



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC SUIT NO.765 OF 2013**

**VINCENT NYAMWAYA OANDA**

**(Suing on his own behalf and in a representative**

**capacity on behalf of 35 others)..... PLAINTIFF**

**VERSUS**

**1. KHUZEIMA MOHSIN MAMUJEE**

**2. HABITABLE HOMES LIMITED**

**3. JOHN NDIRANGU NDEGWA**

**4. SIMON K. THEURI..... DEFENDANTS**

**RULING**

1. The plaintiffs brought this suit against the defendants on 1<sup>st</sup> July, 2013 seeking among others, a permanent injunction restraining the defendants from trespassing, cultivating, selling, disposing of or in any other manner interfering with the plaintiffs' quiet possession and ownership of L.R. No. Mavoko Town Block 3/4354(hereinafter referred to as "the suit property") and a mandatory injunction compelling the 1<sup>st</sup> defendant to surrender the original title and all other relevant documents for the purposes of effecting transfer of the suit property in favour of the plaintiffs and/or their nominees and in default the Land Registrar be empowered to do so.

2. The 1<sup>st</sup> defendant filed a defence and counter-claim on 30<sup>th</sup> August, 2013. In his counter-claim, the 1<sup>st</sup> defendant sought a permanent injunction restraining the plaintiffs and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants from trespassing, encroaching on, alienating, sub-dividing, selling, erecting temporary or fixed structures on, developing and or in any manner whatsoever interfering with the 1<sup>st</sup> defendant's possession, occupation, exclusive use and enjoyment of the suit property and a mandatory injunction compelling the plaintiffs and the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants to remove, pull down and demolish at their own cost all the illegal and offending structures which they have erected on the suit property and to surrender vacant possession of the property to the 1<sup>st</sup> defendant in default of which they be evicted forcefully therefrom and their illegal structures demolished at their own cost.

3. On 16<sup>th</sup> June, 2015, the court adopted as an order of the court a written consent dated 10<sup>th</sup> April 2015 between the plaintiffs and the 1<sup>st</sup> defendant which was filed in court on 20<sup>th</sup> April, 2015. The said consent in material part provided as follows;

*“By consent;*

- 1. The 1<sup>st</sup> defendant be and is hereby declared the registered owner and proprietor of all that parcel of land known as MAVOKO TOWN BLOCK 3/4354(the suit property).*
- 2. The 1<sup>st</sup> defendant has agreed to sell and the plaintiffs have agreed to purchase forty five (45) sub-divided plots measuring 50 feet by 100 feet(approximately 0.05ha.) at a consideration of Kshs.700,000/- per plot as particularized in the schedule annexed hereto.*
- 3. All the plaintiffs shall execute their respective Sale Agreements for purchase of their respective plot(s) as particularized in the schedule annexed hereto within sixty (60) days of filing of this consent failure to which the defaulting plaintiff shall be deemed to have rescinded the offer and surrendered vacant possession of the plot(s) to the 1<sup>st</sup> defendant.*
- 4. Each plaintiff shall be deemed to have taken lawful possession of his/her respective plot(s) only upon payment of the full purchase price of Kshs. 700,000/- as per the annexed schedule in default thereof the 1<sup>st</sup> defendant shall be at liberty to exercise any remedy provided for under the ensuing Sale Agreement between the 1<sup>st</sup> defendant and the defaulting plaintiff/purchaser.*
- 5. Each party shall be at liberty to apply to enforce his/her rights under the Sale Agreement to be prepared and executed between the 1<sup>st</sup> defendant (vendor) on the one part and the respective plaintiffs(purchasers) of the other part.”*

According to the schedule that was annexed to the consent between the parties, there were thirty six (36) plaintiffs who were to purchase a total of 45 sub-divided plots.

4. What is now before the court is a Notice of Motion application dated 18<sup>th</sup> July, 2016 brought by the 1<sup>st</sup> defendant. In the application, the 1<sup>st</sup> defendant is seeking, an order of eviction against 23 plaintiffs from the plots which they are occupying after the sub-division of the suit property the particulars of which are set out in the prayer, an injunction restraining the said plaintiffs from trespassing on or interfering with the 1<sup>st</sup> defendant's quiet possession of the said plots, a mandatory injunction to compel the said plaintiffs to deliver vacant possession of the said plots and, a mandatory injunction to compel the plaintiffs to remove, pull down and demolish at their costs all and any illegal and offending structures erected on the said plots and to surrender vacant possession of the said plots to the 1<sup>st</sup> defendant in default of which the said plaintiffs be evicted forcefully and the said structures removed at their own cost.

5. The application was brought on the following grounds. Following the consent between the plaintiffs and the 1<sup>st</sup> defendant referred to above, the 1<sup>st</sup> defendant sub-divided the suit property into several plots and obtained titles for each of the said plots. The plaintiffs, the subject of the present application were pursuant to the said consent given the opportunity to purchase their respective plots at a consideration of Kshs. 700,000/- per plot. Contrary to the terms of the said consent, the plaintiffs concerned have refused to pay the purchase price for their respective plots. When the parties entered into the said consent, the plaintiffs were in occupation of their respective plots. Under the terms of the consent, the plaintiffs undertook to vacate their respective plots and hand over vacant possession thereof to the 1<sup>st</sup> defendant in the event that they failed to purchase the same.

6. Despite their default to purchase their respective plots, the plaintiffs concerned have continued to occupy the said plots. The 1<sup>st</sup> defendant annexed to his affidavit several documents showing that he had fulfilled his part of the consent by sub-dividing the suit property and offering the resultant plots for sale to the plaintiffs.

7. The application was not opposed by the plaintiffs. I have considered the application together with the supporting affidavit. It is not in dispute that the 1<sup>st</sup> defendant and the plaintiffs entered into a consent which was adopted as an order of the court. The terms of the said consent are not disputed. The said

consent provided that the plaintiffs would purchase portions of the suit property at a consideration of Kshs.700,000/-. The consent provided further that the plaintiffs would execute their respective agreements with the 1<sup>st</sup> defendant for the purchase of their respective portions of the suit property within 60 days of the filing of the consent in court. As I have stated above, the consent was filed in court on 20<sup>th</sup> April 2015 and the same was adopted as an order of the court on 16<sup>th</sup> June 2015. The 1<sup>st</sup> defendant has contended that whereas some of the plaintiffs have executed the agreements for sale in accordance with the terms of the said consent, the plaintiffs who are the subject of the present application have not done so.

8. As I have stated above the application is not opposed. The averments contained in the 1<sup>st</sup> defendant's affidavit regarding the default by the plaintiffs herein to comply with the terms of the consent are not controverted. The consent provided that the plaintiffs who failed to execute their respective agreements for sale would be deemed to have rejected the offer that was made to them to purchase portions of the suit property and surrendered vacant possession of their respective plots to the 1<sup>st</sup> defendant. The consent letter gave liberty to the parties to apply to court for the enforcement of their respective rights under the agreements for sale which they were to enter into in respect of the portions or sub-divisions of the suit property.

9. The 1<sup>st</sup> defendant has now approached the court under that limb of the consent seeking various orders which I have set out earlier in this ruling. From what I have set out above, it is my finding that the 1<sup>st</sup> defendant's application is well founded. The plaintiffs who have failed and/or refused to purchase the portions of the suit property under their respective occupation in accordance with the consent which was adopted by the court herein on 16<sup>th</sup> June, 2015 have lost the right to remain in possession of the said parcels of land and should vacate the same.

10. Due to the foregoing, the 1<sup>st</sup> defendant's application dated 18<sup>th</sup> July, 2016 is allowed in terms of prayers 2 and 6 thereof. The plaintiffs whose particulars are set out in prayer 2 of the application shall vacate and handover possession of the respective parcels of land in their possession within ninety (90) days from the date of service of this order upon them personally and through their advocates on record.

11. The 1<sup>st</sup> defendant shall file in court an affidavit of service of this order upon the said plaintiffs. In the event that the plaintiffs concerned or any of them neglects, refuses or fails to hand over possession as aforesaid, the Deputy Registrar of this court shall on application by the 1<sup>st</sup> defendant issue an eviction warrant for the forceful eviction of the said plaintiffs from the said parcels of land in their possession. The costs of the application shall be met by the concerned plaintiffs.

**Delivered and Signed at Nairobi this 3<sup>rd</sup> day of November 2017**

**S. OKONG'O**

**JUDGE**

**Ruling read in open court in the presence of:**

No appearance	for the Plaintiffs
Mr. Ouma h/b for Muga	for the 1 <sup>st</sup> Defendant
No appearance	for the 2 <sup>nd</sup> Defendant
No appearance	for the 3 <sup>rd</sup> and 4 <sup>th</sup> Defendants
Kajuju	Court Assistant