



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. 6 OF 2018

(FORMELY PETION NO. 24 OF 2011)

IN THE MATTER OF ARTICLE 22 OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF THE CONTRAVENTION OF UNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 40,67
AND 64 OF THE CONSTITUTION**

AND IN THE MATTR OF SECTION 26 OF THE LAND REGISTRATION ACT, NO OF 20212

AND IN THE MATTER OF LAND REFERENCE NO. 24092 (GRANT NO. IR 79398)

BETWEEN

GALOT HOLDINGS LIMITED.....PETITIONER

VERSUS

KENYA AIRPORTS AUTHORITY.....1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULING

1. On 18.11.2021 the advocate for Petitioner urged the court to adopt the consent dated 1.9.2021 as an order of the court. The same is executed by advocates for the Petitioner and 1st Respondent.
2. The advocates for the Interested Parties opposed this move averring that they know nothing about the consent.
3. The court gave directions for the issue of the consent to be canvassed via written submission of which the Interested Party was to file and sever their submissions by 25.11.2021. The Petitioner was to file its submissions by 2.12.2021. These directions were varied by the court on 6.12.2021 as the Interested Parties filed their submissions late. The Petitioners were given extension to file their submissions by 13.12.2021 but they did not. The court also stated that documents filed without directions from the court shall not be considered. To this end, the affidavit filed by one Mohan Galot dated 2.12.2021 shall not be considered.
4. The objection to the consent as framed by the Interested Parties is that though being an integral parties in this petition, they were neither included nor involved into negotiations towards the settlement of the petition. They contend that they have proprietary interests in the suit property in that they were the registered owners of the suit property as at 3.12.2001 but the land was unlawfully and fraudulently transferred to the petitioner on 27.2.2007. They further state that the effect of the consent is that petitioner would be recognised as the lawful proprietor of the suit property and the issue would become moot thus barring the interested parties from forever contending otherwise.
5. To buttress their arguments, the interested parties have cited the case of **Presbyterian Foundation v Charles Ndungu & 3 Others 2016 eKLR** where Munyao J held that;

“On my part, I do not think a party who is not a party to a consent cannot apply to have it set aside. I am of the view that the provisions of Section 80 of the Civil Procedure Act are wide enough to accommodate such an applicant. It will be observed that

Section 80 allows any person aggrieved by a decree or order to apply for a review of the said Judgment....”

6. I have considered all the arguments raised and I find that the above cited case is quite distinguishable from the current case in that in the **Presbyterian Foundation case (supra)**, the interested party, (Dr Arthor P.C.E.A Parish) had made out a case as a necessary party at the time of being enjoined in the proceedings in year 2013. The court have also established that there was, a principal _ Agency relationship between the Interested Party and the Plaintiff.

7. In the current suit, though the Interested Party’s presence was felt as early as 19.5.2011 and 20.5.2011, there is no record as to how they joined these proceedings. On 19.5.2011 one Mr. Ambani just appeared for the Interested Parties while on 20.5.2011, Mr. Gikera appeared for the 1st Interested Party. More than 10 years down the line, the claim of the interested party is not anchored on any pleadings or primary documents. It is trite law that issues for determination in a suit generally flow from the pleadings – see **Galaxy Paints Company Ltd v Falcon Guards Ltd (2000) eKLR**. If this court was to grant the Interested Parties their wishes, how would the court determine their claim?

8. The bottom line is that this suit was initiated by the Petitioners. The Interested Parties appear to have simply banged into those proceedings in year 2011 without stating their claim.

9. It is rather late in the day for the Interested Parties to embark on advancing their claim via submissions during this eleventh hour. The objection raised by the Interested Parties is dismissed.

10. The consent recorded on 1.9.2021 is adopted as an order of the court. The suit is marked as settled with no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Wangu holding brief for Kago for the Petitioner

Ogutu for the 1st and 2nd Interested Parties

Shiundu holding brief for Lutta for the 1st Respondent

Court Assistant: Eddel Barasa