



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Misc Appli 16 of 2007

KENYA ANTI-CORRUPTION COMMISSIONPLAINTIFF

V E R S U S

VIBCO LIMITEDDEFENDANT

R U L I N G

This is an application (by originating motion dated 11th July 2007) by the **KENYA ANTI-CORRUPTION COMMISSION** (hereinafter called “the Applicant”) under section 56 of the **Anti-Corruption and Economic Crimes Act, No. 3 of 2003** (hereinafter “the Act”). Under sub-section (1) of that section, this court may, on an *ex parte* application by the Applicant, 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**”.

“**Corrupt conduct**” is defined in sub-section (7) of the same section as:-

- “(a) Conduct that constitutes corruption or economic crime, or
- (b) Conduct that took place before this Act came into operation and which:-
- (i) at the time, constituted an offence; and
- (ii) if it had taken place after this Act came into operation, would have constituted corruption or economic crime.”

“**Corruption**” and “**economic crime**” are themselves fully defined in section 2 of the Act.

An order under section 56 of the Act may be made against

“**a person who was involved in the corrupt conduct or against a person who subsequently acquired the property**” (sub-section (2)).

Finally, for the purposes of the application before the court, such an order:-

“**shall have effect for six months and may be extended by the court on the application of the (Applicant)**” (sub-section (3)).

The Applicant seeks against the Respondent, **VIBCO LIMITED**, an order to prohibit the transfer of, or other dealings with, the following properties:-

- (i) **L.R. NO. 22169 (Grant No. I.R. 71343)**
- (ii) **L.R. NO. 22170 (Grant No. I.R. 71331)**
- (iii) **L.R. NO. 22177 (Grant No. I.R. 71340)**
- (iv) **L.R. NO. 22179 (Grant No. I.R. 71333)**
- (v) **L.R. NO. 22180 (Grant No. I.R. 71341)**

for a period of six months from the date of the order. There are two supporting affidavits. The first one is sworn by one **YUVINALIS ANGIMA**, an investigator, duly appointed, working with the Applicant. To it are annexed many and varied documents. The second supporting affidavit is sworn by one **PETER JAMES KAMWARA**; he describes himself as “the Head of Forest Survey and Mapping in the newly inaugurated Kenya Forest Service ... established under the Forests Act, 2005”. He further states that prior to that appointment he was the head of the survey and mapping section within the Department of Forestry working under the Director of Forestry. There are three documents annexed to this affidavit.

I have carefully considered the submissions made by the learned counsel for the Applicant. I have also closely perused the two supporting affidavits and the documents annexed thereto. It emerges from the evidence placed before the court that the parcels of land the subject-matter of this application, are, among many others, sub-divisions of land parcel L.R. No. 12835 (Grant No. I.R. 37653). This parcel of land which measured 26.251 hectares was hived off Karura Forest in the northern parts of the City of Nairobi. Karura Forest was, and still is, a gazetted forest. It appears, *prima facie*, that in de-gazetting this portion of the forest the strict provisions of section 4 of the Forests Act, Cap. 385 (since repealed and replaced by the Forests Act, 2005) were not complied with. That section provided in the material portion:-

“4(1). The Minister may, from time to time, by notice in the Gazette-

- (a) ...
 - (b) **declare the boundaries of a forest and from time to time alter those boundaries;**
 - (c) **declare that a forest area shall cease to be a forest area.**
- (2) Before a declaration is made under paragraph (b) or paragraph (c) of sub-section (1), twenty-eight days’ notice of the intention to make the declaration shall be published by the Minister in the Gazette.”**

Parcel L.R. No. 12835 was allotted to a company called **CHRISTIAN EDUCATION DEVELOPMENT OF KENYA**

ED and a grant issued to it. The purpose of the allotment stated in the grant was

“for the erection of a secondary school, the school playing fields, houses for the accommodation of teachers, employees”, etc.

It is the Applicant’s case that no secondary school was ever built; instead the parcel of land was sub-divided into 35 residential plots which were subsequently disposed of to various companies and other entities and new grants issued.

It is the Applicant’s further case that, the portion in question of Karura Forest not having been formally de-gazetted, it is still part of the forest within the meaning of the Forests Act, Cap. 385 (since repealed)

and the new Forests Act, 2005. The Commissioner of Lands therefore did not have any authority in law to alienate land comprised in a gazetted forest.

Having carefully perused the material placed before the court, I am satisfied that the alienation of the portion of Karura Forest comprising land parcel L. R. No. 12835 (Grant No. 37653) was, *prima facie*, unlawful, and the grant issued to Christian Education Development of Kenya Limited was, again *prima facie*, unlawful. It follows that the subsequent sub-divisions of this land and the alienation of the resulting parcels, were also unlawful. There is evidence that all these alienations were done fraudulently and in circumstances reeking of corruption and abuse of office; they evidently were in breach of the law.

I am thus satisfied that the properties the subject-matter of this application were acquired as a result of corrupt conduct. I will therefore allow the application and grant the prohibitory order sought. Costs of the application will be reserved pending any further proceedings herein. There will be orders accordingly.

There are before me some six other similar applications. They are:-

- (i) **HC Misc. Appl. No. ELC 8 of 2007.**
- (ii) **HC Misc. Appl. No. ELC 9 of 2007.**
- (iii) **HC Misc. Appl. No. ELC 10 of 2007.**
- (iv) **HC. Misc. Appl. No. ELC 11 of 2007.**
- (v) **HC. Misc. Appl. No. ELC 12 of 2007.**
- (vi) **HC. Misc. Appl. No. ELC 15 of 2007.**

All the parcels of land in these applications are also sub-divisions of the same original parcel, **L. R. No. 12835 (Grant No. 37653)**, that has featured in the present application. The same prohibitory order is sought in all the applications.

For the same reasons as contained in this present ruling, I will grant the prohibitory orders sought in all those other applications. The same order as to costs will also obtain there. It is so ordered.

DATED AT NAIROBI THIS 19TH DAY OF JULY 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 20TH DAY OF JULY 2007