



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC SUIT NO. 1035 OF 2016

SIMANDI INVESTMENTS LIMITED.....PLAINTIFF

-VERSUS-

ROSALINE NJERI MACHARIA.....DEFENDANT

RULING

What is before this court is the plaintiff's application dated 11th December, 2020 seeking the following orders;

- a. Spent;
- b. That the National Land Commission be enjoined as interested party in the suit.
- c. That Kenya National Highway Authority be enjoined as interested party in the suit.
- d. That this Honourable be pleased to grant an injunction barring and/or staying the release of any compensation by the National Land Commission on behalf of Kenya National Highway Authority to the defendant/respondent herein by herself, her servants, gents and/or employees in respect to compulsory acquisition of the land known as L.R No.209/11293/1 pending the inter-parties hearing of this application and/or further orders of the Honourable Court,
- e. That this Honourable be pleased to grant an injunction barring and/or staying the release of any compensation by the National Land Commission on behalf of Kenya National Highway Authority to the defendant/respondent herein by herself, her servants, agents and/or employees in respect to compulsory acquisition of the land known as L.R No.209/11293/1 pending the hearing and determination of the main suit.
- f. That the costs of the application be provided for.

The applicant's case:

The application was brought on the grounds set out on the face thereof and on the affidavit and supplementary affidavit sworn by the plaintiff's director, Simion Nyamanya Ondiba on 11th December, 2020 and 29th January 2021 respectively. The plaintiff (hereinafter referred to only as "the applicant") contended that it was the registered owner of all those parcels of land known as L.R No. 209/21698 measuring 2.9640 Ha. and L.R No.209/21699 measuring 0.725 Ha. (hereinafter referred to as "the applicant's parcels of land") which resulted from the subdivision of a parcel of land known as L.R 209/11293/1 (hereinafter referred to only as "the suit property").

The applicant contended that the defendant also claimed ownership of the suit property and that, determination of the dispute between the applicant and the defendant over the ownership of the suit property was the subject of this suit that had been fixed for hearing on 15th April, 2021. The applicant contended that on behalf of the Kenya National Highway Authority (KENHA), the National Land Commission (NLC) published notices in the Kenya Gazette of 4th September, 2020(Gazette Notices No.6601 and 6602) of its intention to acquire the suit property compulsorily for Nairobi Expressway Road Project. The applicant contended that in the said notices, NLC indicated that the defendant was the owner of the suit property who was entitled to claim compensation in respect thereof.

The applicant contended that it was necessary in the circumstances to join NLC and KENHA as interested parties in this suit to enable the court to effectually and conclusively adjudicate on all the issues arising out of the dispute over the suit property. The applicant contended that none of the parties to this suit would be prejudiced by the joinder of NLC and KENHA to the suit as interested parties.

The applicant contended that unless the orders sought were granted, there was an imminent risk of NLC paying out to the defendant compensation in respect of the suit property while the issue of its ownership was pending determination before this court. The applicant contended that it would be prejudicial to the applicant if the compensation money was released to the defendant before the hearing and determination of this suit.

The applicant averred that it was fair and just that the payment of compensation in respect of the suit property be put on hold pending the hearing and determination of the suit herein. The applicant averred that it had responded adequately to the averments in the defendant's affidavit in reply and that the veracity of the issues raised therein would be tested at the trial.

The defendant's case.

The application was opposed by the defendant/respondent through grounds of opposition dated 16th December, 2020 and replying affidavit sworn on 11th January, 2021. In her grounds of opposition, the defendant challenged the jurisdiction of this court to entertain the applicant's application. The defendant contended that this court had no jurisdiction to determine disputes over interests or rights over land subject to compulsory acquisition. The defendant contended that that jurisdiction lies with the Land Acquisition Compensation Tribunal established under section 29(2) of the Land Acquisition Act and that the applicant had already lodged a complaint with the said tribunal over the issues raised in the present application.

The defendant contended that the applicant could come to this court only by way of an appeal from the decision of the said tribunal. The defendant contended further that the applicant had sought orders against KENHA and NLC which were not yet parties to this suit. The defendant contended that the applicant had filed a similar application which was dismissed by the court for failure to disclose a prima facie case. The defendant contended that the applicant was a known land fraudster and that its director had been charged with forging documents in a bid to acquire the suit property fraudulently.

In her replying affidavit, the defendant exhibited her documents of title in respect of the suit property and called upon the court to examine the case put forward by the applicant and her defence thereto to establish whether the applicant had established a case with a probability of success. The defendant averred that she was the genuine owner of the suit property and that the title held by the applicant was obtained fraudulently. The defendant averred that she purchased the suit property from Kenya National Chamber of Commerce and Industry (KNCCI) in 1994 and the same was registered in her name on 27th April, 1995.

The defendant averred that she had owned the suit property since 1995 and had even charged the same and there had been a long standing dispute over the property which was the subject of Milimani HCCC No. 938 of 2000, Rosaline Njeri Macharia v Guardian Bank Limited and Kingsway Motors Kenya Limited. The defendant averred that the original title for the suit property was held by Guardian Bank Limited and reiterated that the title held by the applicant in respect of the property was fraudulent.

The defendant contended that the applicant's title to the suit property was obtained 20 years after her title and that she had occupied the suit property since 1994. The defendant contended further that she had constructed a hotel on the suit property known as City Cabanas which she had operated since 1995. The defendant contended that the compensation that she was supposed to receive from NLC was for both the land and her business on the suit property and that she would be highly prejudiced if the orders sought were granted.

The submissions.

The court directed the parties to file skeleton submissions to be highlighted orally. The defendant filed skeleton submissions while the applicant did not do so. At the hearing of the application, the applicant made oral submissions while the defendant highlighted her written submissions. The applicant's advocate Mr. Arusei reiterated the contents of the affidavits filed by the applicant in support of the application. He submitted that there was an ownership dispute between the applicant and the defendant in respect of the suit property. He submitted that whereas the applicant held titles to L.R No. 209/21698 and L.R No. 209/21699 (the applicant's parcels of land) in respect of the suit property, the defendant held title to L.R No. 209/11293/1 in respect of the same property. He submitted that there was a serious conflict between the parties regarding the ownership of the suit property. Mr. Arusei submitted that in the circumstances, it was important that the status quo be maintained pending the determination of the dispute. In support of this submission, Mr. Arusei cited the case of Ougo & another v Otieno [1987] KLR 364 where the court stated that where there are serious conflict of facts, the court should maintain the status quo until the dispute is determined at the trial.

He submitted that the issue of the ownership of the suit property was yet to be determined and that the applicant had a prima facie case with a probability of success. Mr. Arusei submitted that if the subject matter of the suit was not preserved, it will be put beyond the reach of the applicant. Mr. Arusei also cited the case of Munyu Maina v Hiram Gathiha Maina [2013] eKLR, and submitted that where the root of a title is under challenge, it is not sufficient for the holder thereof to dangle the document of title as proof of ownership. He submitted that the defendant was under a duty to prove how she acquired the title in respect of the suit property. He submitted that the search showing that the suit property was owned by the defendant was issued in 1998. He submitted that there were serious issues to be tried in the suit and that it was only fair if the orders sought were granted pending the determination of the said issues. He urged the court to allow the application with costs.

As I have mentioned earlier, the defendant filed skeleton written submissions. In her written submissions, the defendant submitted that the applicant had not established a prima facie case with a probability of success and that it stood to suffer irreparable injury if the orders sought were not granted. The defendant submitted further that even if the application was considered on a balance of convenience, the same did not tilt in favour of the applicant. The defendant cited among others, Munyu Maina v Hiram Gathiha Maina (supra), Giella v Cassman Brown & Company Limited [1973] E.A 358, Nairobi House Ltd. v Lennah Catherine Koinange [2019] eKLR, Mrao Ltd. v American Bank of Kenya Ltd & 2 others [2003] KLR, Nubian Rights Forum v Nubian Rights Forum Trustees of Kibra Community Land Trust (Interested Party) [2019] eKLR in support of her submissions. The defendant submitted that she was the genuine owner of the suit property and that the titles held by the applicant in respect of the property were fraudulent. The defendant submitted that the applicant's claim was based on forged and fraudulent documents. The defendant submitted that the applicant had neither occupied nor developed the suit property. The defendant

submitted that it would be highly prejudicial to grant an injunction against a legitimate owner of the suit property. The applicant submitted that she had been forced to close down her restaurant business on the suit property as a result of the intended compulsory acquisition of the property by the government and that if the orders sought were granted, she would close down her business without compensation.

The defendant submitted that the applicant would not suffer any injury if the orders sought were not granted. The defendant submitted that whereas she had occupied the suit property since 1994 and had a hotel thereon known as City Cabanas, the applicant had never occupied the suit property neither had it invested thereon. The defendant submitted that she was entitled to compensation both for the land and for the business that she had been running on the suit property and that she stood to lose both if the orders sought were granted. The defendant reiterated that the applicant's managing director was a known land fraudster and that he was facing criminal charges over the purported acquisition of the suit property.

In his oral submission, the defendant's advocate Mr. Ochieng Oduol submitted that the issue that had been raised in the applicant's application concerned land compensation. He submitted that there was Land Acquisition Tribunal that determines disputes arising during compulsory land acquisition and compensation. Mr. Ochieng submitted that any party dissatisfied with the decision of that tribunal has a right of appeal to this court. He submitted that the applicant's suit as pleaded was based on alleged acts of fraud on the part of the defendant in relation to the manner in which she acquired the suit property. He submitted that the issue of compensation was not raised in the pleadings. Mr. Ochieng submitted that this is the third suit that the applicant had filed on the same subject matter. He submitted that the applicant was seeking orders against persons who were not yet before the court. He submitted that the only title for the suit property was the one held by the defendant and that the defendant had given the history of her ownership of the suit property.

Mr. Ochieng reiterated that the compensation that was to be paid by NLC was for the loss of business and land. He submitted that the applicant was not doing any business on the suit property. He submitted that it would be unfair to stop the payment of compensation that was due to the defendant in the circumstances. He submitted that the affidavits on record show acts of fraud on the part of the applicant and that a court of equity cannot come to the aid of a fraudster.

In a rejoinder, Mr. Arusei submitted that fraud must not only be pleaded must also be strictly proved. He submitted that the court was yet to render a judgment on the acts of fraud alleged against the applicant. He submitted that the averments in the affidavits relied on by the defendant as a basis for the alleged fraud would be put to test at the trial where the deponents would be cross-examined on the same. He submitted that the issue of compensation only arose in 2020 and as such could not have been pleaded earlier. Mr. Arusei submitted that even if the applicant was a fraudster, it should be given its day in court.

I have considered the applicant's application together with the affidavits filed in support thereof. I have also considered the grounds of opposition and replying affidavit filed by the defendant in opposition to the application. Finally, I have considered both written and oral submissions that were made before me by the advocates for the parties. The following is my view on the matter. In its application, the applicant sought joinder of additional parties to the suit and injunction against the defendant and the said parties. Joinder of new parties to a suit would require amendment to the existing pleadings. The law on joinder of parties and amendment of pleadings is now settled. The rules do not provide for joinder of parties to a suit as interested parties. Under the Civil Procedure Rules, parties can be joined to a suit either as plaintiffs or defendants. I believe however that in appropriate cases, the court can join parties to a suit as interested parties. Since the applicant is seeking a substantive relief against NLC and KENHA, I am of the view that if grounds exist for doing so, they should be joined in the suit as defendants rather than as interested parties.

Order 1 rule 3 of the Civil Procedure Rules provides as follows:

“All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if separate suits were brought against such persons any common question of law or fact would arise.”

Order 1 rule 10 (2) and (4) of the Civil Procedure Rules on the other hand provides as follows:

(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.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

Order 1 rule 3 of the Civil Procedure Rules provides for the persons who may be joined as defendants in a suit while Order 1 rule 10(2) empowers the court to substitute and add parties to an existing suit like in the present case. In my view, under Order 1 rule 10(2) of the Civil Procedure Rules, the court can only join a person as a defendant to an existing suit in two instances; first, where such person ought to have been joined as a defendant under Order 1 rule 3 of the Civil Procedure Rules aforesaid and was not so joined and secondly, where the presence of such person before the court may be necessary in order to enable the court to adjudicate and settle all questions involved in the suit. The onus was upon the applicant to bring itself within the provisions of Order 1 rule 10(2) of the Civil Procedure Rules. After considering the issues raised in the affidavits in support of the application, I am satisfied that the applicant has met the threshold for joinder set out in Order 1 rule 10(2) of the Civil Procedure Rules. The applicant has demonstrated that the joinder of the proposed interested parties to this suit is necessary.

The applicant has demonstrated that NLC intends to acquire the suit property compulsorily on behalf of KENHA for the construction of the

Nairobi Expressway Road. The applicant has also demonstrated that NLC has identified the defendant as the owner of the suit property entitled to compensation. The applicant has demonstrated that it has challenged the title held by the defendant in this suit and that the issue as to who is the legitimate owner of the suit property as between the applicant and the defendant is yet to be determined by the court. The applicant has demonstrated that it is likely to suffer loss in the event that the compensation for the suit property is paid out to the defendant and it turns out at the trial that it is the lawful owner of the suit property. Whether KENHA and NLC can lawfully compensate the defendant for the suit property while a dispute is pending before this court over the ownership of the property is a triable issue as between the applicant, the defendant, KENHA and NLC. I am satisfied that the joinder of NLC and KENHA as parties to this suit would enable the court to adjudicate and settle all questions involved in the suit.

With regard to amendment of pleadings, the law is that applications for leave to amend should be allowed freely at any stage of the proceedings provided that the amendment or joinder as the case may be will not result in prejudice or injustice to the other party which cannot be properly compensated for in costs. See, Central Kenya Ltd. v Trust Bank Limited & 4 others, Court of Appeal at Nairobi, Civil Appeal No. 222 of 1998. The defendant has not convinced me that she will suffer any prejudice or injustice if NLC and KENHA are added to this suit as parties and the applicant is granted leave to amend the plaint to effect that joinder. In my view, the issues raised by the defendant in her replying affidavit touch on the merit of the defence that she has against the applicant's claim against her. I am satisfied that the applicant has established valid grounds for the joinder of NLC and KENHA to this suit and for the amendment of the plaint to effect that joinder.

With regard to the injunction sought against NLC and KENHA that will also affect the defendant, again the law is settled. In Giella v Cassman Brown & Co. Ltd.(supra), an applicant for interlocutory injunction must show a prima facie case with a probability of success and such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not be adequately compensated by award of damages. It was held further that if the court is in doubt as to the foregoing, the application would be determined on a balance of convenience. In Nguruman Limited v Jan Bonde Nielsen & 2 Others [2014] eKLR the court adopted the definition of a prima facie case that was given in Mrao Limited v First American Bank of Kenya Limited & 2 Others(supra) and went further to state as follows:

“The party on whom the burden of proving a prima facie case lies must show a clear and unmistakable right to be protected which is directly threatened by an act sought to be restrained, the invasion of the right has to be material and substantive and there must be an urgent necessity to prevent the irreparable damage that may result from the invasion. ...All that the court is to see is that on the face of it the person applying for an injunction has a right which has been threatened with violation...The applicant need not establish title it is enough if he can show that he has a fair and bonafide question to raise as to the existence of the right which he alleges. The standard of proof of that prima facie case is on a balance or, as otherwise put on a preponderance of probabilities. This means no more than that the court takes the view that on the face of it, the applicant's case is more likely than not to ultimately succeed.”

From the totality of the evidence before me, I am satisfied that the applicant has established that it has some issues to raise in this suit against the defendant and the proposed defendants in relation to the title held by the defendant and the compensation that the proposed defendants intend to make to the defendant for the suit property. I am not convinced however that a prima facie case with a probability of success has been established against the defendant and the proposed defendants. I have highlighted earlier in this ruling the applicant's case against the defendant. The applicant's case as pleaded is as follows: The applicant has contended that it is the registered proprietor of two parcels of land known as L.R No. 209/21698 and L.R No. 209/21699(the applicant's parcels of land) which are resultant subdivisions of L.R No. 209/11293/1(the suit property). The applicant has contended that the suit property was initially owned by Simon Nyamanya Ondiba and Mary Nyamanya t/a Mwanjambori Investments (the Nyamanyas) who subdivided the same to give rise to the applicant's parcels of land. The applicant has averred that the Nyamanyas acquired the suit property from the Kenya National Chamber of Commerce & Industry(KNCCI) on 19th July, 1994 at a consideration of Kshs. 60,000,000/- which they paid in full before the property was registered in their names. The applicant has averred that the defendant trespassed on the applicant's parcels of land in August, 2016 and started excavating the same for the purposes of erecting a perimeter fence around the same and also removing the top black soil. The applicant has averred that on several occasions, it attempted to enter the applicant's parcels of land with a surveyor with the intention of re-establishing their beacons but it was denied access by the defendant who claimed that the properties belong to her. The applicant has contended that the defendant has built a perimeter wall around the applicant's parcels of land without the consent or authority of the applicant who is the legitimate owner of the said parcels of land.

The applicant has averred that the NLC had investigated the dispute between the applicant and the defendant over the ownership of applicant's parcels of land and NLC's verdict was that the said parcels of land belonged to the applicant and that the defendant did not acquire the suit property from KNCCI as she claimed. The applicant has contended that KNCCI disowned the purported sale of the suit property to the defendant. The applicant has contended that the title held by the defendant in respect of the suit property was acquired illegally and unprocedureally and that it was not even clear as to how much the defendant paid for the property since the defendant alternated between Kshs. 45,000,000/- and Kshs. 24,000,000/- as the purchase price. The applicant has averred that the defendant has no valid title to the suit property and that she is a trespasser on the applicant's parcels of land.

The defendant's case as pleaded is as follows: The defendant has contended that she is the registered owner of the suit property and holds a title in respect thereof. The defendant has contended that the applicant is a sham and a fraudulent company that was incorporated with the sole aim of laundering a series of fraudulent transactions relating to the suit property. The defendant has contended that the title that was held by the Nyamanyas in respect of the suit property was a forgery and as such illegal. The defendant has contended that the applicant's director, Simion Nyamanya Ondiba is a known serial land fraudster and a forger of land title documents and that this case is one of his enterprises. The defendant has contended that the applicant's suit herein is a fraud upon the court and has been brought by the applicant for the illegal purpose of laundering a series of fraudulent transactions relating to the suit property in collusion and with the assistance of the NLC, Ministry of Lands, Survey Department and the Nairobi County Government.

It is clear from the foregoing that both the applicant and the defendant have some form of title over the suit property on which their respective claims to the property are anchored. They have both exhibited the said titles in their affidavits in support of and in opposition to the present application. The applicant has contended that the defendant's title is illegal and that the same was obtained fraudulently,

irregularly and unprocedurally. The defendant on her part has made similar allegations with regard to the titles held by the applicant. In Nairobi House Limited v Lennah Catherine Koinange [2019] eKLR that was cited by the defendant in her submissions, my brother Obaga J. stated as follows:

“In the instant case both the Applicant and the Respondent are laying claim to the suit property. Both titles have at different stages been subjected to investigations but what is clear is that in both cases no definite conclusion has been reached about the authenticity of either title. This being the case, it is not for this court to delve into details and examine the two titles as to say which one is the genuine one or not the genuine one. This is a matter best left for the main hearing....”

In Agip (K) Ltd. v Maheshchandra Himatlal Vora & others, Civil Appeal No.213 of 1999 the court stated that:

“In an application for injunction, the Court should not delve in substantive issues and make finally concluded views of the dispute before hearing oral evidence”.

In Narendra Chaganlal Solanki v Neepu Auto Spares Ltd, Kisumu High Court, Civil Case No.90 of 2003, the court stated that:

“In an interlocutory application for injunction, the Court must warn itself of the gravity of danger of making conclusive findings that may prejudice the interest of the parties at the hearing of the suit and should as far as possible exercise some cautionary steps”.

From the material before the court, I am unable to say which of the titles held by the parties is the genuine one. The determination of that issue must await the full hearing of the suit that is scheduled for 15th April, 2021 at which parties and their witnesses will give evidence and will be examined and cross-examined on the allegations that each has made on the pleadings and affidavits before the court. I am also unable for the same reasons to say that the applicant has established a prima facie case with a probability of success against the defendant and the proposed defendants. In Ougo and Another v Otieno (supra), that was cited by the applicant it was held that:

“the general principle is that where there are serious conflicts of facts, the trial court should maintain the status quo until the dispute has been decided at the trial.”

Although the applicant has not established a prima facie case with a probability of success for reasons that I have given and would in normal cases not be entitled to an injunction, I am of the view that this is an appropriate case in which the court should exercise its inherent jurisdiction to preserve the subject matter of the suit pending the hearing and determination of the suit.

In Kenya Power & Lighting Company Limited v Benzene Holdings Limited t/a Wyco Paints [2016] eKLR the court stated as follows:

“Section 3A of the Civil Procedure Act appears to have been introduced to augment the provisions of section 3, vesting in the courts inherent power to make any orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Of course this power has now been broadened by the introduction in 2009 of overriding objective in sections 1A & 1B and in 2010 by Article 159 of the Constitution.

The extent of inherent powers of the court was eloquently explained by the authors of the Halsbury’s Laws of England, 4th Edn. Vol. 37 Para. 14 as follows;

“The jurisdiction of the court which is comprised within the term “inherent” is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.” See also Meshallum Waweru Wanguku (supra)

This inherent jurisdiction is a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.”

It is common ground that NLC intends to acquire the suit property compulsorily on behalf of KENHA for the Nairobi Expressway Road Project and that the process of compensation has commenced. It is also common ground that for the purposes of compensation, NLC has identified the defendant as the owner of the suit property entitled to be compensated in respect thereof. It is common ground and I have demonstrated above that the ownership of the suit property is in dispute between the applicant and the defendant. It is also not disputed that if the suit property is compulsorily acquired and compensation paid to the defendant, the substratum of this suit would be lost and in the event that the applicant succeeds at the trial in proving that it is the legitimate owner of the suit property, both the land and the compensation would be beyond its reach. I am of the view that since NLC cannot be prevented from compulsorily acquiring the suit property for public purposes, justice would demand that the compensation payable in respect thereof be withheld from the parties pending the determination of the issue of ownership of the property.

The defendant has argued strongly that the compensation to be paid is for both the land and business she is undertaking on the suit property and that if the orders sought are granted, she will be forced to close down her hotel business without compensation. The applicant did not contest the fact that the defendant is running hotel business on the suit property and that compensation that is to be made by NLC would be for both the land and the business. Again in the interest of justice, I will not stop the payment of the whole compensation for the suit property to the defendant. I will limit the amount to be withheld to half of the total compensation so as to alleviate possible suffering by the defendant as a result of the closing down of her business on the suit property.

The defendant had raised several grounds against the grant of the orders sought. For the reasons that I have given, I do not think that it is necessary to consider all of them. I will only consider one or two. One of the grounds was that the orders sought cannot issue against NLC and KENHA since they are not parties to the suit. The compensation is payable by NLC. I have noted from the affidavit of service on record that the present application was served upon NLC. NLC had the opportunity to appear in court and oppose the application. They did not do so. I can see no reason why an injunction should not issue against them once they are added to the suit as a defendant. The defendant had also objected the grant of the orders sought on the ground that disputes over compensation in respect of land acquired compulsorily are supposed to be determined by the Land Acquisition Compensation Tribunal established under section 29(2) of the Land Acquisition Act, Chapter 295 Laws of Kenya (now repealed). I am not sure if the said tribunal still exist after the repeal of the Land Acquisition Act. Assuming that it does, my response to this contention is that the dispute before this court is not over compensation for the suit property but the ownership of the property. The said tribunal has no jurisdiction to determine a dispute over title to land. In any event, the dispute was already before this court when NLC expressed its intention to acquire the suit property. It follows therefore that even if the said tribunal could determine the issue of title to land, it could not do so in respect of the suit property in view of the existence of this suit.

In the final analysis and for the foregoing reasons, I will allow the applicant's Notice of Motion application dated 11th December, 2020 on the following terms;

1. National Land Commission and Kenya National Highways Authority are joined in this suit as 2nd and 3rd defendants respectively.
2. The plaintiff shall further amend its plaint within 7 days from the date hereof to effect the joinder.
3. The new parties shall be served with the further amended plaint together with the summons to enter appearance within 14 days from the date hereof
4. The defendant, Rosaline Njeri Macharia shall be at liberty to amend her statement of defence within 14 days from the date of service of the further amended plaint by the plaintiff.
5. Pending the hearing and final determination of this suit or further orders by the court, the National Land Commission and Kenya National Highways Authority shall withhold the payment of one-half (1/2) of the total compensation payable in respect of the compulsory acquisition of all that parcel of land known as L.R No. 209/11293/1 or any part thereof.
6. The costs of the application shall be in the cause.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF MARCH, 2021

S. OKONG'O

JUDGE

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

Ms. Tanui h/b for Mr. Arusei for the Plaintiff

Mr. Obuya h/b for Mr. Ochieng for the Defendant

Ms. C. Nyokabi-Court Assistant