



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

MISC CIVIL APPLI 735 OF 2007

REDCLIFFE HOLDINGS LIMITED.....PETITIONER

Versus

MINISTER FOR LIVESTOCK & FISHERIES DEVELOPMENT..1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

RULING

Before me is the Chamber summons dated 10th July 2007 brought pursuant to Rules 20 and 21 of the Constitution of Kenya (supervisory Jurisdiction and Protection of Fundamental rights and Freedoms of the Individual) High Court Practice and procedure Rules, 2006. The Petitioner/Applicant has filed a Petition, also dated 10th July 2007, under Section 84 (1) of the Constitution in which several orders of prohibition are sought. In the Chamber Summons, the Applicant seeks interim orders to the effect that the court do give a prohibitory order restraining the 1st Respondent by himself or his agents from trespassing upon or repossessing and, or damaging or wasting or interfering with the Petitioner's quiet and peaceful enjoyment of all those properties known as LR No. 21073/2, 21073/3, 21073/4, 21073/5, 21073/6, 21073/7, 21073/8, 21073/9, 21073/10, 21073/11, 21073/12, 21073/13, 21073/14, 21073/15, 21073/16, 21073/17, 21073/18, 21073/19, and 21073/20, pending hearing interpartes and 2ndly an order restraining the 1st Respondent from interfering with the said properties pending hearing and determination of the petition filed herein.

The Chamber summons is supported by grounds found on the face of the Application and a Supporting Affidavit sworn by Hilary Bwire, Director of the Petitioner company. It is the Petitioner's case that they are the proprietor of LR No. 21073 which was subdivided into the 19 parcels listed above, after approval by the Commissioner of Lands. That in May 2007, following instructions of the Minister for Livestock, the Director of Veterinary Services was allowed to demolish or pull down all structures erected on the suit premises to create passage for their livestock to the grazing grounds. That they destroyed the fences, beacons and the 1st Respondent issued a 14 days notice on 27th June 2007 to all persons claiming ownership of the land LR No. 189 R to the effect that those titles were null and void and that the same is Government Land set aside for the Department of Veterinary Services. The Petitioner has established that the suit property forms part of LR 189 R and so the 1st Respondent's notice would affect them and that is what has prompted this Application. The Applicant fears that acts of trespass by the Respondent may be committed against the Applicants properties and their rights under S. 75 of the Constitution will be contravened if a conservatory order is not issued.

Mr. Atanda opposed the Application based on the grounds of opposition filed in court on 30th October 2007 in which he contends that the Application is premature, misconceived and bad in law and that it offends provisions of Order 53 rule 3(2) of the Civil Procedure Rules. Mr. Atanda submitted that all parties to these proceedings have not been served. That it is the Ministry of Lands which issued the titles and should have been enjoined to these proceedings as a party.

The Applicant has exhibited a copy of the title in respect of LR 21073, (HB 1), issued on 1st July 1995 which is said to have been subdivided to produce the other 19 parcels listed in the prayers in the chamber Summons. Correspondence between the Applicant, the Commissioner of Lands and City Council of Nairobi does confirm that the Applicant applied for subdivision of the said land and the same was granted.

I have also noted the letter from Ministry of Lands dated 27th February 2007 where the Director of Surveys in reply to the Applicants Application for subdivision in which he indicated that they had no objection to the subdivision subject to the plot **NOT** constituting part of the disputed public utility allocations. Apparently the subdivisions went ahead on 11th April 2007 and a certificate of title was issued by the Ministry of Lands on 25th April 2007.

From the notice issued by the Minister of Lands on 27th June 2007, whose contents are that there should be no interference with LR 189 R, and which the Applicant admits, 21073 forms part thereof, there obviously is a dispute over the ownership of the disputed plots, as to whether the land belongs to the Applicant or the Government. The letter of 27th February 2007 from the Director of Survey seemed to suggest that there was some dispute over public utility allocations.

There being a dispute as to ownership, the question is whether such an Application can be determined in a Constitutional Application before the rights of the parties are determined in a Civil Court.

Though the Applicant contends that the land is part of LR 189 R, they have not enjoined the Ministry of Lands to these proceedings. It is only the Ministry of Lands, and the Commissioner of Lands who can clarify how LR 189 R, a Government Land, which was set aside for the Department of Veterinary Services in 1963 vide Legal Notice 751 came to be allocated to the Applicant. To clear all issues surrounding the title that is disputed, it is only the Ministry of Lands or Commissioner of Lands who can clarify and should have been made party to this Application as it is the Commissioner of Lands who issues titles to parties and keeps all records pertaining to land in this country and who can therefore trace the history of the land in issue to the present date.

For a conservatory order to issue, the principles prerequisite to the grant of injunctions do apply; that one has to demonstrate that they have a prima facie case; that if the order is not granted, the Applicant will suffer irreparably, and if the court is in doubt, the matter be decided on a balance of probability.

I have noted above that the ownership of the suit land is in dispute and it was imperative upon the Applicant do join the proper parties who have a claim to the disputed land or the Commissioner of Lands who did the allocation of the land to the Petitioner and show how the titles came to be issued to the Applicant.

Will the Applicant suffer irreparably? The notice issued on 27th June 2007 was supposed to take effect on 11th July 2007. It is unknown whether it has taken effect or not. If it took effect, It is unclear who would suffer irreparably if a conservatory order were to issue.

In light of the above, I am of the view that the Petitioner/Applicant do join all the parties that may be affected by the orders of this court to these proceedings and the Petition can then proceed to full hearing for the determination of all the issues raised. The Chamber summons is brought prematurely and therefore, this court declines to grant any conservatory order at this stage and hereby dismiss the Chamber Summons with costs being in the cause.

Dated and delivered this 20th day of November 2007.

R.P.V. WENDOH

JUDGE

Read in the presence of:-

M/s Keruba for Applicant

Mr. Meme Kerori for Respondent

Daniel: Court Clerk