



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT

AT ISIOLO

ELC CASE NO. 004 OF 2021

ETHICS AND ANTI-CORRUPTION COMMISSION.....PLAINTIFF

VERSUS

FRESH 'N' NICE LIMITED.....1ST DEFENDANT

JOTHAM KILIMO.....2ND DEFENDANT

STEPHEN AMBANI.....3RD DEFENDANT

NATIONAL LAND COMMISSION.....4TH DEFENDANT

RULING

1. This application is dated 6th February, 2022 and seeks orders;

1. This application be Certified Urgent, heard *ex parte* and service in respect thereof dispensed with in the first instance.

2. Pending inter partes hearing of this application, the court be pleased to issue a temporary injunction restraining the 1st Defendant, its agents or servants from selling, transferring, charging, leasing, entering, taking possession or in any manner howsoever from dealing with the property referred to as **LR NO. 7918/735 (IR NO. 6481)**.

3. Pending hearing and determination of this suit, the Court be pleased to issue an interlocutory injunction restraining the 1st defendant, its agents or servants from selling, transferring, charging, leasing with the property referred to as **LR NO. 7918/735 (IR NO. 6481)**.

4. In the alternative, the Court be pleased to issue, an order of inhibition inhibiting any registration of any dealing over land parcel number **LR NO. 7918/735 (IR NO. 6481)** pending further orders of the court or until the hearing and determination of this suit.

5. Costs be in the cause.

2. The application is supported by the affidavit of Everline Odipo, a Forensic Investigator Working with the plaintiff. It has the following grounds:

a) In exercise of its mandate under the Ethics and Anti-Corruption Commission Act 2011 and the Anti-Corruption Commission (hereinafter 'the commission') conducted investigations into the suit propriety known LR NO. 7918/735 (IR NO. 6481), measuring 4.046 ha.

b) The investigations have established that the subject property is public land reserved for use by Isiolo G.K Prison as a prison farm and office block vide a part development number 117/75/1 of 18th October 1976.

c) Isiolo G.K Prison has since its establishment in 1947, used the said parcel of land largely for its farming activities.

d) On 25th November 1999 the 1st Defendant was issued with an allotment letter in respect to the suit property notwithstanding that it had previously been reserved for use by Isiolo G.K Prison.

e) Investigations further established that on 15th October 2007, through the 1st defendant's scheme, the Ministry of Lands and Physical Planning, unlawfully and irregularly approved a Part Development Plan Number ISL/117/2006/01, whereupon the suit property was reclassified from being a 'Prison Farm' – Zone 91 to an Industrial Zone 1', thereby paving way for grabbing of the public land.

f) The suit land was subsequently surveyed on or about 27th January 2014, by the 3rd defendant and lease later registered in favour of the 1st Defendant on 12th August 2016.

g) It is the Plaintiff's case that the suit land was government land reserved for public use by Isiolo G. K. Prison and was not available for allocation to the 1st Defendant.

h) There is reasonable apprehension of risk that the 1st defendant may encumber, sell, alienate, transfer, charge or in any other way deal with the suit property in a manner that may cause irreparable injury, frustrate or jeopardize the just and expedient determination of the suit.

i) In the circumstances, it is in public interest and in the interest of justice that the orders sought are granted.

3. When the application was mentioned, Mr. Ingutia, the 1st Defendant's advocate told the Court that there was a similar application at Meru in 2018 when the present deponent of the supporting affidavit intimated to court that the 1st defendant was in possession. This intimation was not controverted by the plaintiff. Same of the 1st defendant's Oral Submissions touched on matters to be canvassed at the hearing of the application and the Main Suit.

4. I do note that in prayers 2 and 3, the plaintiff seeks an injunction, inter alia, that the defendants do not enter the suit land. Respectfully, the prayer not to enter the suit land is not tenable against a litigant who is already on the suit land. Pending hearing and determination of this application, prayers 2 and 3 are not issued.

5. To preserve the suit land, prayer 4 for inhibition is granted pending hearing and determination of this application.

6. The defendants are granted 14 days to respond to the application and the parties are granted open liberal leave to further respond, as and if necessary, before the next date for directions.

7. The plaintiff is granted 14 days to serve upon the 2nd defendant the suit documents and to also serve orders I have issued today upon him.

8. Parties will come to court for directions on 7/3/2022.

WRITTEN AND DELIVERED IN OPEN COURT AT ISIOLO THIS 14TH DAY OF FEBRUARY, 2022 IN THE PRESENCE OF:

COURT ASSISTANT: BALOZI

MOKUA FOR THE PLAINTIFF

INGUTIA FOR THE 1ST DEFENDANT

HON. JUSTICE P. M. NJOROGE

JUDGE