16. I say so because unless and until the suit property is formally sub-divided, and the sub-divisions are transferred to the 1st Respondent, the Applicants will not have a legal basis to seek for the consent of the Board to transfer the said sub-divisions from the 1st Respondent to themselves.

17. In any event, there are pending suits between the 1st and 2nd Respondents and between the Applicants and the Respondents in which the issue of ownership of the suit property is supposed to be determined.

18. Until those suits are determined, the order being sought by the Applicants cannot be granted.

19. The Applicants will have to wait until the issue of ownership of the suit land has been made before filing a suit to have the time within which the Board can give its consent extended.

20. For those reasons, I find and hold that the Originating Summons dated 2nd December, 2014 was filed pre-maturely.

21. In the circumstances, the Originating summons dated 2nd December, 2014 is struck out with costs.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF MAY, 2017.

O. A. ANGOTE,

JUDGE.