



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC APPEAL NO. 8 OF 2017**

**FRANCIS KASUKU NZIOKI & 50 OTHERS.....APPELLANTS**

**VERSUS**

**THE NATIONAL LAND COMMISSION**

**THE KENYA RAILWAYS CORPORATION**

**THE ATTORNEY GENERAL.....RESPONDENTS**

**AND**

**CHINA ROAD AND BRIDGE CORPORATION (K)...INTERESTED PARTY**

**RULING**

What is before court for determination is the Interested Party’s Notice of Motion dated the 13<sup>th</sup> August, 2019 brought pursuant to Order 10 Rule 10 (2) of the Civil Procedure Rules as well as Sections 1A, 1B including 3A of the Civil Procedure Act. The Interested Party seeks to be struck out of this appeal and be awarded costs. The application is premised on the grounds on the face of it and the supporting affidavit of JOSEPH GITAU its Liaison Officer where he explains that the Appeal herein seeks to challenge the awards made by the 1<sup>st</sup> Respondent for the compulsory acquisition of the Appellants’ land at Emali Trading Centre. He contends that the Interested Party does not have an identifiable stake, legal interest or duty in the proceedings as it does not have a role in the process of acquisition of land for public purposes including the compensation or Award made thereafter. Further, it will not be affected in any way by the Appeal in particular the relief that may or may not be granted by the court depending on whether it finds for or against the Appellants. He explains that the 1<sup>st</sup> Respondent at paragraph 56 of the Appeal pleaded that it is the 2<sup>nd</sup> Respondent that is undertaking the construction of the Standard Gauge Railway. He insists the Interested Party is a disclosed agent of Kenya Railways Corporation for purposes of construction of the Standard Gauge Railway Line.

The Respondents though duly served did not oppose the instant application.

Further, it is only the Interested Party/Applicant that filed written submissions.

**Analysis and Determination**

Upon consideration of the Notice of Motion dated the 13<sup>th</sup> August, 2019 including the supporting affidavit and the submissions, the only issue for determination is whether the Interested Party should be struck off of this Appeal and who should bear its costs.

The Interested Party in its submissions reiterated its claim and insisted that it is the National Land Commission responsible for compulsory acquisition of land in accordance with the provisions of Part VIII of the Land Act. It contends that it has no role in the process and is hence not a necessary party in this suit. To buttress its averments, it relied on the case of **Victor Mabachi & Another Vs Nurtun Bates Limited (2013) eKLR**. To decipher whether the Interested Party is a suited party or not in this appeal, I wish to make reference to Order 1 Rule 10(2) of the Civil Procedure Rules which provides that:’ **(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.**’

Black's Law Dictionary 10<sup>th</sup> Edition defines an Interested Party as follows: ' **A party who has a recognizable stake (and therefore standing) in a matter.**'

In this instance, it is not in dispute that the Interested Party was an agent of Kenya Railways Corporation. In the Memorandum of Appeal dated the 30<sup>th</sup> April, 2015, the Appellants have not indicated the role played by the Interested Party in respect to the dispute herein. From a reading of Part VIII of the Land Act, it is quite clear that it is actually the National Land Commission responsible for compulsory acquisition of land for public purposes and payment of compensation to the affected parties.

In the case of *Anthony Francis Wareheim t/a Wareheim & 2 Others vs. Kenya Post Office Savings Bank, Civil Application Nos. Nai 5 & 48 of 2002*, at page 10, the Court of Appeal held that:

**“It was also prima facie imperative that the court should have dismissed the respondent’s claim against the second and third appellants for they were impleaded as agents of a disclosed principal contrary to the clear principal of common law that where the principal is disclosed, the agent is not to be sued. Furthermore, the court having found on the evidence that the second and third appellants were principals in their own right and not agents of the first appellant in the transaction giving rise to the suit, it should have dismissed the suit against the first appellant who had been sued as the principal.”**

See also the case of *Victor Mabachi & Another Vs Nurtun Bates Limited (2013) eKLR*.

Since no party opposed the instant application and while relying on Order 1 Rule 10 (2) of the Civil Procedure Rules and the authorities cited above, I find that the Interested Party’s presence before the court is not necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit. Further, the mere fact that the dispute herein relates to compulsory acquisition and with Kenya Railways Corporation including National Land Commission having been sued as Respondents, I opine that there is no prima facie evidence to prove that the Interested Party indeed played a role in the dispute herein.

In the circumstances, I will proceed to strike it off the Appeal.

On the issue of costs, insofar as I find that the Interested Party is entitled to costs, however since this is a matter revolving around compulsory acquisition of land, and with the Interested Party having been an agent for Kenya Railways Corporation. Further, I note that the National Land Commission being the government agency mandated to lead in the said process, I will direct that the Respondents be responsible for the costs of the Interested Party and not the Appellants herein.

It is against the foregoing that I find the application dated 13<sup>th</sup> August, 2019 merited and will allow it.

**Dated Signed at Delivered Virtually at Kajiado this 11<sup>th</sup> Day of February, 2021.**

**CHRISTINE OCHIENG**

**JUDGE**