



REPUBLIC OF KENYA

HIGH COURT OF AT NAIROBI (MILIMANI LAW COURTS)

MISC APPLI 21 OF 2007

KENYA ANTI-CORRUPTION COMMISSIONAPPLICANT

V E R S U S

GIGIRI COURT LIMITEDRESPONDENT

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, **GIGIRI COURT LIMITED**, an order to prohibit the transfer of, or other dealings with, the parcel of land known as title No. **Nairobi Block 91/386** 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 four 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 material placed before the court that title No. **Nairobi Block 91/386** has the following history:-

- (a) On or about 9th January, 1997 one **Hon. John Joseph Kamotho** applied for an allocation to himself of a parcel of land known as **Nairobi Block 91/130** measuring approx. 2.505 hectares situated in Gigiri area of Nairobi. In his application he claimed that the land was vacant Government land which was not reserved for any particular purpose. The truth, however, was that the land had been reserved for use by the **Kenya Technical Teachers College**, a public institution.
- (b) The said parcel of land was consequently allocated to the said Hon. Kamotho by the Commissioner of Lands.
- (c) The allocation was however subsequently replaced with an allocation of land measuring 2.50 hectares within Karura Forest upon realization by the Commissioner of Lands that parcel No. **Nairobi Block 91/130** was reserved for the Kenya Technical Teachers College and therefore not available for alienation.
- (d) In addition, Hon. Kamotho obtained an allotment to himself of a portion of parcel No. **Nairobi Block 91/130** measuring approx. 0.566 hectares, which was incorrectly said to be an unsurveyed plot.
- (e) The two parcels of land, that is the 0.566 hectares excised from parcel No. **Nairobi Block 91/130** and the 2.50 hectares of the land within Karura Forest were subsequently surveyed and consolidated into one parcel known as **Nairobi Block 91/333** measuring approx. 3.310 hectares. This parcel was then informally transferred to the Respondent by Hon. Kamotho. It is said that Hon. Kamotho had a majority share- holding in the Respondent.
- (f) About 1995 parcel No. **Nairobi Block 91/333** was re-surveyed by a private surveyor; the re-surveyed plot increased in size and resulted in the suit parcel of land, **Nairobi Block 91/386**, measuring approximately 7.11 hectares.

It is the Applicant's case:-

- (i) That the 0.566 hectares excised from land parcel **Nairobi Block 91/130** was irregularly and unlawfully allocated to Hon. Kamotho as no part of that parcel of land was available for alienation, the whole of it having been reserved for use by the Kenya Technical Teachers College.
- (ii) The allocation of 2.50 hectares of land hived off from Karura Forest to Hon. Kamotho was also irregular and unlawful as the strict requirements of section 4 of the Forests Act, Cap. 385 (since repealed and replaced by the Forests Act, 2005) were not complied with.
- (iii) For the same reason, the alienation of a further 3.80 hectares of land from Karura Forest and allocation of the same to the Respondent was also irregular and unlawful.
- (iv) Therefore, part of the consolidated parcel, **Nairobi Block 91/386**, which is the suit parcel of land, was irregularly and unlawfully acquired by Hon. John Joseph Kamotho and subsequently and unlawfully transferred to the Respondent; the other part was irregularly and unlawfully acquired by the

Respondent. All this is because the Commissioner of Lands did not have any authority in law to alienate land reserved for use by the Kenya Technical Teachers College; further, the alienation of the Karura Forest land was breach of the Government Lands Act, Cap. 280 and the Forests Act, Cap. 385 (since repealed and replaced).

Having carefully perused the material placed before the court, I am satisfied that the alienation of the two portions of Karura Forest comprising land parcel title No. **Nairobi Block 91/386** was, *prima facie*, unlawful, and the allocation of the same to Hon. Kamotho was, again *prima facie*, unlawful. The excise of a portion of land parcel No. **Nairobi Block 91/130** was also, *prima facie*, unlawful for not being in compliance with the law. There is evidence that all these alienations and transactions 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 property the subject-matter of this application, being land parcel No. **Nairobi Block 91/386**, was 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.

DATED AT NAIROBI THIS 19TH DAY OF JULY 2007

H. P. G. WAWERU

J U D G E

DELIVERED THIS 3rd DAY OF JULY 2007