



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. SUIT NO. 144 OF 2014

MOSES ABUTO1ST PLAINTIFF/APPLICANT
FELISTA NJERI NGURE.....2ND PLAINTIFF/APPLICANT
FRANCIS MBAO.....3RD PLAINTIFF/APPLICANT
JULIANA MUTHUE MUGAMBI.....4TH PLAINTIFF/APPLICANT
KIMANI MAGAMBO.....5TH PLAINTIFF/APPLICANT
FELISTA NDUNGE.....6TH PLAINTIFF/APPLICANT
KALONDU NYAMBO.....7TH PLAINTIFF/APPLICANT
RICHARD NGAU MWANGANGI.....8TH PLAINTIFF/APPLICANT
ZADOK ORIENO.....9TH PLAINTIFF/APPLICANT
BONIFACE MUTUNGA.....10TH PLAINTIFF/APPLICANT
JOHN MULA NZUMA.....11TH PLAINTIFF/APPLICANT
JACKSON MUTUKU KAVOI.....12TH PLAINTIFF/APPLICANT
FREDRICK MUTHYA MULIKA.....13TH PLAINTIFF/APPLICANT
THOMAS MUNYAO MUMO.....14TH PLAINTIFF/APPLICANT

VERSUS

MUKA MUKUU FARMERS CO-OPERATIVE

SOCIETY LTD.....DEFENDANT/RESPONDENT

RULING

1. The Application before me is dated 27th October, 2014. In the Application, the Plaintiffs are seeking for the following orders:

a) That the Respondent either by itself, its servants, agents employees, or any other persons acting under its supervision or authority be barred by an order of temporary injunction from disposing off, charging, offering for sale, subdividing, evicting or enterfering with the quiet possession and occupation of the Applicants' on land parcel Number 10967 and resultant plots pending the hearing and determination of this suit;

b) That costs of this application be provided for.

2. The Application is premised on the grounds that at an annual general meeting convened by the Respondent on 28th September, 1991, it was resolved that parcel of land number L.R. 10967 (*the suit land*) owned by the Defendant be sold to the members.

3. The 1st Applicant deponed that on diverse dates between the year 2001 and 2003, the Applicants purchased Plots from the Respondent; that various members developed their respective plots; that the Applicants later learnt that the Respondent intends to sell the entire land to unknown people and that an injunctive order should issue.

4. In response, the Respondent's chairman deponed that the Applicants have never been members of the Respondent; that a decision has never been made to sell the suit land save for the allocation of plots to members and that the suit land was sub-divided into several portions and that some members were allocated individual plots and some plots were set aside for public utilities.

5. According to the Respondent, no one was supposed to be allocated land meant for public utilities and that the plots the Plaintiffs purported to have purchased were none existent because they were already set aside for public purpose.

6. The 1st Respondent's chairman deponed that L.R.NO. 10967 measures over 25,000 acres and the Plaintiffs' interest on a small portion of land should not stop the Defendant from utilizing the land.

7. The Defendant's chairman finally deponed that the transaction between the Plaintiff's and some officials of the Respondent were fraudulent; that after investigations into the said fraudulent transactions, a report was done and that in Nairobi Misc. Application number 816 of 2008, the court held that the investigation report was valid.

8. The parties filed their respective submissions and authorities which I have considered.

9. From the Plaintiff and the Affidavit, the Plaintiffs have claimed that they purchased their respective plots from land that was hived from L.R.No. 10967 which is registered in favour of the Defendant.

10. The Plaintiffs have annexed on the Supporting Affidavit the structures that they have developed on a portion of the suit property.

11. It is the Plaintiffs' case that they are in possession of letters and receipts executed by the officials of the Defendant in respect to the plots that they purchased.

12. On the other hand, the Defendant has refuted the claim that the Plaintiffs are their members.

13. According to the Defendant's chairman, the Plaintiffs were duped by people who are not the officials of the Defendant into purchasing plots that were set aside for public utilities like a police station and the hospital.

14. It is not in dispute that the Defendant is the registered owner of the suit land.

15. It is also not in dispute that the suit land was sub-divided into numerous portions and allocated to members.

16.The complaint by the Plaintiffs is that having purchased or allocated the suit properties and having paid for the said plots, the Defendant intends to evict them from their respective reports.

17. The Applicants have annexed a few sale agreements purporting to be agreements between the officials of the Defendant and “members of public”.

18.The sale agreements annexed on the Affidavit are not specific as to the land that was being purchased.

19. Indeed from the three exhibited agreements and copies of the receipts, this court cannot tell the land that the Plaintiffs are saying to be having an interest in.

20. Considering that the suit land is a big parcel of land measuring approximately 25,000 acres, and in view of the fact that the Plaintiffs are not claiming the whole land, it will be unjust for this court to give a blanket injunctive order in respect of the entire suit property.

21.However, the Plaintiffs are entitled to be heard on whether they are entitled to the parcels of land that they claim they purchased either from the Defendant or from its members.

22. In the circumstances, an order for the maintenance of the prevailing status quo would be appropriate.

23. For those reasons, I make the following specific orders:

a. The Plaintiffs to occupy, reside and utilize the portions of land they purport to have bought from the Defendant or its members in L.R.NO. 10967 pending the hearing and determination of the suit.

b. The Plaintiffs should not put up any new structures, or complete any incomplete structures on the suit land pending the hearing and determination of the suit.

c.The costs of the Application to be in the cause.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 16TH DAY OF JUNE, 2017.

O.A. ANGOTE

JUDGE