



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 265 OF 2017

JASON OMBUI ABUGA.....1ST PLAINTIFF
JOSEPH WAMBUGU MUTURI.....2ND PLAINTIFF
PATRICK MBUGUA NJOROGE3RD PLAINTIFF
BENSON MBUGUA MWANGI4TH PLAINTIFF
NJUGUNA GATHU5TH PLAINTIFF

(Suing as officials of Mwanzo Development Company

Limited Plot Owners Welfare Association)

VERSUS

MWANZO DEVELOPMENT COMPANY LTD..... DEFENDANT

RULING

1. In the Application dated 9th July, 2015, the Plaintiffs are seeking for the following orders:

a. That pending the hearing of this suit the Defendants/Respondents by themselves, their servants, agents or otherwise howsoever be restrained by way of a mandatory injunction from disposing, offering to sell, entering, registering in their name, building or causing to be put up structures, excavating, selling, charging, giving as security, trading in, wasting or in any other manner whatsoever interfering with the Title Number Mavoko Town Block 3/213 (formerly Lukenya 426).

b. That the court be pleased to order Area Chief and OCPD Matungulu to enforce prayers number 2 and 3 above.

c. Other and further consequential directions be given as the court may deem fit and just.

2. The Application is supported by the Affidavit of the 1st Plaintiff who has deponed that the suit land was sold to the Plaintiffs by the Defendant in the year 1995; that they are the beneficial owners of the suit land and that the Defendant has not made any effort to grant them with the title documents.

3. According to the Plaintiffs, the Defendant has resold the suit land to third parties who have started

excavating and causing to be erected on the suit land illegal structures.

4. In response, the Defendant's Director deponed that Jason Ombui Abuga is incompetent to make and swear an Affidavit on behalf of the other Plaintiffs; that the Defendant has no knowledge of the existence of the Applicants' alleged Welfare Association or its members and that the Defendant sold some portions of the suit land to purchasers at different times and issued them with Certificates of Ownership and Letters of Allotment.

5. The Defendant's Director denied selling the suit land to the Applicants' Association and that the people who bought land from the Defendant have the right to develop it.

6. The Plaintiffs' and the Defendant's advocates filed brief submissions which I have considered. I have also considered the filed authorities.

7. In the Plaint dated 28th August, 2014, the Plaintiffs averred that they are the officials of Mwanzo Development Company Limited and that they purchased land known as Mavoko Town Block 3/213 (formerly Lukenya 426).

8. Although the 1st Plaintiff deponed that they purchased the suit land twenty (20) years ago, he did not annex any Sale Agreement to show that the Association, or its Members, indeed purchased the suit land or a portion thereof.

9. The 1st Plaintiff has admitted in his Affidavit that their members do not reside on the land and that the said land has since been sold to third parties.

10. Having conceded that they do not live on the land, and in the absence of an Agreement of Sale, which is a pre-requisite pursuant to Section 3(3) of the Law of Contract for one to file a suit for recovery of land, I find that the Plaintiffs have not established a prima facie case with chances of success.

11. The Plaintiffs have also not shown the irreparable loss that they will suffer that cannot be compensated by damages unless the injunctive order is granted.

12. For those reasons, I dismiss the Application dated 9th July, 2015 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE