



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 288 OF 2012**

**PETER K. GITAHI.....1<sup>ST</sup> PLAINTIFF**

**NDUNGU MUGOYA .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**AKUISI FARMERS CO. LTD .....1<sup>ST</sup> DEFENDANT**

**JOHN KAGAI .....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

***(Suit by plaintiff seeking order to compel defendant, a land buying company to hold a meeting and distribute land to its members; suit not defended; plaintiff's case allowed; defendant ordered to hold a transparent balloting process to distribute the land).***

1. This case was commenced by way of plaint filed on 19 January 2012. The plaintiffs' case is that they are shareholders of the 1st defendant company which is a land buying company. The 2nd defendant is a director of the said company. The defendant purchased two farms being Solai L.R No. 8943 and 8944 measuring approximately 947 and another parcel of land being L.R No. 9949 measuring about 1526 acres. However, the plaintiffs claimed the defendant has refused to hold a proper, fair and transparent balloting process to distribute the land to its members. In this suit the plaintiffs have asked for the following orders :-

- (a) Order that the 1st and 2nd defendants do hold a proper, fair and transparent ballot and finalize with the allocation of company land known as L.R No.8943, 8944, and 9949 to its original 3353 members.
- (b) A mandatory injunction to restrain the defendants either by themselves or through their servants, agents or employees or any other person from selling, disposing of , alienating or in any other way interfering with L.RNo. 8943, 8944 and 9949 the property of Akuisi Farmers Co. Ltd before balloting is done.
- (c) The defendants be condemned to pay the costs of this suit.
- (d) Any other relief that this Honourable Court may deem fit and just to grant.

2. The defendants did not enter appearance and the suit proceeded undefended.

3. It is apparent to me that the 1st defendant company is a land buying company. The plaintiffs do hold shares therein. I do not think the plaintiffs are asking for too much. As can be discerned from the prayers above, all they want in this suit is for an order that the process of distribution be fair and transparent. I do not see any reason for denying the plaintiffs the said prayers. I have seen that the matter had previously proceeded before the Land Disputes Tribunal but their decision was quashed for want of jurisdiction in the case Nakuru HCCA No. 133 of 2007. In that case, Maraga J (as he then was) stated obiter that the 1st defendant needs to proceed with its balloting.

4. The plaintiffs called one Ngali Valai as a witness and he testified that the land has already been subdivided. He is also a shareholder of the 1st defendant company. He produced an agreement to subdivide the land entered into by the 1st defendant company and a surveyor one Mr. Muriu.

5. Having considered all issues, I do order the following :-

- (a) That the directors of Akuisi Farmers Company Limited proceed to hold a fair and transparent balloting exercise to distribute the land parcels L.R Nos. 8943, 8944 and 9949 to its members.
- (b) That the above exercise do commence forthwith and be completed within 6 months of today.
- (c) The plaintiffs will have the costs of this suit.

6. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 14<sup>th</sup> day of July, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of:**

Ms. Njeri Muiruri holding brief for Mr. Momanyi Gichuki for plaintiff.

Defendants did not enter appearance: Absent

Court Assistant: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**