



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO.335 OF 2017

HARJI GOVIND RUDA.....PLAINTIFF/RESPONDENT

-VS-

1. NATIONAL LAND COMMISSION

2. KENYA NATIONAL HIGHWAY AUTHORITY (KENHA)

3. REGISTRAR OF TITLES MOMBASA

4. ABEID HAKIM ABEID.....DEFENDANTS/RESPONDENTS

AND

NAZIR AHMED KASSAM SULEIMAN.....INTERESTED PARTY/APPLICANT

RULING

1. For determination is the Notice of Motion dated 29th November, 2019 seeking the following orders:

1. Spent

2. Spent

3. That this honourable court be pleased to enjoin the intended interested parties herein KAHINDI CHARO KALUME & 16 OTHERS in the instant proceedings

4. That costs of this application be provided for.

2. The application is based on grounds on the face of the motion and supported by the affidavit of Kahindi Charo Kalume sworn on 29th November, 2019. The applicants aver that they are the legal and beneficial owners of the property known as CR. NO.8815/25 being subdivision number 2712 (Original Number 387/3) Section v mainland north. The applicants aver that they secured ownership of the said property following a successful prosecution of ELC No.194 of 2010 (OS) Mombasa where judgment was pronounced in their favour and they were awarded 36.75 hectares out of the said land. A copy of the judgment dated 30th October 2014 in Mombasa ELC No.194 of 2010 (OS) has been annexed. The applicants aver that part of the said land measuring 2.1846 hectares has since been compulsorily acquired by the National Land Commission, the 1st defendant herein on behalf of the Kenya National Highway Authority, the 2nd defendant, for the construction of the Mombasa Southern Bypass Road and Kipevu Terminal Link Road and the applicants have been offered the sum of Kshs.39,779,500 as compensation. It is the applicants' contention that the plaintiffs and the defendants have no claim over the suit property and the applicants seek to be enjoined in this suit to enable the court establish the rightful owners of the suit plot. The applicants aver that unless they are enjoined in the suit, public funds will be lost as compensation due will fall into the wrong parties. The applicants aver that they formed a self-help group known as HUDZIMANYA FARMERS SELF HELP GROUP and have been operating on the said land before they were granted ownership. The applicants have annexed copies of the Certificate of Registration of the said Self-Help Group, Sketch and Survey Maps and the proposed award.

3. In opposing the application the Interestd Party filed a replying affidavit sworn by Nazir Ahmed Kassam Suleiman on 14th July, 2020. It is his contention that the applicants have approached this court in bad faith and with unclean hands for being in contempt of the order issued by Mukunya J on 30th October 2014 wherein the court directed the applicants to return back 5.5 acres. A copy of the ruling in Mombasa ELC

Misc. Appl.No.41 Of 2018 has been annexed. The Interested Party avers that by the time the applicants obtained title on 30th April, 2015, the land had already been acquired by the government pursuant to Gazette Notice dated 24th January 2014. Copies of the said Gazette Notice and Applicants' title have also been annexed. The Interested Party avers that when the property was acquired, it belonged to him and was not available to the applicants by way of adverse possession adding that the land was empty and denied that the applicants were settled on it. The Interested Party avers that the award referred to by the applicant is probably a fraud. The Interested Party further avers that title MN/V/2618 and MN/V/1514 were later revoked and/or expunged from the records by the Director of Surveys since the leaseholds were illegally acquired, the same having been issued on an existing freehold.

4. The 4th defendant opposed the application and filed grounds of opposition dated 24th November, 2020, on the grounds that the application is unfounded and ungrounded; that the applicants have not annexed a current search of the suit property showing the current registered owner of the land; that the 1st defendant has upheld the title of the 4th defendant and that the applicants have not met the threshold for joinder.

5. The application was canvassed by way of written submissions. I have considered the application, the responses and the submissions made. The main issue for determination is whether the applicants should be joined into these proceedings. Order 1 Rule 10 of the Civil Procedure Rules gives the court discretion to order the name of a person who ought to be enjoined whether as plaintiff or defendant, or whose presence before the court may be necessary to enable the court effectively and completely adjudicate upon and settle all questions involved in the said suit.

6. In this case, the applicants aver that they are the legal and beneficial owners of the suit property. The applicants aver that they secured ownership of the property vide a judgment in Mombasa ELC No.194 of 2010 (OS). A copy of the said judgment has been exhibited. In my view, the applicants have demonstrated that they have an interest in the suit property. There is no denial that there was another case being Mombasa ELC No.194 of 2010 (OS) in which a portion of the suit land was awarded to the applicants. I am therefore of the view that the application is meritorious.

7. The upshot is that the Notice of Motion dated 29th November 2019 is allowed. The applicants herein, Kahindi Charo Kalume and 16 others are hereby enjoined in these proceedings as interested parties. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 7TH DAY OF JULY 2021.

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C.K. YANO

JUDGE

In the presence of:

Mwangunya holding brief for Malombo for 4th defendant

Borona for plaintiff and holding brief for Oloo for applicant

Ms. Moraa holding brief for Anyeka for 2nd defendant

Ms. Kiti holding brief for Mwandeje for 3rd defendant

Court Assistant – Yumna

C. K. YANO

JUDGE