



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT THIKA

ELC CASE NO 63 OF 2018

ELIZABETH MUTHONI HUSSEINPLAINTIFF

=VERSUS=

VIKESH JINIT SHAH.....DEFENDANT

BY WAY OF COUNTER CLAIM

VIKESH JINIT SHAH.....PLAINTIFF

=VERSUS=

ELIZABETH MUTHONI HUSSEIN.....1ST DEFENDANT

DIRECTOR OF SURVEY OF KENYA.....2ND DEFENDANT

REGISTRAR OF TITLES.....3RD DEFENDANT

KIAMBU COUNTY GOVERNMENT.....4TH DEFENDANT

NATIONAL LAND COMMISSION.....5TH DEFENDANT

ORDER

1. This matter came up for hearing on 4/11/2021. The plaintiff in the primary claim did not attend court to prosecute her suit. The defendant did not attend in person but attended through his advocate and led evidence by his agent (Property Manager). The primary suit by the plaintiff was dismissed for non attendance and the defendant’s counterclaim was heard. The court subsequently scheduled the matter for judgment on the defendant’s counterclaim today. While reading the file in preparation for judgment-writing, the court noted that the suit property was previously surveyed as **Land Reference Number 4953/2144**, measuring 4.000 hectares. It currently bears **Title Number Thika Municipality Block 6/2**. Secondly, the parallel allotment letters being waved by the plaintiff and the defendant relating to the said property bear business names as the allottees. Similarly, the parallel leases which the two rival parties presented to the court bear business names as the lessees.

2. The Director of Land Administration and the Chief Land Registrar, both from the Ministry of Lands and Physical Planning, were neither joined as parties to this suit nor called as witnesses. It is the view of the court that the two officers are relevant parties who will enable the court to effectually and completely adjudicate upon and settle all questions involved in this suit.

3. Consequently, the court hereby invokes **Order 1 rule 10(2)** of the **Civil Procedure Rules** and issues the following orders:

a. The Director of Land Administration and the Chief Land Registrar, both from the Ministry of Lands and Physical Planning, are hereby made interested parties to this suit.

b. The said Officers shall attend court on a date to be set for the purpose of presenting to the court the relevant correspondence file and the relevant deed file (parcel register) relating to Thika Municipality Block 6/2 [formerly Land Reference Number 4953/2144] and confirm to the court whether indeed allotment letters and leases were processed and issued to any of the business names.

c. The order reserving this matter for judgment is hereby vacated.

d. The Court Registry shall serve this order together with the relevant hearing notices on the two Officers in the Ministry of Lands and Physical Planning and on the Hon Attorney General.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 10TH DAY OF DECEMBER 2021

B M EBOSO

JUDGE

In the presence of: -

Ms Kamunya for the Defendant

Court Assistant: Lucy Muthoni