



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

CIVIL SUIT NO. 46 OF 2010

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

VERSUS

**1. WILSON GACANJA)
2. WILLIAM KIPSEREM BUSIENEI) DEFENDANTS
3. INDUSTRIAL & COMMERCIAL)**

DEVELOPMENT CORPORATION)

R U L I N G

1. The third defendant/Applicant Industrial & Commercial Development Corporation (ICDC) filed a chamber summons dated 9th July, 2012 in which it seeks to be removed from the suit filed against it. The applicant contends that it was wrongly enjoined in the suit as it was merely a financier which advanced money to the second respondent who charged two properties in his name as security for the loan taken.
2. The applicant contends that the second respondent failed in repaying the loan advanced. It then exercised its statutory power of sale and sold the two properties charged to third parties. The applicant further contends that the suit has been overtaken by events as one of the properties title was cancelled by the Registrar of titles vide Gazette Notice No. 1582 of 26/11/2010.
3. The application is opposed by the respondent Kenya Anti Corruption Commission now known as Ethics and Corruption Commission through replying affidavit sworn and filed in court on 23/5/2013. The respondent contends that the applicant is a necessary party to the suit and should therefore not be struck out as contended by the applicant. The respondent further contends that if the applicant has no interest in the suit properties, it should have registered a discharge of charge and the purchasers of the suit properties would have then been registered as owners of the said properties.
4. I have gone through the application as well as the pleadings in this case. There are two suit properties in issue. These are LR NO. 2116/1143 IR NO 61522 and LR NO 2116/1144 IR NO 6151. These two properties were excised from Land reserved for Kenya National Library Services Board. Kenya National Library Services being a public body, the respondent contends that its land was not available for alienation by the then Commissioner of Lands Wilson Gacanja who is the first defendant in the suit. The public land was alienated and given to William Kipsirem Busienei who in turn charged the same to ICDC to secure a loan of Kshs. 3,000,000/=.

5. The Registrar of Titles vide Gazette Notice NO 15582 of 26/11/2010 revoked title in respect of LR NO 2116/1144. Title in respect of LR NO. 2116/1143 was not revoked. One of the issues in the plaint is that the charge to ICDC was unlawful and should not stand. This is why the respondent filed an application for injunction against the applicant and William Kipserem Busienei. An injunction was granted in favour of the respondent. This injunction was restraining the 2nd and 3rd defendants from selling the suit properties or in any way interfering with the same. It is therefore clear that the suit as relates to LR NO 2116/1143 is still pending. The applicant cannot therefore seek to come out of the same. The upshot of this is that the application dated 9/7/2012 lacks merit. The same is hereby dismissed with costs to the respondent, the Ethics and Anti Corruption Commission.

It is so ordered.

Dated, signed and delivered at Kitale on this 17th day of September, 2014.

E. OBAGA

JUDGE

In the presence of Mr Ingosi for Mr Khakula for 3rd defendant and Mr Momanyi for M/S Christine Natome for plaintiff. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

17/9/2014