

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

LAND AND ENVIRONMENT CASE NO. 84 OF 2014

RODAH ATEMO AMUKHUMA..... 1ST PLAINTIFF/APPLICANT

DAVID GITHANGA KIARIE2ND PLAINTIFF/APPLICANT

VERSUS

THE EXECUTIVE OFFICER, ROADS

BUNGOMA COUNTY GOVERNMENT.....DEFENDANT/RESPONDENT

RULING

1. The applicants filed this suit against the defendant and alongside with it they filed an application brought under Order 40 seeking for temporary orders of injunction pending determination of suit.

2. The application was opposed. In arguing the application, the applicants submitted that the defendant had marked their houses developed on L.R. No. Ndivisi/Muchi/6504 and Ndivisi/Muchi/3289 for demolition. They have denied encroaching on any road reserve. The respondent in opposing the motion swore an affidavit through Christabel Wekesa stating that there is no post existing under the County Government called “Executive Officer roads” and asked for the motion to be struck off. Christabel deposes further that the County Government has not marked any houses for demolition in Webuye. She urged the court to dismiss the application as it is unfounded and frivolous.

3. I have perused the pleadings and considered the submissions rendered by the parties. In the plaint, there is no description of the defendant given in any of the paragraphs. In paragraph 6 of the plaint, it appears the “defendant” is sued in his personal capacity although his name is not disclosed in the pleadings. Order 2 rules 1 of the Civil Procedure Rules require parties to give information as to the circumstances where liability of Government arises and particulars of officers concerned.

4. The question therefore is whether the objection raised by the defendant on the non-existence of the title sued is valid which would then render this application as incompetent. The County Government is governed by the County Government Act, 2012. Under section 6 of this Act, the County Government is described as a body corporate with perpetual succession which means it is capable of suing and being sued. In section 39 (1), the members of the County Executive Committee are individually and collectively accountable to the governor in the exercise of their powers and performance of their duties. In my understanding, it means the Committee members cannot be sued in their individual capacity or be held personally liable for actions done in their official capacity. It is the government who they represent and whom they are accountable who should be sued in any event

5. The application as drawn seems to be directed at a defendant in an individual capacity and not for actions undertaken on behalf of the County Government. In the supplementary affidavit the 1st applicant deposes that the receiving stamps on the court documents served bore name of “Executive Committee member Roads and Public Works Bungoma County Government.” She did not annex any document bearing such stamp. In any event the ***Executive Officer - roads***

and **Executive Committee member roads** in my view are two entities. The County Government being a body corporate is the one capable of being sued and not departments under it. I do make a finding that the application as drawn is incompetent for non-disclosure and misjoinder of the defendant sued or in what capacity he is sued. Further the applicant failed to establish a prima facie case since there was nothing shown to the court that the houses have been marked for demolition. Consequently the application be and is hereby struck out. Each party to bear their respective costs

Dated and Delivered in Bungoma this **27th** day of **October 2014**

A. OMOLLO

JUDGE.