REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENT AND LAND DIVISION

ELC CIVIL NO. 1180 OF 2014

MUCHANGA INVESTMENTS LTD…….....……...…….……PLAINTIFF

VERSUS

HABENGA HOLDINGS LTD…….....….. 1ST DEFENDANT

JINA ENTERPRISES LTD…….....…..2ND DEFENDANT

TELESOURCE COM LTD…….....….....….3RD DEFENDANT

DIRECTOR OF SURVEYS…….....…..4TH DEFENDANT

DIRECTOR OF PHYSICAL PLANNING

MINISTRY OF LANDS AND HOUSING…….....….5TH DEFENDANT

REGISTRAR OF TITLES…….....…..6TH DEFENDANT

CHIEF LAND REGISTRAR…….....……..7TH DEFENDANT

JOHN MUGO KAMAU…….....…….8TH DEFENDANT

CATHERINE NGANGA FOR THE

ESTATE OF CARMELINA MBURU…….....…….9TH DEFENDANT

BARCLAYS BANK OF KENYA LTD….....…..1ST INTERESTED PARTY

CHARITY KALUKI NGILU…….....….....…..2ND INTERESTED PARTY

DIRECTOR OF PUBLIC PROSECUTIONS….....3RD INTERESTED PARTY

ETHICS AND ANTI-CORRUPTION COMMISSION.....4TH INTERESTED PARTY

RULING

The 3rd Defendant herein ***Telesource Co. Ltd***, brought this Notice of Motion dated ***23rd July 2015,*** and sought for these Orders;-

> ***i. An order staying the criminal proceedings pending before the Chief Magistrate Court at Milimani Anti-Corruption Case No.13 of 2015, be issued pending the hearing and determination of this suit .***
>
> ***ii. Any other further orders that the Court may deem fit ,proper and just to grant***
>
> ***iii. Costs of the application be in the cause.***

This application is primarily based on the grounds stated on the face of the application and on the supporting affidavit of ***Josphert Mulimu Konzolo,*** a Director of the 3rd Defendant (applicant) and also an accused person in the said ***Anti-Corruption Court Case No.13 of 2015***.Among the grounds in support of this application are;-the Director of the 3rd Defendant, (***Telesource Co.Ltd) Mr. Josphert Mulimu Konzolo*** and the 3rd, 4th, 5th, 6th and 7th Defendants were charged by the 3rd Interested Party (DPP) in Anti-Corruption Case No. 13 of 2015, with several offences in relation to the acquisition of a land parcel known as ***LR No. 3586/3***, (Karen land) situate on Karen area within Nairobi County. In particular, the 3rd Defendant was charged with the offence of Conspiracy to Commit an Offence of Corruption Contrary to Section 47A (3) as read with Section 48(1) of the ***Anti-Corruption and Economic Crimes Act,*** which offence is related to the ownership of the suit property which has not yet been resolved. Further that the ownership of the Karen land is the central issue in dispute in the instant suit. It is therefore his position that charging him in the Anti-Corruption Case No. 13 of 2015 and prior to the conclusion of the instant suit is an abuse of the legal process as it would pre-empt the outcome of the current proceedings. He claims that the concurrence proceedings would give advantage to the Plaintiff in this Civil dispute in disregard to the provisions of Section 193A of the Criminal Procedure Code. He thus contends that the ownership of the Karen land in issue is technical and complex and requires a determination by a specialized Court.

He further contends that the intervention of the Director of Public Prosecution and his prosecution in the aforesaid criminal case is premature and will serve no useful purpose except to tangle the issues in question more than is necessary. That the Director of Public Prosecution is in abuse of the legal process and has contravened his Constitutional duty. According to the applicant, it is ***just*** and ***efficacious*** for this Court to stay the criminal proceedings in order to maintain the integrity and dignity of Court proceedings.

Response to the application.

In response to the Application, the Plaintiff raised a preliminary objection on point of law through its Notice dated ***30th July, 2015.*** The Plaintiff objected to the hearing of the application on ground that this Court does not have the jurisdiction to hear and determine the instant application. It is its submissions that Section 13(3) of the Environment and Land Court Act, (ELC Act) limits this Court's supervisory jurisdiction on constitutional matters to issues relating to a clean and healthy environment only. That the Environment and Land Court Act does not confer on the Environment and Land Court jurisdiction to ***supervise, stay*** or ***terminate*** criminal proceedings because it does not have jurisdiction to supervise criminal proceedings

or grant the orders sought. On that point, reliance was placed on the decisions in; ***Owners of Motor Vessel 'Lilian S' vs Caltex Oil (K) Ltd, Civil Appeal No. 50 of 1989, Samuel Kamau Macharia vs Kenya Commercial Bank & 2 Others, Supreme Court Application No. 2 of 2011*** and ***Patrick Musimba vs National Land Commission & Others Petition No. 613 of 2014.*** It further claims that the Application is an abuse of the Court process as there is a similar Order being sought in ***Petition No. 305 of 2015, Charity Kaliku Ngilu vs Director of Public Prosecutions;*** which has been filed by the 2nd Interested Party at the Constitutional and Human Rights Division of the High Court in Nairobi. It is its submissions

that there is danger that the Courts may make conflicting decisions on a similar issue therefore causing embarrassment to the judicial process.

The 9th Defendant, ***Catherine Njeri Ng'ang'a*** opposes the Application through her affidavit sworn on ***11th August, 2015.*** It is her contention that ***Section 193A of the Criminal Procedure Code*** allows both criminal and civil proceedings to run concurrently and it indeed gives the criminal proceedings precedence over civil proceedings. She claimed that the outcome of the criminal proceedings would either exonerate the accused persons from any wrong doing as far as the Karen land is concerned or confirm their involvement in the fraud and illegal dealings pertaining to the ownership of the said land. She also claimed that the decision of the Director

of Public Prosecution to charge the Defendants amongst other accused persons was as a result of investigations having been conducted and sufficient evidence gathered to sustain the charges and the accused persons having pleaded their innocence should stand trial to clear their names without any way interfering with the instant suit. Indeed, it is her further contention that the determination of the ***Anti-Corruption Criminal Case No. 13 of 2015,*** would go along way in assisting this Court in determining the issue of ownership of the Karen land.

The 3rd Interested Party, the Director of Public Prosecution opposes the application through the affidavit of ***Ruby Okoth,*** a Prosecution Counsel in conduct of the ***Anti-Corruption Case No. 13 of 2015,*** sworn on ***7th August 2015*** and also on grounds of opposition on points of law dated ***30th July 2015.*** It is the Director of Public Prosecution's case that Environment & Land Court being a specialized Court established under ***Article 162(2)*** of the Constitution and sitting as such, does not have jurisdiction to determine the validity, commencement, and continuation of a criminal case commenced in Anti-Corruption Court. On that submission it relied on the decision of ***Karisa Chengo & 2 Others vs Republic (2015) eKLR,*** where the Court of Appeal held that Environment & Land Court did not have jurisdiction to hear and determine a criminal appeal from subordinate Court. It therefore submitted that this Court did not have jurisdiction to prohibit the commencement or continuation of criminal proceedings in Anti-Corruption Case No. 13 of 2015.

He further submitted that the Director of Public Prosecution was not a party in the present suit and therefore no orders can be made for or against it. That the suit having proceeded up to to the hearing, the 3rd Defendant requires leave of the Court to be enjoined to the proceedings. On that point, he also claimed that the charges and proceedings intended to be prohibited have already been filed in the Anti-Corruption Court and this Court cannot issue orders against a Court that is not a party in the instant civil case. On that point, reliance was placed on the case of ***Republic vs Director of Public Prosecutions, ex-parte George Peter Opondo Kaluma (2014) eKLR.*** It is the Director of Public prosecution's submission that under Article 157 of the Constitution, he represents the government in criminal proceedings and prosecutes criminal cases and applications. That he has no interest in the Environment & Land Court case being a civil matter which is within the mandate of the Attorney General as provided for under ***Article 156*** of the Constitution. Further, the Director of Public Prosecution submitted that the issues raised in this application are directly and substantially the same as those raised in ***Petition No. 305 of 2015*** and therefore the current application is an abuse of the Court process.

It is the Director of Public Prosecution's submissions that the Applicant has not demonstrated a ***prima facie*** case and exceptional and unusual circumstances that he would suffer prejudice unless a stay order is granted. Relying on the decision of ***Manilal Jamnadas Ramji Gohil vs DPP CACA 57 of 2013*** and ***Kenya Commercial Bank Ltd & 2 Others vs Commissioner of Police & Another, Petition no. 218 of 2012,*** submitted that an order of stay of criminal proceedings is made sparingly and only in exceptional cases. He also submitted that the concurrence of civil proceedings is not a bar for criminal proceedings. He relied on the decision of ***George Joshua Okungu & another vs Chief Magistrate's Court, Anti-Corruption Court (2014) eKLR,*** where it was held that the fact constituting a criminal case may be basis for a civil case is not a bar to criminal case. The Director of Public Prosecution thus concluded that his decision to charge the Applicant was based on sufficiency of evidence and not actuated by malice or any other extraneous considerations. That his decision to charge the Applicant does not violate his

fundamental freedoms or rights and the application for stay should therefore be dismissed with costs.

The 4th Interested Party, Ethics, and Anti-Corruption Commission (EACC) also opposed the Application through the affidavits of ***Charles Kiptanui,*** an investigator with the Commission sworn on ***30th July, 2015*** and ***Emmanuel Arunga,*** also an Investigator with the Commission sworn on ***5th August, 2015.*** Both ***Mr. Kiptanui and Arunga*** deponed that the Commission's investigations into the process leading to the acquisition of the Karen land revealed that the title held by 3rd Defendant was acquired fraudulently and the persons responsible for the fraud have been charged in the Chief Magistrate's Anti-Corruption Court in Case No. 13 of 2015.

It is ***Mr. Arunga's*** averment that the Applicant has not demonstrated any specific rights that have been violated/breached therefore warranting this Court's intervention. Further that the Applicants are using the Environment & Land Court to determine issues that are in contest in the aforesaid criminal case. That the contested facts in issue cannot constitute grounds for preventing the prosecution of the Defendants. Lastly, that the Applicant has failed to show bad faith, dishonest, malice or some other exceptional circumstances that warrant the staying of the criminal case. In its submissions, the 4th Interested Party submitted that this Court does not have the jurisdiction to determine the Application as the matters in question are extensively reserved for the High Court and not Environment & Land Court, while exercising its jurisdiction as provided for under Article 162(2) of the Constitution. On that submission it relied on the decision of ***Karisa Chengo & 3 Others vs Republic (supra).*** It was its further submission that EACC had been enjoined wrongly in the proceedings because the Applicant had failed to seek leave of the court to enjoin it and other Interested Parties. On that point it referred the Court to the decisions of: ***Hussein Ali & 4 others Vs Commissioner of Lands & 7 Others (2013) eKLR, Julia Odhiambo Ogina vs Andrew Horace Omondi (2014) eKLR, Dhanji Jadra Ramji vs Commissioner of Prisons & Another (2014) eKLR*** and ***Kipsigis Farm Enterprises vs Stephen Ngerechi & 2 Others (2014) eKLR.***

It is the EACC's case that the 3rd and the 4th Interested Parties were not parties in this suit and were not part of the Cause of action. That they are not proper parties in the suit and their joinder therefore offends the provisions of Order 1 Rules 1 and 2 of the Civil Procedure Rules. It is therefore the 4th Interested Party submissions that the instant application amounts to an abuse of the Court process and prayed that the Court dismiss it with costs.

In response, the Applicant submitted that this Court has inherent powers under ***Section 3A of the Civil Procedure Act*** and hence jurisdiction to determine the instant Application. On that point, reliance was placed on the decision of ***Madara Evans Okanga Dondo vs Housing Finance Company Kenya Ltd (2005) eKLR,*** where it was held that the inherent powers of a court enable it to draw its powers whenever it is just and equitable to do so in ensuring the observance of the due process of law or prevent improper oppression and ensure justice between parties. It is the Applicant's submissions that the provisions of ***Section 193A of the Criminal Procedure Code*** does not override the express provisions of the Constitution. That the DPP cannot abuse his powers nor can that provision be invoked in circumstance circumstances where the Courts are likely to be abused. It relied on the decision of ***R vs DPP ex Parte Qian Guo Jun & Anor Misc App No. 453 of 2012, Rosemary Wanja Wagiru & 2 Others vs A. G & 3 others (2013) eKLR*** and ***Mohamed Gulam Husseign Fazal Karmali & Another vs Chief Magistrate's Court Nairobi Misc Applic No. 114 of 1997,*** where it was held that a Court is bound to ensure that the provisions of ***Section 193A of the Criminal Procedure Code*** are not abused.

He further contended that he had enjoined the DPP, the EACC and the 2nd Interested Party as Interested Parties to the suit as he recognized that they have a right to be heard before any adverse decision is made against them. He relied on the decision of ***Said Juma Chitembwe vs Edward Muriu Kamau & 4 Others (2011) eKLR,*** where it was held that a person has a right to be heard. As to its failure to enjoin the Chief Magistrate's Court, the Applicant submitted that it was not fatal. That the Chief Magistrate's Court was not a party to the proceedings in Anti-Corruption Criminal Case No. 13 of 2015 and also that none of the orders sought in the instant Application are prejudicial to the Chief Magistrate's Court.

According to the Plaintiff, the charging the Applicant and his co-accused persons in the criminal case is

intended to influence and interfere with the outcome of the civil proceedings. That by listing some of the parties in the civil dispute as witnesses in the criminal case, the DPP is attempting to aide and assist the Plaintiff and influence the Court to reach a favorable decision for the Plaintiff. He therefore claims that it would have been prudent to wait the determination of the ownership dispute by this Court before preferring any criminal charges against any individual in connection to the alleged fraud over the ownership of the Karen land. He referred the Court to the decision in ***Triton Gas Station Ltd & Another VS Kenya Commercial Bank ltd (2015) eKLR,*** where the Court stated that it would been proper and appropriate to determine the veracity of the Deed of Settlement in question, before instituting other proceedings. He also cited the case of ***David Mathenge Ndirangu vs Director of Public Prosecutions & 3 Others (2014) eKLR,*** where the Court held that it was not the place of the criminal proceedings to be used to help individuals advance their civil cases. That the Court must put a halt to criminal case where it is evident that it will aid or advance a civil case.

In regard to the existence of Petition No. 305 of 2015, the Applicant submitted that in that Petition, the Petitioners had sought to have their criminal case **terminated** on several grounds inter alia on the issue of constitutionality of the decision to charge the Petitioners which issue can only be determined by the High Court pursuant to the provisions of Article 165 of the Constitution. That the issues articulated in the said Petition are completely different from those in the instant Motion. In conclusion, the Applicant urged the Court to find that it would be in public interest for it to allow the application and stay the proceedings so as to preserve the integrity of its processes.

Court's determination

This Court has carefully considered the instant application, the annextures thereto , the written submissions and the cited authorities together with the relevant laws and the court makes the following findings;-There are basically two issues herein for determination.

i. Whether this Court has jurisdiction to entertain the application as filed by the applicant.

ii. Whether the applicant is deserving of the orders sought.

After the filing of this application, the 3rd and 4th interested parties;- Director of Public Prosecution(DPP) and Ethic and Anti-Corruption Commission (EACC) and the Plaintiff filed preliminary objections and averred that this Court being an Environment and Land Court, thus specialized court established under Article 162(2) (b) of the Constitution does not have jurisdiction to **hear, entertain** and/or **determine** the validity ,commencement, continuation and conclusion or otherwise of criminal proceedings in the Anti-Corruption Criminal Case No. 13 of 2015 **a**nd relied in Malindi ***Court of Appeal case No .44 of 2014- Karisa Chengo & 2 others Vs Republic (2015) eKLR.***

The 3rd interested party therefore urged the Court to deal with the issue of Jurisdiction first before dealing with the Notice of Motion dated ***23rd July 2015,*** however on ***12th August, 2015*** the Court directed that both the preliminary objection and the main Notice of Motion be canvassed together by way of written submissions.

I will therefore deal with the issue of jurisdiction first. As was rightfully submitted by Mr Ashmosi for the Director of Public Prosecution, where the issue of jurisdiction is raised, the Court has to determine that issue first and if the Court finds that it lacks jurisdiction, it has no option but to down its tool. Indeed the Court finds that the issue of jurisdiction is a pure point of law which is capable of disposing of the suit. The 3rd interested party relied on the case of **Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd (1969) EA 696,**where the Court held that;-

> ***"A preliminary objection raises pure points of law which if argued on the assumption that all the facts pleaded are correct, and it cannot be raised if any facts have to be ascertained or what is sought is the exercise of judicial discretion".***

Further in the case of ***Ndimu Vs Ndimu & Another (2007) (2008) 1 EA 269***, it was held that :-

> ***"A question of jurisdiction ought to be raised at the earliest opportunity and the Court seized of the matter is thus obliged to decide the issue straightaway".***

The parties herein did raise the issue of jurisdiction at the outset of this application and this Court will have to deal with it first.

This Court is in agreement with the submissions by the 3rd interested party and all the other Respondents that jurisdiction is everything and without jurisdiction, the Court should down its tools. There is also no doubt that a court's jurisdiction flows from either the Constitution or the legislation or from both. It is evident that a court of law can only exercise jurisdiction which is conferred to it by the Constitution or other written law. This was the finding in the case of ***Samuel Kamau Macharia & Another Vs Kenya Commercial Bank Ltd & 2 others at the Supreme Court App. No. 2 of 2011***, where it was held that:-

> ***"A court's jurisdiction flows from either the constitution or legislation or both. Thus a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. The issue as to whether a court of Law has jurisdiction to entertain a matter before it is not one of mere procedural technicality. It goes to the very heart of the matter without jurisdiction the court cannot entertain any proceedings".***

It was submitted that the jurisdiction of this court is provided by Section 13 of the Environment and Land Court Act, which jurisdiction only mandates the Court to deal and determines disputes in accordance with Article 162(2) (b) of the Constitution and therefore the Court has power only to hear and determine disputes relating to Environment and Land. It was further submitted that this court being a specialized court dealing with only matter related to Environment and Land, has no jurisdiction to deal with criminal matters and especially in the instant case ***Anti-Corruption case No.13 of 2015*** . The Respondents did submit that the supervisory power over the subordinate Courts lies with the High Court which Court is described by Articles 165(3) and 165(6) of the Constitution. It was therefore submitted by the Respondents that this Court has no jurisdiction to stay criminal proceedings and reliance was made to the findings in ***Karisa Chieng'os*** case.

However, the applicant did submitted that this Court is a superior court of record with the equal status as the High Court and indeed its jurisdiction is set out under Section 13 of the Environment & Land Court Act and this Court is only mandated to deal with disputes related to Land and Environment. The applicant further submitted that this Court is dealing with ownership dispute over Karen land which is a matter falling squarely under the Environment & Land Court. However the applicant who is a disputant in this matter has been charged in Anti-Corruption Case No.13 of 2015 and this Court is called upon to stay those proceedings so as to preserve the integrity of its proceedings. The applicant submitted that the powers to stay criminal proceedings are not provided in the Environment & Land Court Act . Applicant further submitted that the Court is called upon to exercise its inherent power and therefore the Court has inherent jurisdiction to issue the orders sought. The applicant did rely on the quotation by ***South Africa Jurist Jehold Tants*** who describes inherent jurisdiction as ;-

> ***" The inherent jurisdiction ……may be described as the unwritten power without which the Court is unable to function with justice and good reason***".

Further the applicant did rely on Section 19(2) of the Environment & Land Court Act 2011, which provides that the court shall be bound by the procedures laid down by the Civil Procedure Act & Rules. The applicant submitted that such provisions of the Civil Procedure Act that the Court is bound by are the provisions in Section 3A which gives the Court the inherent power to issue orders that are just and necessary for the end of justice.

I have now considered the rival submissions on the issue of jurisdiction. The question that I have to pose now is this;- does this Court have jurisdiction to entertain the application herein?.

The Court finds that it is indeed dealing with ownership dispute over ***LR No.3586/3,*** in which the applicant and others have been charged, in Anti-Corruption Case No.13 of 2015 in Chief Magistrates Court, Milimani.

This Court has been called upon to stay the said proceedings on various grounds. The application is not brought under any provision of law. The Court is therefore called upon to exercise its inherent jurisdiction which stems from the Court itself. The Court also has inherent power under Section 3A of the Civil Procedure Act to make such orders that are just and necessary for ends of justice to be met or to

prevent abuse of the Court process. The Court therefore finds that in determining whether to stay or not to stay these proceedings, the Court would be exercising the inherent jurisdiction. The Court therefore finds that it has jurisdiction to hear this application which is an application seeking for stay of proceedings. In entertaining this application, the Court will be invoking its inherent jurisdiction as provided by Section 3A of the Civil Procedure Act.

The upshot of the foregoing is that this Court finds and holds that it has jurisdiction to entertain this application. The preliminary objection as raised by the 3rd, 4th interested parties and the Plaintiff is not merited, and the same is overruled and accordingly dismissed.

Having now found that this Court has jurisdiction to entertain and deal with this application, is the applicant deserving of the orders sought?.

The applicant has submitted that it is deserving of the orders herein so that the Court can protect the integrity of its proceedings. It was further submitted that the applicant is one of the disputant in the dispute herein which is dealing with ownership of the suit property. However, the DPP has charged the 3rd Defendant together with its Director and the applicant therefore feels prejudiced by the action of the Director of Public prosecution which goes against the spirit of Article 50 of the Constitution which provides that:

> ***"Every person has the right to have <u>any dispute</u> that can be <u>resolved</u> by the application of law decided in a fair and public hearing before a court or another independent and impartial tribunal on body***"

The applicant submitted that this court is being called upon to determine who is the legitimate owner of the suit property where there are three parties claiming ownership of the property and these parties are, the plaintiff, the 3rd Defendant and 9th Defendant. The plaintiff and 3rd Defendant have title documents to this parcel of land. The court is being called upon to determine who the genuine title holder is. However the DPP has charged the 3rd Defendant and some of its witnesses. It was submitted that though Director of Public Prosecution has power to charge any person suspected to have committed of any criminal offence, in the instant matter, the 3rd Defendant feels prejudiced and deprived of fair hearing. That since this matter which is before a superior court to Anti-Corruption Court was initiated earlier, the Director of Public Prosecution should have awaited for the determination of this suit before charging the applicant herein. The Respondents opposed the Staying of the matter in the Anti-Corruption Court case No.13 of 2015 and submitted that Section 193 (A) of the Criminal Procedure Code provides that:

> ***"Not withstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition, or delay of the criminal proceedings.***

However the applicant submitted that Section 193(A) of the Criminal Procedure Code should be applied in a manner that conforms with the provisions of the Constitution and the Constitution provides the right to fair hearing for all persons in a dispute and that Article 50 is not only limited to Criminal matters only.

The Respondents submitted that the applicant is abusing the process of Court as it filed Constitution Petition No. 305 of 2015, which is pending before a ***three Judge bench*** and which petition had sought for

similar Orders as it has sought in this court. However, the applicant submitted that indeed it has filed a Constitution Petition NO. 305 of 2015, where it has sought for ***termination*** and ***quashing*** of ***Anti-Corruption Court Case no. 13 of 2015*** and other declarations, but not stay of those proceedings. It was the applicant's submissions that this court which is dealing with the ownership dispute is the right Court or forum to stay the proceedings so that it can protect the integrity of its proceedings.

The court has now considered the rival submissions. As the court held earlier it is indeed dealing with the ownership dispute of this land parcel ***No.3586/3***, famously known as Karen land. There is no doubt that some of the defendants herein (specifically 3rd Defendant and its Director) have been charged with corruption offences in Anti-Corruption Case 13 of 2015. The offences therein stem from the

ownership dispute over the suit property which this court is called upon to determine. The 3rd Defendant feels prejudiced and he is justified to feel so, given that he is also claiming ownership of the suit property. The Affidavit of ***Ruby Okoth*** ,a senior prosecution counsel in the office of the Director of Public Prosecution in opposition to this application has delved into the very issues that are before this court. Since this court is being called upon to decide on the ownership dispute, the court finds and holds that it has inherent power to protect the integrity of its proceedings. The court has power under Section 3A to make orders that are ***just*** and ***necessary*** for the ***ends of Justice*** and prevent ***abuse of the court process.*** Further, this court ***is not*** called upon to determine the merits of the criminal case before ***Anti-Corruption Court*** but to safeguard the integrity of its proceedings.

Respondents did submit that there is a Petition NO. 305 of 2015, before a ***three Judge bench***, awaiting determination, and thus the application is an abuse of the court process. However this court is not called upon to ***terminate*** or ***quash*** the criminal case before ***Anti-Corruption Court***. It is only called upon to stay the proceedings as the parties await the determination of the ownership dispute. The issue of whether to terminate or quash the proceedings in ACC 13 of 2015, is an issue to be determined in the Constitution Petition No.305 of 2015. However, this court has a mandate to determine the ownership dispute herein. In order to protect the integrity of its proceedings, the court finds that it is ***fair*** and ***just*** to issue an order of stay of proceedings in Anti-Corruption case no.13 of 2015, pending the determination of the ownership dispute herein.

On whether the DPP is in abuse of the court process, the Court finds that is an issue to be determined in Petition No. 305 of 2015. It is evident that this matter was brought to court earlier than the criminal case in Anti-Corruption case no. 13 of 2015 and the applicant is only asking for space to allow the determination of the ownership dispute through stay of proceedings. So what is stay of proceedings? This is an act of ***temporary stopping*** a judicial proceeding through an order of the court which would also mean ***suspension*** of a case but it is not a termination of any judicial proceedings.

Having found that this court has inherent jurisdiction to issue a stay of proceedings, the Court proceeds to borrow from the findings in the case of ***Madara Evans Okange Bondo vs. Housing Finance Co.*** **Ltd of Kenya** which cited with approval Halsbury's Law of England 4th Edition Volume 37 paragraph 14 at page 23.

> ***" The jurisdiction of the court which is comprised within the term 'inherent' is that which enables it to fulfil itself, properly and effectively as Court of law. The overriding feature of the inherent jurisdiction of the Court is that it is part of procedural law, both Civil and Criminal and not part of substantive law…… it may be invoked not only in relation to parties in pending proceedings but in relation to anyone whether a party or not and in relation to matters not raised in litigation between the parties; it may be exercised even in circumstances governed by rules of Court. The inherent jurisdiction of the Court enables it to exercise (1) control over process and by compelling the observance of the process…."***

Further in the case of ***Kenya Bus owners Association (through Paul G Muthumbi-Chairman Samuel Njuguna, Secretary Joseph Kimiri ,the Treasurer , & 8 others Vs Cabinet Secretary for Transport & Infrastructure & 5 Others (2014) eKLR*** , the Court held that :-

" the Court has an inherent jurisdiction to preserve the integrity of the judicial process".

Though the 3rd and 4th interested parties submitted that they are not parties to this suit and are not claiming ownership of the disputed land, the court finds that from the quotation from the Halsbury Laws of England the ***Court has inherent jurisdiction to issue orders not only in relation to parties pending in proceedings but in relation to anyone whether party to the suit or not and in relation to matters not raised in litigation between the parties.***

The Court will also concur with the submissions by the applicant that though the Chief Magistrate was not joined as a party to the suit, this court is bound by the provisions of the Civil Procedure Rules as provided by Section 19(2) of the Environment & Land Court Act, and that being so, Order 1 Rule 9 of the Civil Procedure Rules 2010 provides that:-

> ***"No suit shall be defeated by reason of the misjoinder or non-joinder of parties, and the court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it".***

The Court finds and holds that the non-joinder of the Chief's Magistrates Court in this stay of proceedings application is not fatal as the order sought herein would not prejudice the said court for non-joinder.

This court is also bound by provision of Article ***159(2) (d)*** which provides;-

> ***" in exercising judicial authority , the court and tribunals shall be guided by the following principles. Justice shall be administered without undue regard to procedural technicalities ".***

Having considered the instant application and the relevant laws and the written submissions, the Court finds that the applicant's Notice of Motion application dated ***23rd July, 2015*** is merited and it is also for the courts own interest to preserve the dignity and integrity of its proceedings.

Consequently, the Court allows the applicants application in term of prayer No.3 and ***stays*** the Criminal proceedings in ***Anti-Corruption Case no.13 of 2015***, until the issue of ownership of the suit property is determined by this Court. However, this Order is not a termination of the Anti-Corruption case No.13 of 2015, as that is an issue to be determined in Petition No. 305 of 2015 which is before another Court.

Costs shall be in the case.

It is so ordered.

Dated, Signed and Delivered this ***30th*** day of ***October***, ***2015***

L.GACHERU

JUDGE

30/10/2015

Before Gacheru J

In the presence of Mr Miller &Mr Wena for the Plaintiff

None attendance for the 1st Defendant

None attendance for the 2nd Defendant

Mr Gikera for 3rd Defendant/Applicant

Mr Kamau for 4th -7th Defendants/Respondents

None attendance for the 9th Defendant/Respondent

Mr Waziri holding brief Mr Kamau Karori for 1st interested party

M/s Munyaka holding brief for Mr Kilukumi & Mr Muite, Senior Counsel for 2nd Interested party.

Mr Ayoo for 4th interested party

Mr Ashimosi for 3rd interested party

Court :Ruling read in open Court in the presence of the above stated counsels.

L GACHERU

JUDGE

Mr Ashimosi. On behalf of the 3rd interested party, considering the fact that the Ruling was made under the inherent jurisdiction of the Court, I apply for leave to appeal.

L GACHERU

JUDGE

Mr Ayoo. The 4th interested part vy also wish to appeal and so seeks for leave to appeal.

Mr Miller: I seek for leave to appeal against the Ruling and also for proceedings in relation to this application.

Mr Kamau . We are contended with the Ruling.

Mr Gikera: We are contended with the Ruling

Mr Waziri . No further instructions

L .GACHERU

JUDGE

30/10/2015

Court : Leave to appeal is granted and certified copies of the proceedings in relation to the application dated ***23rd July, 2015*** and ruling to be supplied to the Plaintiff and the 3rd & 4th interested parties.

L.GACHERU

JUDGE

Mr Miller: We have concluded our submissions on the issue of injunction. We can get a Ruling date and directions on the issue of media coverage that I had raised earlier.

L.GACHERU

JUDGE

Court:

I will give a mention date for directions on the issue of the media coverage and also to confirm that proceedings for the application dated ***23rd September, 2015*** have been typed. Further mention on ***17th November 2015,*** for further orders. Interim orders extended to the next mention date.

L.GACHERU

JUDGE

30/10/2015