



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

**AT NAIROBI**

**ELC NO. 623 OF 2012**

**JOHN WAKABA NJAU.....1<sup>ST</sup> PLAINTIFF**  
**EDWARD MWAURA MBUGUA.....2<sup>ND</sup> PLAINTIFF**  
**ANDREW KAMAU KINUTHIA.....3<sup>RD</sup> PLAINTIFF**  
**SAMUEL NGUKU KARIUKI.....4<sup>TH</sup> PLAINTIFF**  
**PAUL KAMAU KAHINJU.....5<sup>TH</sup> PLAINTIFF**  
**JOSEPH KINYANJUI MUIRURI.....6<sup>TH</sup> PLAINTIFF**  
**DAVID MBUGUA MBECA.....7<sup>TH</sup> PLAINTIFF**  
**PETER KIBUI THINJI.....8<sup>TH</sup> PLAINTIFF**  
**ZIPPORAH WANJIKU KARIUKI.....9<sup>TH</sup> PLAINTIFF**  
**ELIUD NDICHU THUBIRA.....10<sup>TH</sup> PLAINTIFF**  
**FRANCIS MUNYINYI GAKAMI.....11<sup>TH</sup> PLAINTIFF**  
**MARY NDUTA MURABA.....12<sup>TH</sup> PLAINTIFF**

**VERSUS**

**MARKROSCAR KENYA LIMITED.....DEFENDANT**

**RULING**

What is before me is the Plaintiff's Notice of Motion application dated 18<sup>th</sup> September 2012 in which the Plaintiffs have sought a temporary injunction to restrain the Defendant from alienating, leasing selling, transferring, dealing with or sub-dividing in favour of any third party all those parcel of land known as LR No. 8469/75 and LR No. 8469/76 (herein after referred to as "the suit properties"). The application was brought on the grounds that, the Defendant had sold to the Plaintiffs the suit properties at a consideration of Kshs.150,000/=. The Plaintiffs also paid to the Defendant a further sum of

Kshs.154,000/= for survey and processing of title deeds for the suit properties. After the Plaintiffs had paid the purchase price and the said amount of Kshs.154,000/= the Defendant handed over to them the original title for Plot No. 8469/75 together with the instrument of transfer for the Plaintiff's execution. The Defendant thereafter promised to hand over the original title for Plot No. 8469/76 at a later date. The Plaintiffs have contended that they found the instrument of transfer that was presented to them for execution in respect of Plot No. 8469/75 erroneous in that it was drawn in the name of Mutuini 1962 Age Group Association which is not a legal entity as the transferee. The Plaintiffs drew a fresh instrument of transfer through their advocates on record and forwarded the same to the Defendant for execution. The Plaintiffs have contended that the Defendant has not only refused and/or neglected to execute the new instrument of transfer in respect of Plot No. 8469/75 that was forwarded to it by the Plaintiffs' advocates so that the property may be registered in the name of the Plaintiffs but has also refused to hand over the original title for Plot No. 8469/76 to the Plaintiffs. The Plaintiffs have contended that the conduct of the Defendant aforesaid has denied them their constitutional right to own property. It is on account of the foregoing that the Plaintiffs have brought this suit against the Defendant for specific performance of the said agreement for sale. In the meantime, the present application has been brought to restrain the Defendant from alienating the suit properties to third parties pending the hearing and determination of this suit.

The Plaintiffs application was opposed by the Defendant through a replying affidavit sworn by Irene SoniaMumbi on 30<sup>th</sup> October 2012. In response to the application, the Defendant admitted that it sold to the Plaintiffs through a group known as Mutuini 1962 Age Group Welfare Association the suit properties. The Defendant contended that it has not refused to transfer the suit properties to the said Mutuini 1962 Age Group Welfare Association. The Defendant has contended that it has not transferred the said properties to the Plaintiffs due to internal wrangles in the said Welfare Association. The Defendant has contended that it has no intention of alienating the suit properties to third parties and that it would transfer the same to the Plaintiffs as soon as they have settled their internal differences. The Defendant has contended that it has been warned by some members of Mutuini 1962 Age Group Welfare Association not to transfer the suit properties to the persons whose names appear in the instrument of transfer that was prepared by the Plaintiffs' advocates in respect of Plot No. 8469/75.

The Plaintiffs' application was argued by way of written submissions. I have considered the application and the affidavit that was field by the Defendant in opposition thereto. I have also considered the submissions on record. As I have stated above, the Defendant has admitted that it sold to the Plaintiffs the suit properties. The Defendant has stated that it is willing to transfer the suit properties to the Plaintiffs and that it has been prevented from doing so due to internal wrangles within the Plaintiffs' Association. The Defendant has stated that it will effect the transfer of the suit properties to the Plaintiffs once they settle their differences. The Defendant has stated that it has no intention of alienating the suit properties. I have considered the Plaintiff's supplementary affidavit sworn on 3<sup>rd</sup> December 2012 in which the Plaintiffs have responded to the Defendants' allegation that they have internal wrangles. I am of the view that it is not possible to determine at this stage whether or not the Plaintiffs have wrangles among themselves and how the said wrangles would impact on the sale transaction that they had with the Defendant in respect of the suit properties. I am of opinion that no prejudice would be suffered by any of the parties if the suit properties are preserved pending the hearing of the suit herein. The orders sought by the Plaintiffs are only intended to preserve the suit properties. I would therefore allow the Notice of Motion dated 18<sup>th</sup> September 2012 with costs to be in the cause. Orders shall issue accordingly.

**Delivered and Dated at Nairobi this 4<sup>th</sup> day of November, 2016**

**S. OKONG'O**

**JUDGE**

**In the presence of**

Mr. Moindi for Koki

for the Plaintiffs

N/A for the Defendant

Kajuju Court Assistant