



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KITALE**  
**MISC CIVIL APPL 28 OF 2007**  
**KENYA ANTI-CORRUPTION COMMISSION:::: APPLICANT**  
**VERSUS**  
**BETTY ALISON CHEBET KIPSAITA:::::1<sup>ST</sup> RESPONDENT**  
**DAVID KIPLAGAT KIPSAITA ::::::::::: 2<sup>ND</sup> RESPONDENT**

**R U L I N G**

This action was commenced by way of an Originating Motion, pursuant to the provisions of section 56 of the Anti-Corruption and Economic Crimes Act, No. 3 of 2003.

Sub-section (1) of that section expressly stipulates that the applicant, Kenya anti-Corruption Commission may make an ex parte application to the High Court, seeking 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.

It is instructive to note that by virtue of sub-section (2) of that section, an order of prohibition may be made against a person who was involved in the corrupt conduct or against a person who subsequently acquired the property.

In determining this matter, those two provisions will be uppermost in my mind. In other words that the orders can be made on an ex parte application, and that the person or persons against whom the orders are directed need not necessarily have been directly involved in the corrupt conduct through which the property in issue was acquired.

The property in issue herein is a parcel of land known as L.R. No. 25001 (original number L.R. No. 2329)

Through an affidavit sworn by Dedan O. Okamwa, the applicant has disclosed its preliminary findings of investigations into the alienation of the property in issue. Mr. Dedan O. Okamwa is an investigator, working with the applicant, and he says that he was a member of a team conducting investigations into the propriety or otherwise of the alienation of the property in issue.

He has adduced evidence of a Survey Plan No. 34565 which was deposited in the survey records on 25/4/1936, which shows that The District Council of Trans Nzoia (as it was then known) had set aside L.R. No. 2329 (Original Number 2071/4), measuring approximately 172.5 acres, for the purposes of

constructing the Kitale Aerodrome.

On 14/3/1961, the Government declared the parcel of land, which it had acquired from the Council, to be an Aerodrome.

Thereafter, on 10/12/1993 the Commissioner of Lands wrote to the Director of Aerodromes, seeking his confirmation that the Director's Department would relinquish a portion of the land, so that the same could be allocated to Major General S.K. Kipsaita.

Mr. B.A. Omuse, the then Managing Director of Kenya Airports authority, wrote back to the Commissioner of Lands, saying that whilst the Commissioner was considering the site recommended for allocation to Major General S.K. Kipsaita, he should also consider the Authority's request for the acquisition of additional land for Kitale Airport. Mr. Omuse's letter is dated 28/12/1993.

Although it is not clear from the material already before the court, whether or not the Commissioner of Lands did simultaneously consider the recommended allocation to Major General Kipsaita, at the same time as the request by the Authority for more land, the next action which has been disclosed to the court is that on 30<sup>th</sup> August, 1994, a letter of allotment was issued to Major General S.K. Kipsaita.

It is the applicant's case that the respondents herein, who are the legal representatives of the estate of the late Major General Stephen Kimnyamis Kipsaita, never accepted the letter of allotment.

Instead, the applicant's investigations have revealed that the respondents have been paying the stipulated stand premium sporadically, through Mr. Luke Obiri.

The Stand Premium cited in the letter of allotment is Ksh. 760,000/=, whilst the Land Rent was stated as being Ksh. 152,000/=.

According to the applicant, their investigations have revealed that todate, only Ksh. 251,650/= had been paid. That being case, there was still an outstanding balance of Ksh. 599,070/=.

Pursuant to the express terms of the letter of allotment;

***“If acceptance and payment respectively are not received within the said thirty (30) days***

*from the date hereof the offer herein contained will be considered to have lapsed.”*

In the face of that term of the letter of allotment, if, as the applicant says, the respondents have not yet paid the Stand Premium in full, it would appear that the offer had lapsed.

Secondly, as the title document has still not yet been issued, I hold the considered view that the interests of justice demands that there issue a prohibitory order, as prayed for in the Originating Motion. By so doing, the property which is the subject matter of the investigations would be preserved.

If however, the respondents feel that the order in question was oppressive or un-warranted, there right to seek an appropriate relief as provided for by statute.

In granting this order, I am guided by the fact that an Aerodrome is for public use. In other words, the land in question was to have been put to public use. However, if it were allowed to pass over into the hands of a private citizen of this country, that would be contrary to the reasons for which it had been acquired.

Accordingly, it is now ordered that there shall issue forthwith a prohibition directed at the Respondents jointly or severally, by themselves, or through their agents, servants or any other person, from transferring, disposing of, wasting, charging or in any other way dealing with the parcel of land, L.R. No. 21808, which is situated in Trans Nzoia district, Kitale Municipality, for a period of six months. The

Respondents and any other persons whom the applicant may deem to be interested in the subject matter of this action, are to be served within the next TEN (10) DAYS.

Costs are awarded to the applicant.

Dated and Delivered at Kitale, this 25<sup>th</sup> day of June, 2007.

**FRED A. OCHIENG.**

**JUDGE.**