



**REPUBLIC OF KENYA**

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

**E&L NO. 452 OF 2013**

**KONDOO CENTRE SELF HELP GROUP**

*suing through officials namely*

**JAMES MAINA**

**DANIEL MWANGI GIKONYO**

**BEN KIPLAGAT KANGOGO**

**DANIEL CHEGE.....PLAINTIFF**

**VS**

**ATTORNEY GENERAL .....1ST DEFENDANT**

**COMMISSIONER OF LANDS.....2ND DEFENDANT**

**KONDOO CENTERE COMMITTEE.....3RD DEFENDANT**

**JOHN SONG'OEL.....4TH DEFENDANT**

**JOSEPH NG'ETICH.....5TH DEFENDANT**

**PAUL GATHUO.....6TH DEFENDANT**

***(Application for injunction; principles to be applied; applicants wanting to stop the process of issuance of titles; allegation that suggested beneficiaries are not the proper beneficiaries; evidence showing splinter groups; splintered groups appearing to have been merged into one; names forwarded for approval; whether in the circumstances and injunction should issue; application dismissed)***

**RULING**

1. The four plaintiffs have described themselves as officials of Kondoo Centre Self Help Group. It is their case that since the year 1972, the members of this Self Help Group have occupied, farmed and established businesses on various pieces of land in the land parcel Uasin Gishu/Kondoo Scheme/ 627 at Kondoo Trading Center which is said to be a settlement scheme. In the plaint, it is pleaded that on 12 April 2004, a meeting was held to discuss how each member could get his title deed, and that is how, Kondoo Trading Centre Self Help Group was formed and registered. A physical development plan was then drawn being ELD 1805/2005/1 and the same was approved. However in 2007-2008 the area was affected badly by the post-election violence and some members were killed and some fled. After calm returned, the members

came back, but were turned away by the 3rd - 5th defendants, who are said to be officials of Kondoo Centre Committee. It is alleged that the members of Kondoo Centre Committee were now claiming ownership of the suit land. It is pleaded that the 3rd and 4th defendants were previously members of the plaintiff Self Help Group but defected to form the Kondoo Centre Committee. The plaintiffs claim that they have made numerous demands to the National Land Commission to help them settle but this has been in vain. The plaintiffs want a declaration that it is the plaintiff member group which is entitled to the suit land. They also want an order directing the National Land Commission to process titles for them. They want a permanent injunction issued against the 3rd-6th defendants and their members from being issued with titles and also want them to be permanently restrained from the suit land.

2. Simultaneously with the plaint, the plaintiffs filed an application for injunction, which is the subject of this ruling. The application as drawn seeks the following orders :-

*1. That this application be certified as urgent and be heard ex parte in the first instance (spent).*

*2. That a permanent injunction be issued restraining the defendants/respondents by themselves their agents, servants or employees and/or any one taking title from them, evicting, trespassing, alienating, repossessing, leasing out or interfering with the plaintiffs title and/or ownership of the suit premises, quiet and peaceful possession of all that property known as Uasin Gishu/Kondoo Scheme/627, Kondoo Trading Center captured in Physical Development Plan No. ELD/1805/2005/1 pending the hearing and determination of this application and suit.*

*3. That an order directing the 1st defendant/respondent to provide and maintain security, protection to the plaintiffs and the 2nd defendant/respondent to settle the plaintiffs and its members and/or nominees, legal representatives or assigns on suit premises known as Uasin Gishu/Kondoo Scheme/ 627 Kondoo Trading Center captured in Physical Development Plan No. PDP No. ELD/1805/2005/1.*

*4. That an injunction be issued restraining, forbidding and stopping the 2nd defendant/respondent by itself, their agents, servants or employees from processing formalization of allotment, issue of title deeds and or issue of any land document on all that piece of land known as Uasing Gishu/Kondoo Scheme/627 Kondoo Trading Center captured in Physical Development Plan No. PDP No. ELD/1805/2005/1 to the 3rd, 4th, 5th & 6th defendants pending the hearing and determination of this application and suit.*

*5. That an injunction do issue restraining the 3rd, 4th, 5th & 6th defendants/respondents their servants or agents from entering, trespassing, remaining, possessing, occupying, constructing, developing, or in any way interfering with the plaintiff's suit premises known as Uasin Gishu/Kondoo Scheme/627, Kondoo Trading Center, PDP No. ELD/1805/2005/1 pending the hearing and determination of this application and suit.*

*6. That the officer in charge OCS of Burnt Forest Police Station and Provincial Administrator Wareng District, to supervise the compliance of the orders of this Honourable Court and ensure that peace prevails.*

*7. The costs of this application.*

3. In the supporting affidavit, it is said that in the year 2004, the Kondoo Center Self Help Group was formed with 128 members. The members also elected a Center Committee which comprised of David Mwaura Githuka, Stephen Wanyoike Kinyanjui, James Maina, and John Singoei (4th defendant) . They engaged the Government and a Physical Plan was drawn. After the PEV, in 2009, the plaintiffs sought to be allocated the plots. They were however informed that there was another list drawn by a new splinter group led by the 4th defendant. They are therefore afraid that the Government will issue titles to this new Group.

4. The 3rd - 6th respondents filed a replying affidavit sworn by Stephen Gathuo Kimani (also known as Paul Gathuo, the 6th defendant). He denied that they have dispossessed the plaintiffs of the suit land. He said that he knows the history of the suit land which he claims originally belonged to his grandmother.

The land was given to the public, in exchange for another, in the year 1972 and set aside as a trading centre. The land has been public land held by the Burnt Forest Town Council. He was part of the original committee which came up with a map in the year 1996. In 2004, a splinter group emerged and formed the plaintiff Self Help Group. After the PEV, through the initiative of the District Commissioner, on 11 July 2009, the two groups were brought together and merged into one committee, with the 4th defendant becoming the joint-committee chairman. The duties of the committee was to harmonize the list of members entitled to be allocated plots within the trading centre. They held subsequent meetings and came up with a list of beneficiaries which was adopted by the Town Council of Burnt Forest. This list was also endorsed by the area Chief, the D.O Kesses Division, the D.C Wareng, the Uasin Gishu District Physical Planner, the Uasin Gishu District Land Registrar and the Burnt Forest Town Council before being forwarded to the Commissioner of Lands. It is stated that indeed the plaintiffs are beneficiaries in the said list. It is said that the plaintiffs are a group of disgruntled people.

5. The plaintiffs filed a supplementary affidavit through which they have inter alia refuted that there was a meeting held on 11 July 2011. They have otherwise stated that they are strangers to the averments of the defendants.

6. It is with the above opposing positions that I need to decide this application. This is in essence an application for injunction. The principles to be considered in an application for injunction were settled in the case of **Giella v Cassman Brown (1973) EA 358** . In the said case, the Court of Appeal stated that first, one needs to demonstrate a prima facie case with a probability of success; secondly, that the court ought to consider the tenet that an injunction will not normally be granted unless damages are an inappropriate remedy; and finally if in doubt, the court will consider the application on a balance of convenience.

7. The first port of call is to assess whether a prima facie case has been laid out by the applicant. This inevitably means a preliminary assessment of the case of the applicant, based on the material presented. If the other party has responded to the application, and has tabled rival material, the material presented by the applicant has to be balanced against the material presented by the respondent. The preliminary assessment is the determination of whether a prima facie case has been established. It should be noted that this is only a preliminary assessment, aimed at determining whether the application for injunction should succeed. The final determination has to await the hearing of the suit and does not necessarily have to tally with the preliminary findings made at the interlocutory stage.

8. I have considered the rival positions. The plaintiffs seem to suggest that it is their members who are entitled to the suit land and therefore want the process of issuing of titles stopped. The defendants on the other hand have averred that there had been a vetting process which was endorsed by the authorities. I have seen the various documents tabled by the parties. It appears as if the two rival groups were merged into one committee in a meeting held on 11 July 2009. Although the plaintiffs have denied that there was ever such a meeting, I have seen the minutes of the said meeting, which were annexed by the defendants. Indeed, I have seen that one James Maina Mbaria ( a name that is strikingly similar to that of the 1st plaintiff) spoke in the said meeting. I have seen Min VII/11/7/2009 of the said meeting, which states as follows :

*"After discussion and deliberations the members agreed to have one committee to deal with plots and allocations and pursuing of allotment letters. The said members were :*

*1. Kondoo Trading Centre Committee Members namely*

*-George Rongoei*

*- Richard Misoi*

*- James Mungai Kimani.*

*-Stephen Gathuo Kimani.*

*The Farm Committee Members were*

- 1. Reuben Lelei*
- 2. Wilson Chumo*
- 3. Mike Ruto. "*

A proposal was mooted and accepted on how the plots should be allocated which was covered in Agenda 3 of the meeting. Subsequently, these appear to have been forwarded to the relevant authorities and approved. It appears that thereafter some members felt that they were left out hence the complaints to the Commissioner of Lands.

9. Having gone through the documents tabled by both plaintiffs and defendants, I am not of the view that the plaintiffs have demonstrated to me that the defendants have been guilty of any wrongdoing. Neither has it been demonstrated to me that the defendants are considering names of persons who are not entitled to benefit from the Scheme. It has also not been shown to me that there are persons who were to be included in the allocations but that the defendants have unfairly listed them out. I am not convinced at this stage of the proceedings, that the plaintiffs have tabled before me, material, that demonstrates that the defendants have been engaged in any illegal process, or that the process of vetting of persons entitled to be considered for allocation is a flawed process. True, they may be disgruntled, but disgruntlement alone, without demonstrating what wrong the defendants have done, cannot make one deserve an injunction.

10. In essence, I have not been persuaded, at this stage of the proceedings, that the plaintiffs have laid before me a prima facie case with a probability of success. Having not been convinced that a prima facie case has been laid, I have no option but to dismiss this application with costs.

11. It is so ordered.

**DATED AND DELIVERED AT ELDORET THIS 16TH DAY OF OCTOBER 2014**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Delivered in the presence of:***

***Delivered in the presence of:***

***Mr. M.K. Chemwok holding brief for M/s Mwathi Njue & Co Advocates for plaintiffs/applicants.***

***Mr. P. Kuria for State Law Office for 1st & 2nd respondents.***

***N/A for M/s Magut & Sang for 3rd - 6th respondents.***