

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 1538 OF 2013

FLASH AUDIO SERVICES LIMITED.....PLAINTIFF

VERSUS

MBESA LIMITED.....1ST DEFENDANT

THE ATTORNEY GENERAL.....2ND DEFENDANT

RULING

The National Land Commission (NLC) in the application dated 19/2/2018 seeks to join these proceedings as an Interested Party and to file responses to the suit within 21 days. It also seeks to be granted an opportunity to call witnesses, cross examine witnesses and make submissions at the hearing of the suit. NLC states that it is the custodian of all records relating to the alienation of Government land. The Suit Properties being L.R. No. 1870/1/186 and L.R. No. 1870/1/544 emanated from processes undertaken by NLC's predecessor in title, the Commissioner of Lands. NLC claims that it has a stake in these proceedings and it would be directly affected by the court's decision and that it therefore ought to be allowed to participate in these proceedings.

In the supporting affidavit of Abdulkadir Adan Khalif, he enumerates various processes and transactions undertaken in relation to the suit parcels on which it needs to shed light. They include whether the suit land was transferred to the Defendant, whether the lease over the Suit Properties expired by effluxion of time without any extension and whether the allocation of the Suit Properties to the Plaintiff was proper.

The Plaintiff's director, James Gichuki Wambugu swore the affidavit in opposition to the application. He averred that NLC is a mere interloper and a busy body in this dispute without any conceivable interest. He averred that the Suit Properties are purely private land. He challenged the capacity of the Deponent to swear the supporting affidavit. The director made other allegations to the effect that the 1st Defendant has attempted to waylay the Plaintiff's directors while armed. The Plaintiff concludes in the affidavit that the application has been made at the behest of the 1st Defendant.

Parties made oral submissions. NLC relied on Order 1 Rule 10 (2) of the Civil Procedure Rules which allows the court to join an interested party to a suit. NLC argued that its involvement in the suit is necessary to enable the court to effectively and completely adjudicate all the issues before it in relation to the suit land. The Plaintiff relied on Section 20 (4) of the NLC Act on the power of the secretary and the secretariat and urged that a Commissioner of NLC has no power to swear an affidavit and no authority to act individually.

The court has considered the rival arguments and it is satisfied that NLC ought to be joined as a party in order to enable the court effectually and completely adjudicate upon the issues involved in this suit.

The court allows the application dated 19/2/2018. NLC will be added as the 3rd Defendant to the suit. NLC is directed to file and serve its pleadings and documents within 21 days.

The costs of the application shall be in the cause.

Dated and delivered at Nairobi this 5th day of October 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Thuita for the Plaintiff

Mr. A. Kamau for the 2nd Defendant

Mr. V. Owuor- Court Assistant

No appearance for the Applicant and the 1st Defendant