



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 254 OF 2015

JOHN LAGAT.....1ST PLAINTIFF
ROBERT LANGAT.....2ND PLAINTIFF
KENNETH KOSIMBEL.....3RD PLAINTIFF
CYRUS KILONZI.....4TH PLAINTIFF
JEFY RONO.....5TH PLAINTIFF
PROF. EDWARD TANUL.....6TH PLAINTIFF

VERSUS

NAFTALI KABERU.....1ST DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)...2ND DEFENDANT

AND

MOSES RUTO.....PROPOSED INTERESTED PARTY

RULING

(Application to be enjoined as interested party; suit being one to stop construction of a slaughterhouse on certain land; applicant having sold that land to the defendant; no connection between the applicant and the suit property or the slaughterhouse; application dismissed).

1. The application before me is that dated 18 January 2016 filed by one Moses Ruto, who seeks to be enjoined to this suit as an interested party. The application is opposed by the plaintiff.
2. By way of background, this suit was commenced through a plaint which was filed on 16 September 2015. In the plaint, the plaintiff pleaded that the 1st defendant, with authority from the 2nd defendant, is illegally constructing a slaughter house. It is his case that the slaughterhouse is a health hazard as it will make the neighbourhood inhabitable owing to smell from bowels and blood of slaughtered animals. It is also claimed that the slaughterhouse is next to a stream thus a danger to the ecosystem.
3. The position of the 1st defendant is that he is constructing the slaughterhouse on his own parcel of land, which is described as Njoro/Njoro Block 4/1537. He has averred that a public hearing was held by the 2nd defendant, the National Environmental Management Agency (NEMA), and the project given a clean bill of health. He has asserted that he has the requisite EIA licence to proceed with the project.
4. The proposed interested party/applicant, has stated in his application, that he is the one who subdivided his land and sold a portion of it, the land parcel No. 1537, to the 1st defendant. He has stated that the original parcel of land was registered as Njoro/Njoro Block 4/1568 (Belbur). He later subdivided this land to produce the land parcels Njoro/Njoro Block 4/1537, 1538, 1580-1616 (Belbur). He has mentioned that he sold two parcels being the parcel No. 1537 and 1538 to the 1st defendant and that he is in the process of selling the other subdivisions. He has averred that he urgently needs to dispose of these subdivisions so as to raise money to raise education fees for his children. He has stated that there are pending orders which affect his rights to sell off the other parcels of land hence the need to come into the case.

5. The plaintiff has filed Grounds of Opposition, to oppose the application. Inter alia, it is contended that the applicant has not demonstrated what interest he has in these proceedings as the issue at hand is the slaughterhouse and not the proprietary rights of the applicant.

6. I have considered the matter, alongside the quite well researched submissions of Ms. Ogange, learned counsel for the applicant. I regret however, that I am not persuaded to allow this application, and it is indeed not necessary for me to write a very elaborate ruling on it.

7. My main reason for not allowing this application is that I see absolutely no connection between the subject matter at hand, which is the construction of a slaughterhouse within the land parcel No. 1537, and the proprietary interest that the applicant may have over other parcels of land within the area. What the plaintiff is attempting to stop is the construction of a slaughterhouse which is in the defendant's land and not any of the parcels of land that the applicant owns. I do not see how the applicant stands to be affected, irrespective of whether this court allows or dismisses the plaintiff's case. Indeed, the applicant lost all interest in the disputed land after he sold it to the 1st defendant. He has not purported to claim that he has a stake in the slaughterhouse being constructed so that he is directly affected by the litigation. His interest, which he has clearly elaborated, is over parcels of land which are not the subject of this litigation. I see absolutely no basis for allowing the applicant to come on record as an interested party. He has no interest in the subject matter of the suit and he will add no value to these proceedings. On the contrary, he is only going to overburden this case for no reason at all.

8. It is for the above reasons, that I decline to allow this application and proceed to dismiss it with costs to the plaintiffs.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 3rd day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In the presence of :-

No appearance on the part of M/s Konosi & Co. Advocates for the applicant.

Mr. Makori holding brief for Mr. Oumo for the plaintiffs.

No Appearance on the part of M/s Ikua Mwangi & Co. for the 1st defendant .

No Appearance on the part of the 2nd defendant.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

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