



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 401 OF 2016

DAVID GATHII MUGWERU, MICHAEL MUTURI WAWERU AND GRACE

MUKAMI MACHARI (*Suing in their capacity as the Chairman, Secretary*

and Treasurer of WAZEE PAMAOJA SELF HELP GROUP).....**PLAINTIFF**

VERSUS

MUKENIA FARMERS CO-OPERATIVE SOCIETY LTD.....DEFENDANT

RULING

(Application for injunction; order that status quo be maintained).

1. This suit was commenced by way of plaint filed on 27 September 2016. The plaintiff is a self help group known as Wazee Pamoja Self Help Group, suing through its officials. It is pleaded that in the month of February 2012, the plaintiff entered into an agreement with the defendant for the purchase of 100 acres out of the land parcel LR No. 11106 situated in Gilgil through the then chairlady of the defendant one Ruth Wanjiru Muraya (now deceased). It is pleaded that the plaintiff purchased 90 acres and its members took possession of their various portions in the land. They also paid money for survey and processing of title deeds. After survey and subdivision, the properties Gilgil/Gilgil Block 1/16109 - 16147 were created, each measuring about 2.151 Ha. It is pleaded that title deeds were created and left with the law firm of M/s Olonyi & Company Advocates for safe custody. It is pleaded that the plaintiff has made full payment yet the defendant is demanding a sum of Kshs. 2,638,500/= contrary to their agreement. In the suit the plaintiff wants a declaration that they are the legal owners of the land parcels Gilgil/Gilgil Block 1/16109-16147 and a permanent injunction to restrain the defendant from the said parcels of land.

2. Together with the suit, the plaintiff filed an application for injunction seeking to restrain the defendant from dealing with the land parcels Gilgil/Gilgil Block 1/16109-16147 (hereinafter "the suit properties") until this case is heard and determined. The supporting affidavit has been sworn by David Gathii Mugweru, the Chairman of the plaintiff. He has annexed some sale agreements and receipts. He has deposed that they were asked to pay part of the purchase price, an amount of Kshs. 500,000/= to one Paul Chege Gitahi, from whom the defendant had purchased the original land. He has also annexed a letter dated 30 December 2013 vide which the defendant demanded a sum of Kshs. 2,638,500/= which they claimed was still owing. Also annexed is a letter dated 14 January 2014, from the chairlady of the defendant which countered the letter of 30 December 2013 and which advised them not to pay the demanded amount of Kshs. 2,638,500/=. He has deposed that despite paying all monies due, the defendant has failed to surrender the title deeds. He has further stated that the defendant has started

offering the same land to 3rd parties. This prompted them to lodge a complaint with the National Land Commission which tried to mediate in vain.

3. The defendant was served with the suit papers and entered appearance through the law firm of M/s Olonyi & Company Advocates. On 2 November 2016 when the application came up for inter partes hearing, Mr. Olonyi asked for an adjournment. I allowed the adjournment and gave him 21 days to file his papers. I directed that the application be heard inter partes on 21 March 2017. On that day, Mr. Olonyi again applied for adjournment on the ground that the defendant had some "issues" which made it difficult for him to file a reply. These so called "issues" were not disclosed and I was of the view that no good reason had been tabled to make me grant the defendant another adjournment. I directed that the application do proceed.

4. Mr. Waiganjo for the plaintiff referred me to the documents filed by the plaintiff and was of the view that a prima facie case has been made out. On his part, Mr. Olonyi pointed out that what the plaintiff has displayed are agreements with individuals and not the defendant.

5. I have considered the matter. The application before me is one for injunction. To succeed in an application of this nature, one needs to demonstrate a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the injunction is not granted. If the court is in doubt, it will decide the application on a balance of convenience. These principles were laid down in the case of ***Giella vs Cassman Brown (1973) EA 358***.

6. The case of the plaintiff is that it purchased land from the defendant, paid the full purchase price and the titles were processed. It is of the view that the demand for extra money from the defendant is misplaced. I note that the parties did not enter into a single sale agreement. It appears that several sale agreements were signed. I see the point of Mr. Olonyi because some of those sale agreements appear to be with individuals and not directly with the Society. Nevertheless, there is evidence of payment to the defendant. I cannot actually at this stage in time reconcile what is in the various sale agreements and what is in the receipts and tally whether or not the whole monies have been paid. I also cannot quite understand why some agreements are with individuals. That may need a full hearing on merits. It could be that some members of the defendant were selling what they considered to be their shares in the defendant company. I can only appreciate all issues after a hearing.

7. However, it cannot be denied that the parties had a disagreement on what exactly the plaintiff was entitled to. I have seen minutes of various meetings held to reconcile their positions. In one meeting, held on 30 September 2015, the plaintiff appears to have agreed to pay a further sum of Kshs. 2,650,000/= and that the plaintiff is entitled to 80 acres. Another meeting held on 26 February 2016 avers that the plaintiff is to come on 29 March to be allocated 45 acres.

8. In addition to the above, I have no concrete proof that the land parcels Gilgil/Gilgil Block 1/16109-16147 actually exist and if they do, in whose name they are registered. No copies of title deeds or search certificates have been annexed by the plaintiff. The plaintiff has only annexed what it has called a map. But a cursory look at it makes me come to the conclusion that it is only a proposed subdivision and not the actual Registered Index Map (RIM).

9. Given the above, it is apparent that I have some doubts on the case. I am of the view that this application is best decided on a balance of convenience. The balance of convenience tilts towards maintaining the status quo on the land parcel in dispute. No party should sell, lease, charge or enter into any disposition over the properties in dispute. In addition, there should be no construction of any structures. The land may continue to be in possession of whoever is in possession at the moment and the user of it to continue as has been before until this case is heard and determined. In essence, the current status quo to be maintained until this suit is heard and determined.

10. The costs of this application shall be costs in the cause.

11. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 11th day of May 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:

Ms. Barbara Wangari for the plaintiffs/applicants

No appearance on the part of M/s. Olonyi & Company for the defendant/respondent

Court Assistant: Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU