



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Case 196 of 2003

1. Land and Environmental Law Division

2. Civil Practice and Procedure

i) Subject of main suit land

LR 209/12829

LR 1870/1193

3. That the said suit against the 3rd defendant be struck out.

Application opposed.

The Government had no legal capacity to allocate the land.

5. Held: Striking out should be done in very clearest circumstances applicant.

Application refused

6. Application dismissed

7. Case law – nil

8. Advocate:

B.N. Simiyu of Iseme Kamau & Co. Advocates for the defendant/applicant – present

J.W. Mwaniki for holding brief for L. Muiruri for Attorney General the 1st and 2nd defendant/Respondent – present.

S. Ritho of S.K. Ritho & Co. Advocates for the 3rd defendant - absent

FRANCIS JOHN WANYANGE.....PLAINTIFF

VERSUS

COMMISSIONER OF LANDS1ST DEFENDANT

DIRECTOR OF PHYSICAL PLANNING2ND DEFENDANT

RIVER VIEW PLAZA LIMITED3RD DEFENDANT

RULING

1. The application before court dated 12 July 2005 has been pending in these court corridors for 2 years. The said applicant 3rd defendant prays that he be struck out from the suit on grounds that there is no grounds that there is no cause of action against him. That a dispute really remains between the defendant 1 and 2 being the Government of Kenya

nts and the plaintiffs.

2. In this case the respondent plaintiff object to the striking out of the suit. The government of Kenya had no capacity through the Commissioner of Land and the Director of Physical Planning to allocate original LR 1876/1/193 to further sub-division which was intended for a road reserve. That sub division was unconstitutional and should not therefore be permitted. The reasons that the third defendant was allocated the land secretly is unknown.

3. The plaintiff/respondent will seek orders of declaration that the allocation of land was illegal and unconstitutional.

I: Finding

4. In a striking out application there must be in the clearest circumstances. No doubt arising in a matter to show that the 3rd defendant are not part of this land.

5. In this case it is imperative that if the plaintiff is successful in his case against the Government of Kenya it would mean the holder of title are required to be effected by orders of the court.

6. I reject this application to strike out the 3rd defendant from this case.

7. I award no costs to the plaintiff/respondent and defendant 1 and 2 not to be paid by the 3rd defendant because the plaintiff was absent at the reading of this ruling.

Dated this 15th day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

B.N. Simiyu of Iseme Kamau & Co. Advocates for the defendant/applicant – present

J.W. Mwaniki for holding brief for L. Muiruri for Attorney General the 1st and 2nd defendant – present.

S. Ritho of S.K. Ritho & Co. Advocates for the 3rd defendant - absent