



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENT AND LAND COURT CASE NO. 71 OF 2014

STEPHEN KAMUNGE WAINAINA 1ST PETITIONER

JOSEPH NJOROGI KIMANI 2ND PETITIONER

PAULINE MWEMBA 3RD PETITIONER

VERSUS

COUNTY GOVERNMENT OF NAIROBI RESPONDENT

RULING

1. The respondent by a chamber summons application dated 9th February 2015 expressed to be brought under Order 1 Rule 14, Order 8 Rule 3 of the Civil Procedure Rules, Section 1A, 1B and 3A of the Civil Procedure Act seeks the following orders:-
 1. **That the honourable court be pleased to grant leave to the respondent to enjoin the National Land Commission which is mandated with allocation and issuing of title deeds as a party to this suit.**
 2. **That the court be pleased to grant leave to the respondent to amend its pleadings to reflect the proposed joinder of the National Land Commission as is necessary.**
 3. **That the honourable court be pleased to order the National Land Commission to enter appearance within 15 days of service of the order of this court and file its pleadings within the specified time accordingly.**
 4. **That the court be pleased to direct the National Land Commission to provide all documents pertaining to the change of status of the suit land from a public utility to privately owned land and to provide requisite explanation on the process leading to the same.**
 5. **That the costs of the application be provided for.**
2. The respondent/applicant premises the application on the grounds set out on the face of the application and on the supporting affidavit sworn by Karisa Iha the Director of Legal of the respondent on 9th February 2015. The respondent's contention is that the suit property LR No. 209/14882 was reserved for the building of a community centre and social hall and is therefore for public utility and could therefore not be legally owned by the petitioners as claimed by the petitioners. The applicant has annexed various correspondences to support the respondent's contention that the suit land was intended for public purposes (letters annexed and marked "K1-1"). The respondent's place reliance on the Commissioner of Lands letter dated 1st September 2005 marked "K1-4" where the Commissioner of Lands had stated the copy of title forwarded vide letter of 12th August 2005 in respect of LR No. 209/14882 was unregistered and could not therefore be used to support a claim for the land by Stephen Kamunge Wainaina & 2 Others. The

same Land Commissioner vide a letter of 2nd July 2007 to the PCIO Nairobi annexed and marked “K1-6” wrote thus:-

“Records held in this office indicate that the above plot is registered in the names of Stephen Kamunge Wainaina, Joseph Njoroge Kimani and Pauline Mwemba Kirombo carrying on business under the business name of Limu Properties.

The contents of my letter ref: 70009/XI/108 dated 1st September, 2005 addressed to the Director of City Planning was based on a copy of an unregistered title that was forwarded to this office by the said director. The said letter therefore, should not be taken out of context.”

3. The respondent acknowledge that the respondents are registered as owners of the suit property and this fact was confirmed by **F. Lubulellah**, Land Registrar from the Ministry of Lands and Housing when he appeared before the court on 1st December 2013 following issue of summons for his appearance by the court. The respondent avers that this confirmation by the Ministry of Lands that the petitioners are the registered owners of the suit property is what has made it necessary to seek to enjoin the National Land Commission as a party so that the commission can shed light on how the status of the suit property changed from public utility to private ownership.
4. The petitioners filed grounds of opposition to the respondent’s application dated 9th February, 2015 dated 12th May, 2015. Inter alia the petitioners state in their grounds of opposition thus:-
 1. **The respondent has never filed any proceedings in opposition to the petition and neither has it to date sought to have the petitioners’ title declared invalid by the court.**
 2. **The respondent’s remedy if indeed it purports that the land was irregularly allocated to the petitioners by the then Commissioner of Lands would be to sue the National Land Commission.**
 3. **The petitioners have a valid title which has not been invalidated and/or annulled and the Ministry of Lands has confirmed the petitioners to be properly registered as the owners.**
 4. **The respondent cannot claim that the suit property was for a community centre and social hall when it went ahead to construct a dispensary thereon against what it purports to be the recommended user of the property.**
 5. **The National Land Commission itself has not sought to be enjoined in the suit as indeed there is no dispute as to the title of the petitioners’ in spite of being aware of the suit.**
 6. **The application by the respondent is merely intended to delay the process of law whereas it was by consent of the parties agreed that the only issue was who was the registered proprietor of the suit land and its value and the respondent cannot now be heard to purport to review the said consent.**
 7. **That there can be no basis to enjoin the National Land Commission at this stage in the proceedings when the parties have filed their submissions and are awaiting a judgment on the petition.**
5. The respondent/applicant had on 13th October 2014 prior to filing the present application filed more or less a similar application but in the application the respondent sought to have the Commissioner of Lands enjoined as the 2nd respondents in these proceedings. It is this application by the respondent which provoked the court to seek to verify who the registered owner of the suit property is as then, the only issue that was in contention was who was the properly registered owner of the suit property. **Mr. Lubulellah**, the Land Registrar appeared in court on 1st December 2014 and he unequivocally confirmed that the suit property was registered in the petitioners names and that the original title held by the petitioners conformed with the registration details held by the Ministry of Lands at the Lands office.
6. On the face of the evidence from the land registrar, it does appear the respondent abandoned the application to enjoin the Commissioner of Lands to the proceedings and indeed sought time to make consultations with his clients. The court granted the parties leave on 1st December 2014 to file further submissions and any further documents they wished to file. The matter was mentioned

on 10th February 2015 and as at that date the petitioner had filed further submissions and a further affidavit annexing a valuation report. The respondent on the date requested for time to have prepared and filed a valuation from the respondent's side. Rather than file the valuation report the respondent on 17th February 2015 filed the instant application dated 9th February 2015.

7. I have reverted to the foregoing background to contextualize the circumstances pursuant to which the instant application is to be considered. The respondent's application does not state in what capacity they wish the National Land Commission to be enjoined in the proceedings. Is it as an interested party or as a respondent? If it is as an interested party their role would be limited to the extent they may be affected by any order that court may make upon the determination of the petition and they would not be substantive parties to the suit. If it is as a respondent it has to be demonstrated that the applicant seeks a relief from them. The petitioners have no claim against the National Land Commission and they seek no relief from the National Land Commission. The National Land Commission have not sought to be enjoined in these proceedings either as an interested party or as a petitioner or respondent.
8. For a party to be ordered to be enjoined to any proceedings a party making the application has to demonstrate the person/party sought to be enjoined has a legal interest in the proceedings and is therefore a necessary party to enable all the issues to be fully adjudicated upon in the suit. What interest does the National Land Commission have in the instant suit? I see none as they have not staked any claim to the suit property and neither do the petitioners make any claim against the National Land Commission. The petitioners cannot properly be lumped with a respondent who they have no claim against. The respondent/applicants have not annexed a draft of the amended intended pleadings which they intended to file to demonstrate how the National Land Commission fits in the proceedings. The court cannot second guess and/or act on presumption as to how the pleadings will be like.
9. Having carefully considered the respondent/applicant's application dated 9th February 2015, I am not satisfied the respondent has demonstrated that the National Land Commission has any interest in this suit as framed and/or that they are a necessary party to have all the issues adjudicated upon by the court. There is no dispute that the petitioners are the registered owners of the suit property and under the provisions of sections 24, 25 and 26 of the Land Registration Act, 2012 they have absolute rights of ownership. Challenge to their title can only be under the limited provisions under section 26 1 (a) and (b) of the Land Registration Act and/or if it is shown and demonstrated that the title was illegally and unlawfully procured under article 40 (6) of the Constitution. I do not consider that it would be appropriate to enjoin the National Land Commission to these proceedings if the intention is that the National Land Commission would be the ones to challenge the title held by the petitioners. In such a situation the National Land Commission would need to be the petitioner as against the petitioners herein.
10. The net result is that I find and hold that the respondent's application dated 9th February 2015 lacks merit and the same is dismissed with costs to the petitioners.

Ruling dated and signed at Kisii this 6th day of October 2015.

J. M MUTUNGI

JUDGE

Ruling delivered at Nairobi this 23rd day of October 2015.

L.GACHERU

JUDGE

In the presence of:

N/A for the Petitioner/respondent

N/A for the respondent/applicant

N/A Court Assistant

L.GACHERU

JUDGE