



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

LANDS AND ENVIRONMENT DIVISION

CIVIL CASE NO. 8 OF 2008

KENYA ANTI-CORRUPTION COMMISSION.....PLAINTIFF

• VERSUS -

JUDITH MARILYN OKUNGU1ST DEFENDANT

DAKANE ABDULAHI ALI2ND DEFENDANT

RULING

1. The plaintiff vide a plaint dated 14th January 2008 instituted the instant suit and *inter alia* seeks a declaration that the allocation and issuance of grant of L.R.No. 209/16441 (I.R 10069) by the 1st Defendant to the 2nd Defendant is null and void and incapable of conferring any estate interest or right.

Simultaneously with the plaint the plaintiff filed a chamber summons application directed against the 2nd Defendant and *inter alia* sought the following orders:-

- i. *That the 2nd Defendant be and is hereby restrained by himself, his agents, servants or any other person whatsoever from selling, leasing, charging, transferring, subdividing, developing, occupying, encroaching, wasting or in any other way dealing with the propriety referred to as L.R. 209/16441 IR 100691 pending the hearing and determination of this suit.*
- ii. *A mandatory injunction directing the 2nd Defendant, his servants or agents, to vacate LR 209/16441 IR 100691 forthwith pending the hearing and determination of this suit.*
- iii. *That costs be provided for.*

The application is *inter alia* premised on the following grounds that appear on the face of the application:-

1. *The plaintiff, pursuant to its mandate under the provisions of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003 investigated allegations that L.R. No. 209/16441 (IR 10069) has been illegally alienated by the 1st Defendant, who was at all material times relevant to this suit the Commissioner of Lands, to the 2nd Defendant.*
2. *Investigations have revealed that the subject property constituted government Land reserved for public utility for educational purposes and therefore not available for alienation.*
3. *Pursuant to the said reservation the government issued a letter of allotment to the City Council of Nairobi allocating the subject land to Racecourse Primary School. Race course Primary School*

is a public educational institution run and maintained by the City Council of Nairobi.

4. *The alienation by the 1st Respondent of government land not available for alienation amounts to economic crime resulting to loss of public property within the measuring of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.*
5. *Further, the use of her office by the 1st Defendant to improperly confer a benefit to the 2nd Defendant amounts to corruption.*
6. *Pending the hearing and determination of this suit, it is necessary that orders to preserve the property by restraining the Respondents from transferring, selling, disposing, constructing, developing, wasting or in any other manner dealing with the property to the prejudice of the public interest be issued by this Honourable court.*
7. *That the 2nd Defendant is in possession of part of the suit property. As the acquisition of the same was patently illegal and as the Defendants have no defence against the circumstances of this case, it is necessary that an order of mandatory injunction do issue directing the 2nd Defendant to move out of the suit property forthwith pending the hearing and determination of this suit.*

The plaintiff further relies on the grounds contained in the affidavit of Pius Maithya sworn in support of the application on 14th January 2008.

2. The 1st Defendant for her part upon being served with the suit and application by the plaintiff on 28th January 2008 filed a Notice of Preliminary objection to both the suit and the interlocutory application and on 22nd April 2008 filed particulars of preliminary objection which set out hereunder:-
 - i. *That the suit against the 1st Defendant violates provisions of the Government proceedings Act Cap 40 of the Laws of Kenya.*
 - ii. *That the suit against the 1st Defendant violates the provisions of the Government Lands Act Cap 280 of the Laws of Kenya.*
 - iii. *That the suit against the 1st Defendant is statute barred. Defendants violates the provisions of Anti Corruption and Economic Crimes Act No. 3 of 2003.*
 - iv. *That the High Court has no jurisdiction to entertain the suit.*
 - v. *That the suit against the Defendants violates their constitutional right to protection of law.*
 - vi. *That the suit against the 1st Defendant violates her constitutional rights as a public officer.*

The 1st Defendant further relies on her replying affidavit and further affidavit sworn on 28th January 2008 and 18th January 2013 to support of her preliminary objection and to oppose the plaintiff's application.

The 2nd Defendant filed grounds of opposition dated 21st January 2008 and a replying affidavit sworn on 24th January 2008 in opposition to the plaintiff's application. The parties filed written submissions and furnished authorities which they highlighted before me on 21st June 2013.

Mr. Murei for the plaintiff applicant basing his submissions on the pleadings (plaint and supporting affidavit) and making references to the authorities cited made forceful submissions that the suit land was indeed government land that had been reserved for public use and had been set aside for education purposes. He submitted the land had infact been allocated to Race course Primary School and a letter of allocation issued to them in 1983 and henceforth the same parcel of land could not be available for allocation to the 2nd Defendant. It is the applicants submission that the subsequent grant to the 2nd Defendant made in 2006 is illegal and null and void and was made by the 1st Defendant in excess of her authority and in abuse of her authority as the Commissioner of Lands and was therefore ultra vires and void *abinitio* and could not pass and/or confer any interest over the subject parcel of land.

3. Responding to the 1st Defendant's submission that the Government is the proper Defendant in this suit by virtue of section 4 of the Government proceedings Act, the plaintiff asserted that section 4 of the Government proceedings Act only provides that the Government is liable for the tortious acts of its servants and/or officers where the act or omission would give rise to a cause of action against the servant or agent or his estate. The plaintiff contends that section 4 of the Government proceedings Act does not make it mandatory to sue the Government every time a servant or agent commits a tort and it does give an aggrieved party the liberty to sue the government either in lieu of or in addition to the servant or agent.
4. The plaintiff submits the 1st Defendant's acts were not merely tortious but were also illegal which would invite personal liability and culpability. The plaintiff asserts that the 1st Defendant purported to allocate to the 2nd Defendant land that was not available for allocation as the same had already been allocated to Race course Primary School and further that the 1st Defendant exceeded the powers delegated to her under section 3 of the Government Lands Act when she made the allocation of the land to the 2nd Defendant as the grant was not for any of the limited purposes in respect of which she had power to make under the Act. The plaintiff in the circumstances argues the 1st Defendant acted illegally and her liability is personal and it cannot be said she was acting in course of her employment as the Commissioner of Lands when she was acting contrary to the law.
5. The 1st Defendant in her submissions asserts the suit against her violates the Government proceedings Act Cap 40 and in support of her contention relies on section 4 of the Act.

Section 4 (1) of the Act provides:-

4 (1). Subject to the provisions of this Act, the Government shall be Subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:-

- a. *In respect of torts committed by its servants or agent;*
- b. *In respect of any breach of those duties which a person owes to his servants or agents at common law by reason of being their employer; and*
- c. *In respect of any breach of the duties attaching at common law to the ownership, occupation, possession or control of property.*

Section 4 (3) of the Act further provides as follows:-

4 (3) Where any functions are conferred or imposed upon an officer of the Government as such either by any rule of the common law or by any written law and that officer commits a tort which performing or purporting to perform those functions, the liabilities of the Government in respect of the tort shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

6. The 1st Defendant in the premises submits she is improperly enjoined in this suit and the proper party ought to have been the Commissioner of Lands or the Attorney General by virtue of sections 4 (1) and section 12 (1) & (2) of the Government proceedings Act which provides as follows:-

12 (1) Subject to the provisions of any other written law, civil proceedings by or against the government shall be instituted by or against the Attorney General as the law may be.

12 (2) No proceedings instituted in accordance with this part by or against the Attorney General shall abate or be affected by any change in the person holding the office of the Attorney General.

The 1st Defendant contends that there is no averment on the part of the plaintiff and/or

evidence to the effect that she derived a personal benefit out of the transaction whereby the 2nd Defendant was allocated the subject parcel of land to render her to be personally liable for any improper conduct. She maintains she acted above board in her capacity as the Commissioner of Lands and hence no liability can attach to her in her personal individual capacity. The 1st Defendant relies on the case of *Bishop Vs Attorney General of Uganda* [1967] E.A. 293 to support her proposition that only the Attorney General could be sued for acts committed by officers of the government.

7. The 1st Defendant further submits that although section 7 (1) (h) of the Anti-Corruption and Economic Crimes Act empowers the plaintiff to “investigate the extent of liability for the loss of or damage to any property:-
- i. *To institute civil proceedings against any person for recovery of such property or for compensation; and*
 - ii. *To recover such property or enforce order for compensation even if the property is outside Kenya or the assets that could be used to satisfy the order outside Kenya”.*

This provision has to be viewed against the other provisions of the Act and not as a “stand alone”.

The 1st defendant contends that this provision has to be read in conjunction with sections 51, 52, 53 and 55 of the Act which deal with the circumstances under which suits can be instituted against a public officer. As the instant suit does not seek recovery of any assets or compensation from the 1st Defendant it is contended that the powers donated to the plaintiff under section 7 (h) would not apply. It is submitted on behalf of the 1st Defendant that sections 51, 52, 53, 54 and 55 of the Act envisage that investigations are done and reveal that a person is liable to compensate or is liable for improper benefit in which case civil proceedings can be instituted for recovery against such a person. The 1st Defendant argues that the High Court lacks jurisdiction to deal with this suit as the Act (ACEC) has specifically conferred jurisdiction to the special Magistrate’s courts established thereunder. The 1st Defendant cites the case of *Argosam Finance Co. Ltd Vs Oxybi & another* [1964] 1 ALL ER 791 *and Barra Clough Vs Brown* [1887] AC 615 in support of the proposition that where right and/or procedure is given by statute to enforce or give redress then a party is obliged to follow and/or use that statute to seek or obtain redress. Honourable *Justice Shields*, as he then was held this view in the case of *Fatemi Investments Ltd Vs Bayusuf* [1990] KLR 390 when he held that:-

“The claim to recover treble the value of the goods was a liability imposed purely by statute and where a right is given to enforce or redress the means to enforce or redress are given by statute, one must use this means to get the relief one seeks”.

The 1st Defendant further contends that the plaintiff’s available option is to recover the suit property if it claims it was illegally allocated through conducting a successful criminal prosecution and subsequently seeking an order of forfeiture from the Anti-Corruption criminal court. Considering that the plaintiff has initiated criminal proceedings vide Anti-Corruption criminal case No. 3 of 13th February 2012 the Defendants submit that the present civil proceedings ought to be terminated as it would be prejudicial to the Defendants to sustain two parallel legal processes seeking virtually the same reliefs.

8. Finally the 1st Defendant contends that the suit against her is statute barred by virtue of section 3 of the Public Authorities Limitation Act which provides;-

“No proceedings founded on tort shall be brought against the government or local authority after the end of twelve months from the date which the cause of action accrued”.

Section 2 (2) of the Act provides:-

“Proceedings against the government includes proceedings against the Attorney General or any government department or any public officer as such”.

The 1st Defendant states she is a public officer and has been sued as such. The plaintiff alleges she signed the impugned title on 16th March 2006 and the instant suit was instituted on 15th January 2008 outside the statutory period of 12 months and therefore the suit against the 1st Defendant is statute barred.

9. The 2nd Defendant on its part submits that he holds an indefeasible title to the suit property and contends that there is no proof that the property was acquired by the 2nd Defendant illegally and/or that the property was not available for allocation at the time he was allocated the same and a grant issued to him by the Commissioner of Lands.
10. The 2nd Defendant submits that being the registered owner of the suit property he is entitled to the rights and privileges of an owner as envisaged under section 23 (1) of the Registration of Titles Act Cap 281 (now repealed) which provides this:-

“The certificate of title issued by the registrar to a purchaser of land upon a transfer or transmission by the proprietor thereof shall be taken by all court as conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof subject to the encumbrances easements, restrictions and conditions contained therein or endorsed thereon, and the title of that proprietor shall not be subject to challenge, except on the ground of fraud misrepresentation to which he is proved to be a party”.

11. The 2nd Defendant asserts that as the holder of a legal title that is duly registered, his title supercedes the claim by the plaintiff who merely allege the City Council of Nairobi had been issued a letter of allotment over the suit property but had not as at the time the 2nd Defendant obtained title processed their title. In the case of James Njuguna Vs Municipal Council of Nakuru [2010] e KLR Hon. Justice William Ouko while considering a somewhat similar situation respecting competing interests as regards a certificate of Title and a Letter of Allotment observed:-

“Without deciding with finality the question of who between the two group is/are the legal owner(s) of the suit plots, I am persuaded that the 2nd Respondent, being the holder of a certificate of Lease issued under the Registered Land Act has a superior title..... The applicants have not demonstrated what form of ownership is conferred by a letter of allocation”.

The 2nd Defendant submits that to the extent that no fraud or misrepresentation has been alleged or proved against the 2nd Defendant to vitiate the title he holds his tile is sacrosanct and indefeasible and deserves protection under the provisions of Article 40 of the constitution.

12. The 2nd Defendant has further submitted that the claim by the plaintiff is statute barred by virtue of the the provisions of section 136 of Government Lands Act Cap 280 Laws of Kenya which requires that all actions under the Government Lands Act be commenced within 1 year from the date the cause of action arose. The title in favour of the 2nd Defendant was issued on 16th March 2006 and the instant suit was filed on 15th January 2008 more than 1 year from the date of the issue of the title. It is in the premises the 2nd Defendants submissions that the plaintiff cannot satisfy the conditions of Giella Vs Cassman Brown [1973] E.A 358 for the grant of injunction and thus an injunction ought not to be granted as sought against the 2nd Defendant. The plaintiff, the 2nd defendant contends, has neither established a *prima facie* case with any probability of success, or that the plaintiff stands to suffer any damage that cannot be compensated for by an award in

- damages. The balance of convenience it is submitted would favour the 2nd Defendant who is in possession of the suit property as the registered proprietor. The 2nd Defendant places reliance on the case of *Moya Drift Farm Ltd Vs Theruri* [1973] E.A. 114 for the proposition that a court would not grant an injunction against a party who is the registered proprietor and is in possession of the subject land.
13. The 2nd Defendant has further submitted that the plaintiff is not the proper plaintiff in this matter and that the matter is in fact *res judicata* by reason of the decision in HCCC Misc Application No. 186 of 2007 which it is submitted dealt with the matters in issue in the present suit.
 14. The plaintiff in the submission dated 2nd April 2013 and filed in court on 5th April 2013 responded to the various and specific issues/matters addressed in the 1st and 2nd Defendant's filed submission.
 15. The court has reviewed the pleadings on the part of the plaintiff and the Respondents replying affidavits and the submissions and the authorities cited by the parties and the issues for determination by the court is whether the plaintiff has established a *prima facie* case against the 1st and 2nd Defendants to enable the court to grant an injunction together with a mandatory order of injunction against the Defendants. As against the 1st Defendant the court has to additionally determine whether the preliminary objection she has taken is sustainable on any of the grounds advanced in support of the same.
 16. The 2nd Defendant has contended that the plaintiff lacks capacity to bring this suit against the Defendants and further submits the suit is *res judicata* by reason of the determination in HCCC Misc. Application No. 186 of 2007. Quite clearly section 7 (1) (h) of the Anti-Corruption and Economic Crimes Act referred to earlier in this ruling confers upon the plaintiff the power to investigate the extent of liability for the loss of or damage to any public property and to institute civil proceedings against any person for recovery of such property or for compensation. Whereas it is true that under section 8 of the now repealed Government Lands Act (Cap 280 Laws of Kenya) only the Attorney General or the Commissioner of Lands could bring an action to recover Government Land, this position changed with the enactment of the Anti-Corruption and Economic Crimes Act [ACECA) in 2003 as the latter Act by express statutory provision as aforesaid empowered the plaintiff to institute civil proceedings for recovery of public assets. Hence after the enactment of ACECA it became possible for both the plaintiff in this suit and/or the Attorney General, or the Commissioner of Lands to institute such proceedings. I see no conflict between the GLA and ACECA as the latter was a special Act that was aimed at redressing the runaway corruption that had taken route in the country and through which economic crimes had been perpetrated and public assets plundered by well heeled individuals. I therefore hold and find that the plaintiff has both *locus* and capacity to institute these proceedings.
 17. On the issue of *res judicata!* find no basis for the 2nd Defendant's argument. The Misc application No. 186 of 2007 was filed only for purposes of obtaining a conservatory order in respect of the targeted alleged public asset and section 56 (1) of the Act allows and permits the plaintiff to move to the High Court to seek a preservative order. Section 56 (1) provides:-

“56 (1) On an ex parte application by the Commission, the High Court may make an order prohibiting the transfer or disposal of or other dealing with property on evidence that the property was acquired as a result of corrupt conduct. In my view an application for a preservative order under section 56 (1) of the Act is merely intended to preserve the property and is the precursor of the main suit. Such an application does not and cannot lead to a determination of the issue that would need to be determined in the envisaged suit to follow. A decision in an application under section 56 (1) can only be on whether there is sufficient evidence to enable the court to make a preservation order and that cannot be a final decision on the rights and/or interest of the parties as relates to the identified property. That has to await the formal suit where the issues would be canvassed and ventilated and a final determination made. Hence I decline the argument that this suit is res judicata on account of the determination in HC Misc Application No. 186 of 2007.
 18. The plaintiff contends that the suit property was public property that had been allocated to Race course Primary School before being allocated to the 2nd Defendant and a title issued in favour of

- the 2nd Defendant. The 2nd Defendant counters that stating he was properly allocated the land and there is no evidence that the land he was allocated had been alienated to Race course Primary School and/or indeed the same was public property and that he holds an indefeasible title that deserves protection under the law. The 2nd Defendant further contends that the plaintiffs claim is pursuant to section 136 of the Government Lands Act statute barred as the action was brought after more than 12 months had elapsed from the time the title to the land was issued to him. Whether or not the property was unlawfully or illegally acquired by the 2nd Defendant and whether or not the plaintiff's suit against the 2nd Defendant is statute barred are in my view issues that cannot be determined at this interlocutory stage on the basis of affidavit evidence on record. They are matters that call for evidence to be adduced at the trial to reach a determination. Whether or not the suit is statute barred may for instance be dependent on when the fraud or illegality was discovered as time would start to run from the time of such discovering.
19. The 1st Defendant has forcibly argued that the suit against her violates the Government proceedings Act Cap 40 Laws of Kenya. The Defendant was appointed Commissioner of Lands on 13th February 2003 and served as such until 27th July 2007 when she was transferred to the Ministry of Education as the Director of Legal Services. It is the 1st Defendants contention that she is being sued in this suit for wrongs purportedly committed by her when she was carrying out her duties as the Commissioner of Lands. She contends that by virtue of sections 4 (1) and section 4 (3) of the Government proceedings Act (supra) she is absolved of all the tortious acts and liabilities which may have arisen in the course of her duties as such officer. The 1st Defendants avers the liability cannot attach to her personally unless it is shown and established that the 1st Defendant derived a personal benefit from the alleged wrong doing as provided under sections 51, 52, 53, 54 and 55 of the Anti-Corruption and Economic Crimes Act.
20. Under the aforesaid provisions of the ACECA it is apparent a suit against the 1st Defendant personally can only be sustained if it is demonstrated that she received a benefit as a result of her improper conduct. Further section 51, 52 and 53 of the Act envisages recovery of compensation arising out of the wrong doings.

Section 51 of the Act provides:-

51. A person who does anything that constitutes corruption or economic crime is liable to anyone who suffers a loss as a result for an amount that would be full compensation for the loss suffered.

52. A person who receives a benefit the receipt of which would constitute an offence under section 39, 40 or 43 is liable for the value of the benefit.....

53. (1) A person liable for an amount under section 51 or 52 shall also be liable to pay interest, at the prescribed rate, on the amount payable.

(3) An amount for which a person is liable under section 51 or 52 to a public body may be recovered by the public body or by the Commission on its behalf.

(4) For greater certainty, nothing in the Government proceedings Act prevents the commission from instituting civil proceedings to recover amounts under sub section (3).

54 (1). A court that convicts a person of any corruption or economic crime shall, at the time of conviction or on subsequent application, order the person

- a. *To pay any amount the person may be liable for under section 51 or 52; and*
- b. *To give to the rightful owner any property acquired in the course of or as a result of the conduct that constituted the corruption or economic crime or an amount equivalent to the value of that*

property.

Section 7 (1) (h) of the Act gives the commission the power to institute civil proceedings against any person to recover public property the aforesaid provisions confer upon the commission the power to recover compensation against a person who has accrued a benefit including a public officer like the 1st Defendant as is clear from section 53 (4) of the Act. However the plaintiff has not sued the 1st Defendant seeking any recovery of any property and/or for any compensation arising from any improper conduct on her part.

21. The plaintiff has submitted that the 1st Defendant is sued in her personal individual capacity since it is alleged she abused her office and/or acted in excess of her powers as the Commissioner of Lands in allocating the 2nd Defendant land that was not available for allocation. The fact of the matter is that she was the Commissioner of Lands at the time the transaction took place and she states she was acting as Commissioner for Lands and not in her individual capacity. Without any allegation and/or evidence that the 1st Defendant accrued a personal benefit I am not able to hold that she was acting otherwise than in her official capacity as the Commissioner. She may have made mistakes and/or committed acts that were tortious but then section 4 (3) of the Government proceedings Act Cap 40 envisages that and that is why public officers are not made liable for any tortious acts they commit in the course of their duties. In the premises I would hold that the 1st Defendant is not properly enjoined in this suit as in my view she was acting as the Commissioner of Lands when she executed the certificate of Title for the suit property in favour of the 2nd Defendant. I hold that she cannot be personally liable for those acts.
22. There is yet a further aspect of this matter that is of concern. The 1st and 2nd Defendants have jointly with others been charged in Anti-Corruption criminal case No. 3 of 2012 with conspiracy to defraud contrary to section 317 of the penal and the subject matter is the suit property. They have again been separately charged with fraudulent disposal of public property contrary to section 45 (1) (a) as read with section 48 of the Anti-corruption and Economic Crimes Act, 2003. Should the 1st and 2nd Defendant be convicted of the offence under the Anti-corruption and Economic Crimes Act then under section 54 of the Act they would be liable to give compensation which would include “to give to the rightful owner any property acquired in the course of or as a result of the conduct that constituted the corruption on economic crime or an amount equivalent to the value of that property”.

The plaintiff can achieve through the criminal case that is now pending before the anti-corruption criminal court what it seeks to achieve through this suit. I think the plaintiff is using a double edged sword and I am of the view that is prejudicial to the interests of the Defendants. Both the criminal court and this court have jurisdiction to hear and determine the matters pending before them but conducting the two matters simultaneously smacks of harassment of the Defendants.

23. The plaintiff in this suit has sought both a temporary injunction and a mandatory injunction pending the hearing and determination of the suit. From my evaluation of the material and facts placed before the court it is apparent that ownership and right to L.R. No. 209/16441 I.R 100691 is a seriously contested issue with the plaintiff on the one hand asserting this is public property that was illegally and unlawfully allocated and transferred to the 2nd Defendant while the 2nd Defendant asserts it is his property for which he holds an indefeasible title that deserves to be protected. The well known principles in *Giela Vs Cassman Brown & Co Ltd* [1973] E.A. 358 for the grant of injunction would not in the circumstances of this case be applicable in their pure form as this is an instance where it may be necessary and prudent to preserve the property at the centre of the contest not because any of the parties has established their entitlement but because it is desirable to do so to enable the issue of who is rightfully entitled to the property to be determined by the court at the trial. I find solace in the sentiments of Lyon, J in the case of *Shivabhai Nathabhai Patel Vs Hathibhai Patel* [1959] E.A. 907 where he observed:-

“In my opinion it is not only right that the court should attempt to preserve property

which may be in issue, but it is the clear duty of the court to do so. If the plaintiff succeeds in the suit...there might be a barren result; and that is the duty of the court to try to avoid”.

In the instant case were the 2nd defendant to dispose the property to a third party during the pendency of the suit and the plaintiff is successful, the plaintiff could be forced to start the process of recovery all over against the new owner. This court should avoid such an eventuality by ensuring the property is preserved until the suit is determined. In the face of the disputed ownership of the suit property I find no basis upon which an order for a mandatory injunction sought by the plaintiff can be granted and I disallow the prayer.

24. In the premises and for all the reasons above I make the following orders:-

- a. That the 1st Defendants preliminary objection is hereby upheld and the court finds that the 1st Defendant is not properly enjoined in the suit and the suit against is hereby ordered dismissed with costs;
- b. That the 2nd Defendant be and is hereby restrained by himself, his servants or any other person whatsoever from selling, leasing, charging, subdividing, developing, wasting or transferring the property referred to as L.R. No. 209/16441 I.R. 100691 pending the hearing and determination of this suit;
- c. That this suit will be stayed to await the determination of the Anti-corruption criminal case No. 3 of 2012;
- d. The costs for this application as between the plaintiff and the 2nd Defendant will be in the cause.

DATED and DELIVERED at NAIROBI this 15th day of November 2013.

J.M. MUTUNGI

JUDGE

Ruling read in open court in the presence of

..... for the Plaintiff.

..... for the 1st Defendant.

..... for the 2nd Defendant.