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Court:	Environment and Land Court at Eldoret
Case Action:	Motion
Judge:	Milicent Akinyi Obwa Odeny
Citation:	James Maina & 3 others v Attorney General & 4 others [2022] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Uasin Gishu
Docket Number:	-
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Case Outcome:	-
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Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**ELC CASE NO. 452 OF 2013**

**JAMES MAINA.....1<sup>ST</sup> PLAINTIFF**  
**DANIEL MWANGI.....2<sup>ND</sup> PLAINTIFF**  
**BEN KIPLAGAT KANGOGO.....3<sup>RD</sup> PLAINTIFF**  
**DANIEL CHEGE.....4<sup>TH</sup> PLAINTIFF**

*(All suing as officials of Kondoo Trading Centre Self Help Group)*

**-VERSUS-**

**ATTORNEY GENERAL.....1<sup>ST</sup> DEFENDANT**  
**NATIONAL LAND COMMISSION.....2<sup>ND</sup> DEFENDANT**  
**JOHN SING'OE.....3<sup>RD</sup> DEFENDANT**  
**JOSEPH NG'ETICH.....4<sup>TH</sup> DEFENDANT**  
**PAUL GATHUO.....5<sup>TH</sup> DEFENDANT**

*(The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants sued as officials of Kondoo Centre Committee)*

**JUDGMENT**

By a plaint dated 20<sup>th</sup> September, 2013 and amended on 21<sup>st</sup> October, 2013 the plaintiffs' herein sued the defendants jointly and severally seeking the following orders:

*(a) A permanent injunction be issued restraining the defendants 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' quiet and peaceful enjoyment and possession of all that property known as UASIN GISHU/KONDOO SCHEME/627, Kondoo Trading Centre, captured in Physical Development Plan No. PDP No. ELD/1805/2005/1.*

*(b) Declaration that the plaintiffs and its members and/or its nominees, legal representatives or assigns are entitled to possession ownership of the property, property of land premises known as UASIN GISHU/KONDOO SCHEME/627, Kondoo Trading Centre, captured in Physical Development Plan No. PDP No. ELD/1805/2005/1.*

*(c) An order directing the 2<sup>nd</sup> defendant to process and issue letters of allotment and title deed to the plaintiff and its members and or its nominees' legal representation or assigns for the parcel known as UASIN GISHU/KONDOO SCHEME/627 as per the list submitted to its predecessor when the Physical Development Plan No. PDP No. ELD/1805/2005/1 was approved. Further, to stop processing of letters of allotment and title deed of the suit premises to the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants and their members and to forbid or stop any dealing with the said land unless it is in favour of the plaintiffs.*

*(d) An order directing the 1<sup>st</sup> defendant to facilitate through the Kenya Police Service the settlement of the plaintiffs' members in the suit premises since they have been Internally Displaced Persons for more than 45 years now and to maintain peace and provide security in the process.*

*(e) Costs of the suit.*

*(f) Any other further relief as this Honourable Court may deem fit and just.*

#### **PLAINTIFFS' CASE**

PW1 James Maina adopted his written statements and testified that he was the Secretary of Kondoo Centre Self Help Group and that the members of have occupied, farmed, built and established businesses on various plots or parcels of land at Uasin Gishu Scheme 627 also known as Kondoo Trading Centre since 1972.

It was PW1 's evidence that in 2004 they formed a group known as Kondoo Trading Centre Self Help Group comprising of 128 members which group was registered under Certificate No. UG/SS/REG/7700/2004 in the Ministry of Gender Children and Social Development. PW1 further stated that the elected committee members who included the late David Mwaura Githuka as chairman, late Stephen Wanyoike Kinyajui as treasurer, James Maina as secretary and John Singoei as vice chairman.

PW1 stated that in order to implement their plan the committee members visited the offices of the area Chief, the District Officer, Settlement Officer, the Physical Planner, the District Commissioner, Surveyor and Land Registrar who authorized their plan. That the members signed the development plan which was later published by advertisements made in two Newspapers namely; Taifa Leo and Kenya Times on 2<sup>nd</sup> February, 2006 and also in the Kenya Gazette Notice No. 980 of 10<sup>th</sup> February 2006.

PW1 stated that the publication required that any objections be raised within 60 days and no objections or adverse comments were made therefore the **Plan No. ELD/1805/2005/1** was approved by the Director Physical Planning department on 13<sup>th</sup> June 2007 and completed on 15<sup>th</sup> October 2007, and was finally approved by the Minister of Lands.

PW1 testified that to date the PDP has not been replaced, revoked or frustrated and is still valid and legal. That the next process was the issuance of allotment letters to the members that should have been followed by issuance of title deed by the 2<sup>nd</sup> Defendant after the 2007 general elections.

It was PW1's testimony that the members were asked to wait for survey of the area which never took place due to the 2007 clashes. PW1 produced copies of correspondence between their advocates and the National Land Commission and the office of Physical Planning and confirmed that despite those letters, the government had not helped them. PW1 produced 27 exhibits in support of their case which included a copy of registration, Plaintiff's list of members, Minutes of 28/6/2003 and 12<sup>th</sup> -14<sup>th</sup> April 2004, Physical development plan No. Eld/1805/2005/1, copies of Taifa Leo and Kenya Times 2<sup>nd</sup> February, 2006, Gazette Notice No. 980/2006 of 10<sup>th</sup> February, 2006, letter of defection of Vice Chairman, Application letters for Kondoo Centre Plots dated 27/7/2009 and 12/7/2010, letter from the Ministry of Lands dated 29/7/2010, demand letters, letter from the Ministry of Lands Uasin Gishu dated 1/9/2010, complaint letter dated 10/11/2010, Application for caveat dated 31/3/2011, letter from Ministry of Lands to letter dated 15/4/2011, Letters dated 1/2/2016 and 5/4/2016 to the Chairman, Reply by the National Land Commission, Uasin Gishu certified copy of beneficiaries dated 24/8/2017, Uasin Gishu letter authenticating the Plaintiff's list as genuine, Kondoo Trading Centre member's plot distribution list, letter to Uashin Gishu County to supply a certified list of beneficiaries, certified copy of list of beneficiaries by the NLC Uasin Gishu, reply to the letter requesting certified copy of list of beneficiaries, certified copy of the official original list of beneficiaries and a letter to Otieno Appida and Swazuri dated 8<sup>th</sup> December, 2016.

On cross examination by Mr. Kuria for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, PW1 confirmed that the Plaintiffs did not possess allotment letters and that the surveyor had not placed any beacons on the suit property. He also stated that the list of members given to the Physical Planner confirmed the real beneficiaries of the suit property.

PW1 further stated that he was not present at the meetings on 23<sup>rd</sup> December, 2009 and 3<sup>rd</sup> December 2010 which purportedly harmonized the two groups stating that, his name and signature does not appear anywhere in the harmonized list. Further that the groups were never merged or harmonized and there are no records at the Ministry of Land or at the National Land Commission.

On cross examination by Mr. Magut for the 3<sup>rd</sup> -5<sup>th</sup> Defendants, PW1 stated that the suit property belonged to the government, which was given to them when they made an application for allocation. He was not aware that the same belonged to one Wambui Richo who has a different plot.

PW2 Daniel Mwangi adopted his statement dated 20<sup>th</sup> September 2013 and reiterated PW1's testimony. He stated that the only group that existed was the Plaintiffs' group and further that the Plaintiffs' and Defendants' groups were never amalgamated.

On cross examination by Mr. Wabwire counsel for the 1<sup>st</sup> Defendant, PW2 stated that the National Land Commission asked the two groups to agree on a list of beneficiaries but they were not able to agree. PW2 further stated that NLC could not issue allotment letters to them since some of the members listed had not given their Identification Card Numbers.

On cross examination by Mr. Magut, PW2 confirmed that the 3<sup>rd</sup> Defendant was a vice chairman of the Plaintiffs' group until after the clashes when he formed the second group-Kondoo Centre Committee.

PW3 Ben Kiplagat Kangogo adopted his statement dated 20<sup>th</sup> September 2013 and testified that he is an elected committee member and that together with the other committee members, they were tasked with following up the process of obtaining allotment letters for the members of the group and that they obtained the Physical Planning Development Plan (PDP) but had to wait for the allotment letters. The committee was then directed to issue a list of beneficiaries which they did as per the Physical Planner's PDP.

On cross examination by Mr. Wabwire, PW3 told the court that the Plaintiffs had not made any payments to NLC to process the allotment letters. He added that NLC could not issue allotment letters as per their list since it had received a parallel list of beneficiaries.

On cross examination by Mr. Magut, PW3 confirmed that he was not aware of any meeting with the then District Commissioner in 2009 due to the fact that he was displaced after the clashes.

PW4 Daniel Chege- PW4 reiterated the evidence of PW1 and testified that the National Land Commission had not refused to grant the allotment letters but was only waiting for the outcome of this case to identify the right beneficiaries. PW4 added that the Physical Planner conducted a head count to come up with the list of beneficiaries but the process was disrupted by the post-election violence.

## **DEFENCE CASE**

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their statements of defence dated 23<sup>rd</sup> November 2017 and 10<sup>th</sup> October 2017 respectively. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants filed a joint statement of defence dated 10<sup>th</sup> April 2019.

DW1 Paul Gathuo alias Stephen Gathuo adopted the contents of his Replying Affidavit dated 16<sup>th</sup> July 2014 and stated that the suit property was in his grandmother's name Wambui Richo but was later given to the Kondoo Community in exchange for another plot in the year 1972. DW1 further testified that he was part of the first committee that came up with a map in 1996 which had 63 plots. He stated that in 2004, the Plaintiffs formed a group which according to him, did not have the mandate of the majority of the members of the Kondoo Community.

DW1 further gave evidence that after the clashes, the then District Commissioner called for a meeting on 11<sup>th</sup> July 2009 whose objective was to merge the two groups and subdivide the plots. That an all-inclusive list was to be generated and vide a meeting dated 17<sup>th</sup> November 2009, it was agreed that 63 plots be divided into 4 portions: 44 plots in favour of the members of Kondoo Center; the remainder 19 plots to members of Kipkaren, Kabein and Kaplum villages.

It was DW1's testimony that the Plaintiffs were present during the meetings and that they received their portions but they wanted bigger plots.

On cross examination by Mr. Njue for the Plaintiffs, DW1 testified that he did not have any document to show that the land belonged to his grandmother. Further that the PDP was amended in 2007 without his knowledge. However, he indicated that he had no issues with the new map. DW1 told the Court that the Plaintiffs were not residents at Kondoo Centre.

DW2 Joseph Ng'etich, the then Area Chief, testified that after the 2007 clashes, the then District Commissioner held a meeting in a bid to harmonize the two groups of which the resolutions of the meeting were as per DW1's testimony. It was DW2's evidence that the Kondoo Centre Committee was the right body to identify the beneficiaries of the suit property.

DW3 Timothy Mwangi the Deputy Director Physical Planner's testimony was largely on the process of preparation of a development plan prior to issuance of allotment letters. DW3 stated that the development plan in file no. ELD 1805/2005/1 was approved by the Minister on 15<sup>th</sup> October 2007 having been advertised as required in February 2006. He produced the plan and a planning brief as DEXH 1 and 3 respectively.

DW3 stated that there was a difference between a local physical development plan and a PDP. DW3 explained that once a plan is approved, a Part Development Plan (PDP) would then be prepared for specifics. He confirmed that his office had never done any specifics since 2007.

On cross examination by Mr. Magut, DW3 told the court that in case of practical difficulties of implementation of the plan on the ground the Physical Planning Act allows for amendment on request by the public or the Director on his own motion but it has to be subjected to the same process of approval.

On cross examination by Mr. Njue, DW3 told the court that what was on record was a local physical development plan and not a PDP. He confirmed that the plan on record has never been amended and that the same supersedes any other plan.

DW3 stated that at the time they went to the ground there were people on the ground who would be the beneficiaries of the plots. Further that there were no objections to the approval of the plan within the 60-day period. It was DW3's testimony that they did not have a list of beneficiaries but the beneficiaries would be those who requested its development plan.

#### **PLAINTIFFS' SUBMISSIONS**

Counsel for the plaintiff filed submissions and identified 4 issues for determination as follows:

- a) Who is the bona fide owner or beneficial owner of the suit property"*
- b) Whether the plaintiffs have proved their case on a balance of probability"*
- c) Whether the plaintiffs are entitled to the orders sought"*
- d) Who bears the cost of the suit"*

On the issue as to who is the bona fide or beneficial owner of the suit property, counsel submitted that the Plaintiffs explained the process and steps taken to register the group and the steps they took collectively as a group to apply and request for the development of the PDP No. ELD/1805/2005/1 that would lead to issuance of title deed on UASIN GISHU SCHEME / 627. Counsel also submitted that the plaintiffs produced a list which the 2<sup>nd</sup> defendant National Land Commission Uasin Gishu County certified as a true copy of the original of beneficiaries of the scheme and represents the list of members on the record of the 2<sup>nd</sup> Defendant.

Counsel submitted that there was uncontroverted documentary and oral evidence that the Plaintiffs followed due process in obtaining the PDP, and that the same has never been amended under Sections 22 and 27 of the Physical Planning Act, the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants purported changes were therefore fraudulent, illegal and unprocedural.

Mr. Njue further submitted that the Plaintiffs having resided on the suit property since 1972, have acquired beneficial interests over the suit property and are therefore entitled to protection under Article 40 and 43 of the Constitution of Kenya.

On the second issue as to whether the Plaintiffs have proved their case on a balance of probability, counsel relied on the case of **GITWANY INVESTMENT LIMITED v TAJMAL LIMITED & 3 OTHERS [2006] eKLR**, and submitted that the Plaintiffs have a first claim over the suit property by virtue of being in occupation for over 35 years.

Counsel further cited the case of **Nguruman Limited v Jan Bonde Nelsen & 2 others [2014] eKLR**, where the Court of Appeal held that the burden of proof lies on a party who claims a right which he must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained.

Mr. Njue submitted that the Plaintiffs will be gravely affected if they are not resettled on the land that they call home as they still suffer from the effects of the post-election violence. Further that it would be a great miscarriage of justice if some of the Defendants who were not part of the initial Kondoo Center Self Help Group would acquire the allotment letters and title deeds for property they do not deserve to own.

On the third issue as to whether the Plaintiffs are entitled to the orders sought, counsel submitted that the Plaintiffs' have met the conditions for grant of an injunction as per **Giella v Cassman Brown case**.

Counsel cited the case of **Chase International Investment Corporation & another v Laxman Keshra & others [1978] KLR 143**, and submitted that the Plaintiffs' circumstances entitle them to the orders sought as equity tilts in their favour. Counsel further submitted that the Plaintiffs are entitled to costs by virtue of Section 27 of the Civil Procedure Act.

### **1<sup>ST</sup> DEFENDANT'S SUBMISSIONS**

Counsel for the 1<sup>st</sup> Defendant framed two issues for determination by the court namely: what is the status of land parcel number 627 at Kondoo Trading Centre and whether the plaintiffs are entitled to the reliefs sought.

On the first issue on what is the status of land parcel number 627 at Kondoo Trading Centre, counsel submitted that the Plaintiffs have failed to prove that they are entitled to the reliefs sought as the pleadings and evidence on record, it was admitted by all parties that the suit parcel of land, Plot number 627 in Kondoo Trading Centre, is alienated Government Land reserved as a trading center.

Counsel further submitted that neither the Plaintiffs nor 3<sup>rd</sup> to 5<sup>th</sup> Defendants can lay legitimate claim to plot number 627 unless and until it is properly or lawfully conferred upon them through an allocation process provided for under the Land Act, 2012. Further that alienation of land must be preceded by preparation and approval of a PDP.

Mr. Odongo submitted that DW 1, a Deputy Director of Physical Planning was emphatic that there exist no approved PDPs for any of the 63 plots within Kondoo Trading Centre or letters of allotment issued to either the Plaintiffs or 3<sup>rd</sup> to 5<sup>th</sup> Defendants, further that what exists was merely a Local Physical Development Plan for Kondoo Trading Centre and not a PDP. That a Local Physical Development Plan is a plan for a centre or an area aimed at providing a spatial framework for coordinated development which indicates preferred land uses, their sizes and spatial inter-relationships.

It was counsel's submission that a Local Physical Development Plan is prepared to facilitate alienation of public land or provide for specific sites for immediate implementation of policies. PDPs are prepared on the basis of a local physical development plan and is basically an instrument of alienation.

Mr. Odongo also cited Section 3 of the Physical Planning Act, which defines a PDP as '*a plan indicating precise sites for immediate implementation of specific projects or for alienation purposes.*' That under the Third Schedule of the Act (Short Term Plans), PDPs should be prepared by the Director and not any other person. Under section 24(3) of the Act, Local Physical Development Plans are prepared to guide and coordinate development of infrastructural facilities and services for a city, municipal, trading or market center for specific control of the use and development of land or provision of any land in such an area for public purpose. Counsel therefore submitted that in the absence of approved PDPs, neither plaintiffs nor 3<sup>rd</sup> to 5<sup>th</sup> defendants can assert proprietary interest in the suit property.

Counsel submitted that the genuine beneficiaries could only be determined through an extensive stakeholders' engagement and that the court cannot determine the question as to who are the actual beneficiaries of the suit land. Counsel also submitted that the parties are at liberty to petition the 2<sup>nd</sup> defendant to initiate an allocation process where a proper stakeholder engagement would be held to identify genuine and bona fide beneficiaries of Kondoo Trading Center.

Counsel relied on the cases of **Lucy Mirigo & 550 others v Minister for Lands & 4 others [2014] eKLR; Eldoret HCCA No. 40 of 1995. The Committee Nyakinyua Jogoo Usalama Farm v Joseph K Mwangi & 17 others; and Wreck Motors**

**Enterprises v Commissioner of Lands & 3 others [1997] eKLR** in support of his submissions.

On the second issue as to whether the Plaintiffs are entitled to the reliefs sought, counsel submitted that the suit property being public land, it is only the National Land Commission that could make a determination on what to do with the same, as envisaged under Article 62 of the Constitution and urged the court to dismiss the suit with costs.

The 2<sup>nd</sup> to 5<sup>th</sup> Defendants did not file any submissions as ordered by the court.

### **ANALYSIS AND DETERMINATION**

The issues for determination are as to whether the Plaintiffs have met the conditions for grant of a permanent injunction, whether the Plaintiffs are entitled to the orders sought for recognition as owners of the suit property and be issued with allotment letters and title deeds.

The background to this case is that the Plaintiffs stated that they peacefully occupied the parcel of land known as **UASIN GISHU/KONDOO SCHEME/627** since the year 1972 as a Settlement Scheme. That sometimes in April 2004, the Plaintiffs agreed to regularize their ownership and consequently formed Kondoo Trading Centre Self Help Group and held a meeting with the predecessor of the 2<sup>nd</sup> Defendant. That meeting saw the production of the Physical Planning Development Plan No. ELD 1805/2005/1 together with a list of the beneficiaries thereto. That list was thereafter approved on 13<sup>th</sup> July 2007 by the then Director of Physical Planning, as well as by the then Minister of Lands on 15<sup>th</sup> October 2007.

Before the allotment letters could be issued, post-election violence erupted in 2007 forcing some of the members of the self-help group out of the suit land. Upon calm being restored, and when the said members sought to return to the suit land, they were met with protests from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who claimed ownership after forming Kondoo Centre Committee.

It is upon that backdrop that the Plaintiffs filed this suit in 2013 seeking for a permanent injunction together with a declaration that they are the rightful beneficiaries to the suit land.

The first issue for determination is as to whether the Plaintiffs are entitled to the ownership of the suit land. It is not disputed that the suit property is government land that was reserved for Kondoo trading center and that the same was in the process of being allocated to members of the Kondoo community before the unfortunate post -violence of 2007.

It is also not in dispute that there are several correspondences in respect of the allocation and planning processes between the Plaintiffs, the Ministry of Lands and Physical Planning, National Land Commission and the County government. DW3 Timothy Mwangi the Deputy Director Physical Planner's testimony confirmed that the process of preparation of a development plan prior to issuance of allotment letters was adhered to and stated that the development plan in file No. ELD 1805/2005/1 was approved by the Minister on 15<sup>th</sup> October 2007 having been advertised as required in February 2006. DW3 also produced the plan and a planning brief which indicates that the Plaintiffs followed due process in the approval processes.

The plaintiffs further produced the advertisements in Taifa Leo and Kenya Times together with the Gazette Notice dated 31<sup>st</sup> January 2006 by the District Planning Officer Uasin Gishu J. K. Ngetich on the completion of Part Development Plan (PDP) PDP No. ELD 1805/2005/1 for Kondoo Trading Center.

DW3 also stated that when the advertisement was done nobody objected or made adverse comments on the PDP hence it was approved and that no other PDP has been prepared. DW3's only concern was that they did not have a beneficiary list which should be generated wide stakeholder engagement.

The process of allocation of government land was restated in the case of **Nelson Kazungu Chai & 9 Others vs. Pwani University College (2014) eKLR**. where the court held as follows:

***“130. It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister of Lands before any unalienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved Part Development Plan is then issued to the allottee.***

*131. It is only after the issuance of the letter of allotment, and the compliance of the terms therein, that a cadastral survey can be conducted for the purpose of issuance of a Certificate of Lease. This procedural survey was confirmed by the Surveyor, PW3. The process was also reinstated in the case of African Line Transport Company Limited vs. The Hon. Attorney General, Mombasa HCCC No. 276 of 2013.*

*“Secondly, all the defence witnesses were unanimous that in the normal course of events, planning comes first, then surveying follows. A letter of allotment is invariably accompanied by a PDP with a definite number. These are then taken to the department of survey, who undertake the surveying. Once the surveying is complete, it is then referred to the Director of Surveys for authentication and approval. Thereafter, a land reference number is issued in respect of the plot.”*

In this case, the Plaintiffs complied with the process of the preparation of the PDP but were not able to be issued with the allotment letters due to the post-election violence in 2007 and the emergence of another group who were claiming an interest in the suit land.

The Plaintiffs’ produced a beneficiary list which was confirmed by the National Land Commission County Coordinator Uasin Gishu dated 14<sup>th</sup> February 2017 and another dated 8<sup>th</sup> December 2016 by Chair Emeritus Muhammed Swazuri on the authentication of the beneficiary list.

The list by the Plaintiffs was authenticated and there has been no written or otherwise objection to the beneficiary list. It is on record that the 1<sup>st</sup> Defendant’s position is that the land was government land reserved for a trading center and that the issue for generation of a beneficiary list should be done through stakeholder engagement which in effect means that is the only issue which should be dealt with to settle this matter.

From the correspondences between the Plaintiffs and the government agencies namely the Ministry of Lands and Physical Planning, the National Land Commission and the Provincial Administration, I find that the Plaintiffs have proved that they are entitled to a declaration that they are the rightful beneficial owners of the suit land as it was reserved for Kondoo trading center.

On the second issue as to whether the Plaintiffs have met the threshold for grant of a permanent injunction, in the case of **Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR** the Court explained as follows regarding permanent injunctions:

*“A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.*

*9. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties.*

*10. Generally, an injunction is sought in addition to other remedies. It is often difficult to seek an injunctive relief as a stand-alone remedy. In most cases it accompanies declaratory orders.”*

The issue of an order of injunction in this case is s hinged on whether the Plaintiffs have proved that they have any right to the property which the court has answered in the affirmative. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit which essentially fully determines the rights of the parties.

In the case of **Nguruman Limited v Jan Bonde Nielsen & 2 others, CA No. 77 of 2012; [2014] eKLR**, the Court of Appeal reiterated the conditions to be met by a litigant who seeks injunctive relief as follows:

*“In an interlocutory injunction application, the applicant has to satisfy the triple requirements to;*

*a. establish his case only at a prima facie level,*



*b. demonstrate irreparable injury if a temporary injunction is not granted, and*

*c. ally any doubts as to (b) by showing that the balance of convenience is in his favour.*

*These are the three pillars on which rests the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially.”*

From the foregoing principles enumerated above, I find that the evidence on record by the Plaintiff shows that they have established a case for grant of an injunction against the Defendants as prayed in the Plaintiff.

The upshot is that I find that the Plaintiffs have established their claim against the Defendants on a balance of probabilities and enter judgment in the following terms: -

*a) A permanent injunction is hereby issued restraining the defendants 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' quiet and peaceful enjoyment and possession of all that property known as UASIN GISHU/KONDOO SCHEME/627, Kondoo Trading Centre, captured in Physical Development Plan No. PDP No. ELD/1805/2005/1.*

*b) A Declaration is hereby issued that the plaintiffs and its members and/or its nominees, legal representatives or assigns are entitled to possession ownership of the property, property of land premises known as UASIN GISHU/KONDOO SCHEME/627, Kondoo Trading Centre, captured in Physical Development Plan No. PDP No. ELD/1805/2005/1.*

*c) An order is hereby issued directing the 2<sup>nd</sup> defendant to process and issue letters of allotment and title deeds to the plaintiff and its members and or its nominees' legal representation or assigns for the parcel known as UASIN GISHU/KONDOO SCHEME/627 as per the list submitted to its predecessor when the Physical Development Plan No. PDP No. ELD/1805/2005/1 was approved. Further, to stop processing of letters of allotment and title deed of the suit premises to the 3<sup>rd</sup> 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants and their members and to forbid or stop any dealing with the said land unless it is in favour of the plaintiffs.*

*d) An order is hereby issued directing the 1<sup>st</sup> defendant to facilitate through the Kenya Police Service the settlement of the plaintiffs' members.*

*e) Costs to the Plaintiffs.*

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 20<sup>TH</sup> DAY OF APRIL, 2022.**

**M.A. ODENY**

**JUDGE**

***NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.***



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