



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT KISII

CASE NO. 68 OF 2016

BIRONGO FARMERS CO-OPERATIVE SOCIETY LTD.....PLAINTIFF

VERSUS

ABEL MORANGA ONGWACHO 1ST DEFENDANT

PATRICK MOKANYA NYANGWESO 2ND DEFENDANT

JAMES MAKORI KIBAGENDI 3RD DEFENDANT

ANNAH NYAKERARIO OTWOMA 4TH DEFENDANT

THE LAND REGISTRAR KISII COUNTY 5TH DEFENDANT

RULING

1. The plaintiff filed the instant suit vide the plaint dated 16th March 2016. The plaintiff alleges that its property **LR No. Central Kitutu/Daraja Mbili/66** (hereinafter referred to as **“the suit property”**) was fraudulently and unlawfully transferred to the 1st defendant purportedly through a sale contrived by the 2nd, 3rd and 4th defendants purporting to be genuine officials of the plaintiff and therefore authorized to act for and on behalf of the plaintiff society. The plaintiff contends the purported sale was fraudulent and was perpetrated through collusion and was unlawful and illegal. The plaintiff by the plaint seeks interalia:-

(a) A declaration that the plaintiff is the rightful owner of land parcel No. Central Kitutu/Daraja Mbili/66.

(b) An order for the reversion and cancellation of land title No. Central Kitutu/Daraja Mbili/66 unto the names of the 1st defendant Abel Moranga Ongwacho.

(c) Permanent injunction against the defendants restraining them from in any manner interfering or dealing with the suit property.

(d) A declaration that the 1st defendant is holding land title Central Kitutu/Daraja Mbili/66 in trust for the plaintiff.

Simultaneously with the plaint the plaintiff filed a Notice of Motion dated 18th March 2016 and interalia sought an order of injunction on the following terms:-

“That pending the determination of this suit, an order of injunction do issue restraining the defendants and/or their derivatives, agents, servants or any other person acting under their direction(s) or authority from entering or building upon, fencing off, cultivation or in any manner utilizing or effecting any dispositions whether by way of subdivision and transfer, charge, pledge, lease or in any manner dealing with the suit property, that is Central Kitutu/Daraja Mbili/66”.

2. The Notice of Motion is grounded on the grounds set out on the face of the application and on the affidavit sworn in support thereof by Silver N. Nyangoka Ongeru describing himself as the Chairman of the plaintiff on 18th March 2016 and the further affidavit sworn on 11th April 2016. The plaintiff's contention is that the suit property **Central Kitutu/Daraja Mbili/66** has since 1976 when the plaintiff purchased the same been registered in its name and the plaintiff has been in occupation of the same. The plaintiff states that some time in January 2016 its Bank Account at Barclays Bank was credited with strange deposits totaling kshs. 2,000,000/= whose source they did not know prompting the plaintiff to write to the bank on 28th January 2016 as per annexure “**SN2**” seeking details respecting the deposits. The plaintiff subsequently got information that the said deposits were purportedly in respect of sale proceeds for the purchase by the 1st defendant, **Abel Moranga Ongwacho** of the plaintiff's land parcel **Central Kitutu/Daraja Mbili/66** which allegedly had been sold to the 1st defendant.

3. The plaintiff contends the persons, **James Makori Kibagendi, Patrick Mokaya Nyangweso** and **Annah Nyakerario Otwoma** who held themselves as genuine officials of the plaintiff and transacted the sale on behalf of the plaintiff were not bonafide officers of the plaintiff and there were no elections held by the plaintiff at which they were elected. The plaintiff's state that the letter dated 17th March 2015 by the County Co-operative Commissioner Nyamira marked “**SN3**” certifying the 2nd, 3rd and 4th defendants as the elected officials of the plaintiff is a forgery. The plaintiff further avers that its title to the suit land has never gotten lost or misplaced and the deponent stated the title had always been in his possession and custody contrary to the averments by the 2nd, 3rd and 4th defendants. The plaintiff contends that the 2nd, 3rd and 4th defendants procured forged documents that they used to facilitate the sale of the suit land to the 1st defendant. The plaintiff avers that the 1st defendant was part of the fraudulent and corrupt scheme to alienate the plaintiff's said suit property.

4. The plaintiff further avers no special general meeting of the plaintiff was held on 18th November 2015 at the society grounds at Birongo and states the alleged minutes of that meeting exhibited as “**SN5**” at which only 5 members are shown to have attended is a fabrication. The plaintiff further states the value of the suit property is not less than kshs. **100Million** yet it is stated to have been sold for a paltry kshs. 2 Million. The plaintiff further state that the letter dated 9th December 2015 from the County Co-operative Commissioner is yet a further fabrication and the plaintiff has annexed a letter dated 10th February 2016 from the County Co-operative Commissioner, Nyamira County who denies having authoured or signed the alleged letter of 9th December 2015. The County Co-operative Commissioner states the letter of 9th December 2015 and the alleged minutes of 18th November 2015 are forgeries. In the premises, the plaintiff avers that a prima facie case has been demonstrated to warrant grant of the orders prayed for in the Notice of Motion.

5. The 1st defendant swore a replying affidavit on 30th March 2016 in opposition to the plaintiff's application. The 1st defendant deponed that he is the registered owner of land parcel **LR No. Central Kitutu/Daraja Mbili/66** (the suit property) having purchased the same from the executive committee members of the plaintiff in December 2015 and annexed a copy of official search dated 5th January 2016 marked “**AMO-01**”. The 1st defendant stated that he purchased the property regularly free from encumbrances and annexed the requisite copies of consent and transfer marked “**AMO-02 (a) and (b)**” respectively. The 1st defendant asserted that a search from the Commissioner of Co-operatives carried out on 11th March 2016 revealed that the 2nd, 3rd and 4th defendants were genuine officials of the plaintiff. Search annexed as “**AMO-03(a)**”.

6. The 1st defendant contends that he responded to an advertisement for tender to purchase the suit property (“AMO-05”) and that he was the highest bidder and that he proceeded to complete the sale by payment of the purchase price through the bank account of the plaintiff. The 1st defendant further states that upon completing the purchase of the suit property he took possession and fenced off the entire property and constructed a toilet therein. The 1st defendant further avers he does not know Silver Nyangoka, the deponent of the affidavit on behalf of the plaintiff and denies he has locus standi to institute the current suit on behalf of the plaintiff since he is not an official. The 1st defendant further denies the allegations of fraud and avers that he dealt with the 2nd, 3rd and 4th defendants as the genuine officers of the plaintiff. He denies any documents were forged to facilitate the sale of the property to him and asserts no prima facie case has been made to warrant the grant of an injunction in favour of the plaintiff. The 1st defendant simultaneously with filing of the replying affidavit filed a Notice of Preliminary Objection dated 30th March 2016 and set out the following grounds:-

1. That the applicant lacks locus standi to institute the suit.

2. That Silver Nyangoka Ongeru is a busy body and therefore cannot institute a suit before a court of no competent jurisdiction.

3. That no suit shall be instituted against a deceased person.

7. Annah Nyakeraro Otwoma, the 4th defendant swore a replying affidavit on behalf of herself and the 2nd and 3rd defendant on 30th June 2016 in opposition to the plaintiff’s application. By the replying affidavit the 2nd, 3rd and 4th defendants refute the allegations by the plaintiff that they were not members of the plaintiff Co-operative Society. The 2nd, 3rd and 4th defendants allege that they were duly elected officials of the plaintiff society on 18th November 2015 at an annual general meeting requisitioned by the 3rd defendant. Annexed as “ANO2” and “ANO4” are copies of the notice of the requisition for the meeting and official search from the commissioner of Co-operatives respectively. The 2nd, 3rd and 4th defendants state that as members had realized the title of the suit property was lost they deputed one of the members to obtain a police abstract respecting the loss and caused the land registrar to gazette the loss (“ANO6”) on 15th July 2015 and a replacement title was issued on 3rd December 2015 as per annexure “ANO7”. The deponent states that she, the 3rd and 4th defendants as the executive committee members collected the title from the Ministry of Lands, Kisii. As the executive committee, the said defendants further state they commissioned the valuation of the property and the same was valued at Kshs. 6Million as per the valuation report annexed as “ANO8” pursuant to which they advertised the property for sale. They state they opened the bids on 23rd December 2015 and the 1st defendant was the highest bidder at kshs. 3,000,000/= which they accepted and entered into a sale agreement on 24th December 2015 as per attached copy marked “ANO10”.

8. The 2nd, 3rd and 4th defendants state that the 1st defendant paid a sum of kshs. 2,000,000/= on 30th December 2015 towards the purchase price and aver that it was after learning of the sale of the property that Mr. Silver N. Nyangoka Ongeru, the deponent of the affidavit in support of the plaintiff’s application started raising issues as he wanted to have control of the funds paid and that precipitated in the institution of the present suit. The defendants aver that he lacks the locus standi to bring the suit on behalf of the plaintiff since he has never been appointed as Chairman of the plaintiff at any time. The 2nd, 3rd and 4th defendants deny they were involved in any fraudulent dealing insisting they acted in accordance with the mandate given to the executive committee by the annual general meeting held on 18th November 2015 at which they were elected as officials of the plaintiff. In disputing the allegations of fraud, the 2nd, 3rd and 4th defendants under paragraph 30 of the replying affidavit proffer the following reasons:

(i) Elections were held on 18th November 2015 and was attended by many members.

(ii) The sale of Plot No. Central Kitutu/Daraja Mbili/66 Kisii was discussed at the annual

general meeting.

(iii) The names of the elected officials were forwarded to the commissioner for co-operative for registration.

(iv) The property was sold and the proceeds deposited in the account of Birongo Farmers Co-operative Society Ltd, the applicant hereinabove.

9. The 2nd, 3rd and 4th defendants accuse Mr. Silver Nyangoka Ongeru of forgery of documents namely the letter of 9th December 2015 and minutes of the annual general meeting of 18th November 2015 with the object of misleading the court. They maintain they were not engaged in any fraud and that the sale to the 1st defendant was above board and that Mr. Silver Nyangoka Ongeru's real interest was to have the defendants (2nd – 4th) removed from office for his own selfish interest. It is the said defendant's further contention that this court lacks the jurisdiction to entertain the instant suit as the matter falls within the jurisdiction of the Co-operative Tribunal as the dispute involves members of the Co-operative Society which ought to be resolved by the Tribunal and not the High Court. The 2nd, 3rd and 4th defendants simultaneously with the replying affidavit on 1st July 2016 filed a preliminary objection dated 30th June 2016 and took the ground that:-

1. This court lacks jurisdiction to entertain the dispute between members of Birongo Co-operative Society Limited.

10. At the ex parte stage the court on 18th March 2016, granted an interim order preserving the suit property which order was extended pending the hearing of the plaintiff's application interpartes and/or further orders of the court. The court on 5th July 2016 directed that the preliminary objections taken by the 1st defendant on one part and the 2nd – 4th defendants on the other part be disposed first. The parties were directed to argue the preliminary objection by way of written submissions. The 2nd, 3rd and 4th defendants filed their written submissions on 5th August 2016 and the 1st defendant filed his on 17th August 2016. The plaintiff's response submissions were filed on 4th October 2016.

11. The 1st – 4th defendants preliminary objection is predicated on Section 76 of the Co-operative Societies Act, Cap 490 Laws of Kenya which provides thus:-

76. Disputes;

(1) If any disputes concerning the business of a Co-operative Society arises-

(a) Among members, past members and persons claiming through members, past members and deceased members; or

(b) Between members, past members or deceased members and the society, its committee or any officer of the society; or

(c) Between the society and any other co-operative society, it shall be referred to the tribunal.

(2) A dispute for the purpose of this Section shall include:-

(a) Claim by a Co-operative Society for any debt or demand due to it from a member or past member, or from the nominee or personal representative of a deceased member, whether such debt or demand is admitted or not; or

(b) A claim by a member, past member or the nominee or personal representative of a deceased member for any debt or demand due from a co-operative society, whether

such debt or demand is admitted.

12. It is the defendants' contention that the instant dispute falls within the ambit of Section 76 of the **Co-operative Societies Act** and consequently ought to have been referred to the Co-operative Tribunal for adjudication. The defendants argue that the dispute relates to the society and its members and it is therefore the Tribunal that has jurisdiction. The defendants (1st – 4th) submit that this court has no jurisdiction to deal with the dispute. The defendants submit that Silver Nyangoka Ongeru who swore the supporting affidavit on behalf of the plaintiff society is a member of the society and that even though he claimed he did not know the 2nd, 3rd and 4th defendants the latter have demonstrated through affidavit evidence that they are members of the plaintiff society. The 2nd, 3rd and 4th defendants' names are in the list of members held by the commissioner of co-operatives.

13. In support of their submissions the defendants referred the court to several authorities notably **C.A.C.A No. 261 of 1998 John Githinji Wangonde & Another –vs- Othaya Farmers Co-op Society Ltd & Commissioner of Co-operative Development (unreported)** where the court held that the Co-operative Societies Act sets out the procedure for settling disputes which may arise under it and observed thus:

“Disputes (under the Act) are to be settled through the Commissioner of Co-operatives, and the decisions of the commissioner are appealable to the High Court, so the High Court has only appellate powers and there is a provision for instituting suits in the High Court under the provisions of Cap 490...”.

14. In the case of **Adero & Another –vs- Ulinzi Socca Society Ltd (Nbi HCCC No. 1879 of 1999 (unreported))** the plaintiffs were members of a registered Co-operative Society and filed a dispute with the society in the High Court. on an application to have the dispute transferred to the Co-operative Tribunal on the ground that the matter fell within the Tribunal's jurisdiction, Ringera, J (as he then was) held inter alia:-

1. As the subject matter of the suit was a dispute between a registered co-operative society and its members the dispute should not have been filed in the High Court by dint of the Co-operative Societies Act, 1997 Section 76.

2. The jurisdiction either exists or does not ab initio and the non constitution of the forum created by statute to adjudicate on specified disputes could not of itself have the effect of conferring jurisdiction on another forum which otherwise lacked jurisdiction.”

15. The defendants have further referred the court to the ruling of my brother **Okong'o, J.** in the case of **Nyaigwa Farmers Co-operative Society Ltd –vs- Ibrahim Nyambare & 8 Others (Kisii ELC No. 11 of 2014 (unreported))**. In the case the learned Judge held that the 1st to 6th defendants were officials of the plaintiff society and that the dispute related to the execution of the business of the Co-operative Society. The 1st to the 4th defendants had sanctioned the sale of the plaintiff's property **LR No. Kisii Municipality/ Block III/105** to the 7th defendant. The plaintiff instituted the suit claiming the sale of the property to the 7th defendant was illegal and fraudulent and inter alia sought for an account of the sale proceeds and in the alternative the cancellation of the transfer in favour of the 7th defendant and restoration of the title in to the name of the plaintiff's company.

16. In an interlocutory application by the 1st – 4th defendants in the case of **Nyaigwa Farmers Co-operative Society Ltd [supra]** where they sought to strike out the suit on the ground that the same raises no triable issue and was scandalous, frivolous and/or otherwise an abuse of the process of the court. The applicants additionally argued the court lacked the jurisdiction to deal with the matter as it fell under Section 76 of the **Co-operative Societies Act**, cap 490 Laws of Kenya. The judge in the case held:-

“I am not in agreement with the plaintiff's contention that merely because its claim against the 1st to 4th defendants relates to sale of land, this court has jurisdiction over the same. Save

where it is expressly stated in the Environment and Land Act, 2011 or any other statute to the contrary, the establishment of this court did not take away the jurisdiction of specialized tribunals and courts that had been established by various statutes to deal with particular disputes even if such disputes touches on environment and land. In any event, the plaintiff's claim herein against the 1st to 4th defendants does not strictly relate to environment and land. The plaintiff's claim against the 1st to 4th defendants is set out in paragraph (a) of the reliefs sought as "An order to issue compelling the 1st to 6th defendants to remit the purchase price of the plot to the plaintiff together with interest from the date of sale."

The Judge granted the application by the 1st to 4th defendants holding that the court lacked jurisdiction and struck out the suit.

17. The plaintiff in response submissions maintained that the court had jurisdiction and argued that the transaction executed by the defendants that resulted in the transfer of the plaintiff's property to the 1st defendant did not constitute normal business of the plaintiff so as to fall within the ambit of Section 76 of the **Co-operative Societies Act**. The plaintiff contends that the actions of the 2nd to 4th defendants were outright fraudulent such that they infringed the rights of the plaintiff. The plaintiff places reliance on the case of **Bernard Mugo & Others –vs- Kaagari South Farmers Co-op. Society & 4 Others [2015] eKLR** where the defendants had taken a preliminary objection that the court lacked jurisdiction to deal with a matter where the society had taken some disciplinary action against the plaintiff's arguing that the matter fell under Section 76 of the **Act** and ought to have been submitted to the Tribunal to deal with. In dismissing the preliminary objection Muchemi, J. held thus:-

"I have carefully analyzed the nature of the claim and the prayers sought. I come to the conclusion that the claim does not fall within the description of the business of the society. It is a suit challenging the legality of the decision of the society alleged to have the effect of infringing the rights of the plaintiffs. The matter is outside the ambit of Section 76 (1) and (2) of the Act and therefore falls squarely under the jurisdiction of this court."

18. In the further case of **Republic –vs- Gathaite Farmers Co-op Society Ltd & Another Ex parte Richard Ng'ang'a Kamiro [2013] eKLR, Justice W. Korir** in a Judicial Review challenging the award by the Co-operative Tribunal awarding land to the society where it had claimed the land in question had been irregularly registered in the name of the applicant on the basis that the Tribunal had no jurisdiction the Judge after reviewing several decisions relating to the defunct land disputes tribunal established under the repealed **Land Disputes Tribunals Act No. 18 of 1990** the Judge stated thus:-

"Although the above cited decisions were in respect of the defunct land disputes tribunals which had been created by the repealed Land Disputes Tribunal Act, I am of the view that the same position is applicable to the Co-operative Tribunal. In my view the said Tribunal has no jurisdiction to make a decision that amounts to the revocation of title to land. It did not therefore have jurisdiction to make a decision that amounts to the revocation of title to land. It did not therefore have jurisdiction to revoke the applicant's title to the land in question. At the moment such matters ought to be dealt with by the Land and Environment Court".

19. I have briefly set out the respective cases of the parties and have summarized their rival arguments on the preliminary objection. The issue for determination is whether the preliminary objections taken by the 1st to 4th defendants are sustainable. The jurisdiction of this court is established under Article 162 (2) (b) of the Constitution which provides thus:-

(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

(a)

(b) the environment and the use and occupation of and title to land.

The **Environment and Land Court Act** under Section 13 provides for the jurisdiction of the court. Section 13(1) of the Act provides as follows:-

13.(1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162 (2) (b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.

20. The plaintiff by prayers (a), (b) and (e) of the plaint seeks the following reliefs:-

(a) A declaration that the plaintiff is the rightful owner of land parcel No. Central Kitutu/Daraja Mbili/66.

(b) An order for reversion and cancellation of the transfer and registration of land title No. Central Kitutu/Daraja Mbili/66 into the names of the 1st defendant Abel Moranga Ongwacho.

(c) A declaration that the 1st defendant is holding land title No. Central Kitutu/Daraja Mbili/66 in trust for the plaintiff.

21. The plaintiff's suit against the 1st to 4th defendants is predicated on claims that the said defendants acted fraudulently in getting the suit property transferred into the 1st defendant's name and it is for that reason the plaintiff is seeking for the revocation and cancellation of the title registered in the 1st defendant's name. The allegations of fraud are denied by the 2nd to 4th defendants with them contending that they are genuine officials of the plaintiff and were executing the ordinary business of the plaintiff Co-operative Society when they sold the property to the 1st defendant. The plaintiff through Silver Nyangoka Ongeru, protest that the 2nd to 4th defendants were not officials of the society and they had no authority from the plaintiff. There are counter accusations of forgery and fraud of various documents exhibited by the parties and it is quite evident the court cannot make any definitive findings with regard to whether any document has been forged at this stage without hearing viva voce evidence. Equally the court is not in a position to make any definite findings on whether or not fraud was committed save to observe that there are indicative pointers that fraud may have been committed in facilitating the impugned transaction. Those are issues that would have to await hearing at the trial.

22. However, if the plaintiff were to prove the allegations of fraud against the defendants, the title transferred to the 1st defendant would be impugned under the provisions of section 26 (1) (a) and (b) of the **Land Registration Act, 2012** which provides thus:-

26(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and the title of that proprietor shall not be subject to challenge, except-

**(a) On the ground of fraud or misrepresentation to which the person is proved to be a party;
or**

(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

It is the plaintiff's case that the 1st defendant's title is impeachable under the above provision on account of fraud, misrepresentation and/or illegality for having been unprocedurally acquired.

23. My view is that where the title is under challenge as in the instant suit the Tribunal established under the **Co-operative Act** would have no jurisdiction to determine the question as the issue would relate to whether or not such title should be revoked and/or cancelled. That in my opinion is the preserve of this court. The 1st defendant who is presently the registered owner of the suit property is not a member of the plaintiff co-operative society and the plaintiff cannot properly challenge the title in the hands of the 1st defendant before the Co-operative Tribunal. While the 1st defendant contends he is a bonafide purchaser for value, the plaintiff insists he was part of the fraudulent scheme that was hatched by the 2nd, 3rd and 4th defendants to appropriate the plaintiff's said property. I have no basis to hold that Silver Nyangoka Ongeru lacks locus standi to bring the present suit. The Minutes of 18th November 2015 of the meeting at which the 2nd, 3rd and 4th defendants claim they were elected into office have been disowned by the County Co-operative Commissioner vide his letter dated 10th February 2016 yet he would have been the person who would have validated the said elections.

24. Under Section 80(1) of the **Land Registration Act, 2012** it is the court that has the jurisdiction to order the rectification of the register where any registration was obtained, made or omitted by fraud or mistake. Section 80 (1) provides:-

80(1) Subject to subsection (2) the court may order the rectification by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

At the time the instant suit was filed it was only the environment and land court that had jurisdiction to deal with matters arising under the **Land Registration Act, 2012**. 'Court' under the Act is defined as the Environment and Land Court established under the **Environment and Land Court Act, 2011**. The Co-operative Tribunal could not have jurisdiction to deal with a dispute as the present one where the title is under challenge.

25. In the premises, having regard to the pleadings of the parties in this suit, I am persuaded that this suit would not constitute a dispute as envisaged under Section 76 of the **Co-operative Societies Act, Cap 490** so as to require the dispute to be referred to the Co-operative Tribunal for determination. The scope of the dispute is beyond the jurisdiction of the Tribunal as it involves the challenge of title on grounds of fraud and misrepresentation. The case before me is distinguishable from the case decided by **Okong'o, J. Nyaigwa Farmers Co-op. Society Ltd –vs- Ibrahim Nyambare & 8 Others [supra]**. In that case the society was not as it were challenging the resultant title but was rather seeking the sale proceeds to be accounted to the society. The sale of the property had been effectuated by former officials of the society who apparently had not remitted the sale proceeds to the society. The scenario in the present case is different as it is contested that the 2nd to 4th defendants were indeed officials of the plaintiff and it is alleged the sale was contrived in a fraudulent and corrupt scheme which involved the 1st defendant, now registered owner of the suit property as well.

26. The upshot is that I find the preliminary objections taken by the 1st defendant on one part and the 2nd to 4th defendants on the other part to be devoid of any merit and I disallow the same but make no order for costs. I have in the course of this ruling set out in brief the facts of the respective cases of the parties. I have in particular held that the court cannot reach any definite findings in regard to the allegations of fraud made by the parties against each other at this interlocutory stage without hearing the parties in evidence.

27. In the circumstances, the court having regard to the plaintiff's application for injunction and the 1st to the 4th defendants opposition thereto vide the filed replying affidavits, I am persuaded that the order that would commend itself is one requiring that the parties maintain the obtaining status quo where there will be no transfer or charging of the suit property until the suit is heard and determined and it is so ordered. There is need to preserve the subject matter of the suit until the suit is heard and determined. The court is of the view that justice would be better served if the parties moved speedily and complied with Order II of the Civil Procedure Rules to facilitate expeditious hearing of the suit on its merits. The plaintiff's

application for injunction dated 18th March 2016 is accordingly dispensed with on the foregoing terms and the costs will be in the cause.

28. Orders accordingly.

Ruling dated, signed and delivered at Kisii this 16th day of December, 2016.

J. M. MUTUNGI

JUDGE

In the presence of:

Mr. Ochoki for the plaintiff

Ms. Moguche for the 1st defendant

Ms. Moguche for Mogire for the 2nd, 3rd and 4th defendants

Mr. Ngare Court Assistant

J. M. MUTUNGI

JUDGE