

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 58 OF 2014

**TURBO MUNYAKA CO-OPERATIVE SOCIETY
LIMITED::: PLAINTIFF**

VERSUS

**JOSEPH MBUGUA HOSEA :::
::: DEFENDANT**

R U L I N G

1. The applicant is a Co-operative Society duly registered under the Co-operative Societies Act Cap 490 Laws of Kenya. The applicant had set aside land for a trading centre which it registered in the name of Munyaka Trading Centre. The property is known as Makutano/Kapsara Block 2/Turbo Munyaka/247. When the applicant started subdividing the land for distribution to its members, the respondent moved into the property and started digging trenches and fencing it. This forced the applicant to move to court seeking injunctive orders against the respondent restraining him from interfering with the suit land.
2. The applicant contends that the action by the respondent is leading to waste of the property and that the respondent has no interest in the suit property and therefore should be restrained by way of injunction from proceeding further with his activities.
3. The applicant's application is opposed by the respondent through replying affidavit sworn on 5/5/2014 and a further affidavit sworn on 3/6/2014. The respondent contends that the applicant has no locus standi to bring this suit as the plot in issue is not registered in its name. The respondent further contends that the applicant ceased to exist once it completed its task of acquiring land for its members.
4. The respondents further contends that he is the owner of the plot in issue as per the decree of court in land case No. 28 of 2011 at the Chief Magistrate's court Kitale.
5. I have gone through the applicant's application as well as the opposition thereto by the respondent. The issues which emerge for determination are firstly whether the plaintiff has locus standi to bring this suit against the defendant and secondly whether the applicant has demonstrated that it is entitled to injunction orders.
6. The principles for grant of injunction are well settled. First an applicant must demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless otherwise the applicant will suffer irreparable loss which will not be compensated in damages. Thirdly if the court is in doubt it will decide the application on a balance of convenience.
7. I will first determine whether the applicant has locus standi to bring this case. The respondent contends that the plot in issue is registered in the name of Munyaka trading centre and that therefore the plaintiff/Applicant should not be the one suing the respondent. It is true that the plot in issue is registered under Munyaka Trading Centre. Munyaka Trading Centre was created by the plaintiff to hold land which was to be sub-divided and given to its members. The suit land was carved for purposes of a trading centre. The name having been created by the applicant it cannot be argued that the applicant has nothing to do with it. The minutes annexed by the respondent to

his further affidavit are clear that Munyaka trading centre was created by the applicant to hold the plot for distribution to its members who are said to be 81 in number. The applicant was to distribute the plot to its members before it will be voluntarily dissolved or dissolved by the Commissioner of Co-operatives. The applicant has not accomplished that task and for that reason it cannot be dissolved. The argument by the respondent that the applicant ceased to exist is therefore without basis. The liquidation of the applicant was suspended pending finalization of the sub-divisions of the trading centre plots. I therefore find that the applicant has locus standi to bring this suit against the respondent.

8. The applicant has demonstrated that it has a prima facie case with probability of success. The applicant has demonstrated that it was the original owner of the land which included the area now designated as Munyaka trading centre. The applicant is in the process of sub-dividing the suit land for sub-division to its members. The respondent is interfering with this process. The respondent should not be allowed to interfere with the process. I do not have to consider the other two principles. The application by the applicant is well founded. The temporary injunction given on 03/4/2014 is hereby confirmed. The same shall remain in force until the hearing and determination of this suit. The applicant shall have costs of this application.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of September, 2014.

E. OBAGA

JUDGE

In the presence of M/S Nyakibia for applicant. Court Clerk Kassachoon.

E. OBAGA

JUDGE

30/9/2014