



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 106 OF 2013**

**KITALE INDUSTRIES LIMITED:.....PLAINTIFF**

**VERSUS**

**THE ATTORNEY GENERAL:.....DEFENDANT**

**R U L I N G**

1. The applicant the County Government of Trans-Nzoia made an application to court seeking to be enjoined in this suit as a defendant or interested party. The applicant is the Successor of Nzoia County Council which was initially known as Kitale County Council. The applicant contends that the predecessor was the registered owner of LR NO. 2116/VI/144 which was irregularly changed into Kitale Municipality Block 4/114 which was then allocated to the plaintiff in this case.
2. The applicant contends that an officer from its predecessor's office recommended that the plot in issue be allocated to the plaintiff. The plaintiff had made a request for allocation of the land which it alleged was idle. The applicant contends that contrary to the plaintiff's claim, the land was actually not idle. It had old buildings which are over 50 years old and that the suit land is occupied by both the County and National Government.
3. The applicant contends that the allocation of the land to the plaintiff was fastracked using two different files which is a pointer to the fact that there was something wrong in the whole allocation.
4. The plaintiff opposed the application through grounds of opposition filed on 2/9/2014. The plaintiff contends that the application is incompetent, vexatious and an abuse of the process of court and that the applicant relinquished the suit land on 7/10/1986 and that they therefore do not have any control over the subject matter.
5. I have gone through the pleadings in this case. I have now to decide whether the applicant has demonstrated sufficient interest in this case as to be allowed to be a party to the same. The suit herein was allocated to the plaintiff who had applied to the applicant's predecessor for allocation on the ground that the suit land was idle. The application for allocation was made on 28/11/2009. The plaintiff was allocated the land on 28/10/2010 and allotment letter issued to it. A lease was issued on 4/11/2010 and a certificate of lease issued on the same day.
6. The applicant contends that the suit property is currently occupied by the County Public Works, Energy department, Transport and Infrastructure, Mechanical department, Kenya Rural Roads Authority, Kenya Rural Electrification Authority, The offices for the Minister fo roads and infrastructure - Trans-Nzoia County and offices of all the five constituency Development Fund Committees in Trans-Nzoia County.

The plaintiff has not denied that this is the position as it did not file any replying affidavit to contest the averments by the applicant.

7. The plaintiff contends that the applicant's application is incompetent because the applicant invoked section 3 A of the Civil Procedure Act when there were other provisions under which the applicant should have moved the court. This argument is without basis. The applicants application clearly indicates that the applicant is moving the court under section 3 A as well Order 1 Rule 10 (2) of the Civil Procedure Rules. Order 1 Rule 10 (2) of the Civil Procedure rules provides that the court may on its own motion or on application order that a plaintiff or defendant be added as party if that addition will enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.

8. In the present case, the plaintiff is contending that it was legally allocated the suit land. The Government of Kenya is saying that the allocation was irregularly done and it involved Public land which was not idle. The applicant herein has come out with more details on how the allocated was done. The applicant is the one in possession of all documents relating to the history of the suit land. I find that the applicant is a necessary party which should be added as a defendant. The addition of the applicant as a defendant will enable that court to effectually and completely adjudicate upon and settle all questions herein. I find that the applicant's application is well merited. The same is allowed with the result that the applicant is hereby allowed to come to this suit as a defendant. The applicant is granted leave to file a defence to the plaintiff's claim within 14 days from today and serve the plaintiff and the other defendant. The plaintiff shall reply to the applicant's defence within 14 days from the date of service. The costs of this application shall be in the cause.

It is so ordered.

**Dated, signed and delivered at Kitale on this 29th day September, 2014.**

**E. OBAGA**

**JUDGE**

**In the presence of Professor Sifuna for interested party. Court Clerk – Kassachoon.**

**E. OBAGA**

**JUDGE**

**29/9/2014**