



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

CIVIL SUIT NUMBER 573 OF 2017

ETHICS & ANTI-CORRUPTION COMMISSION.....PLAINTIFF

-VERSUS-

WILSON GACANJA & 10 OTHERS.....DEFENDANT

-AND-

NATIONAL LAND COMMISSIONINTERESTED PARTY

Ruling

Background

1. The Plaintiff/Applicant filed a suit against the Defendants/ Respondents in which it sought recovery of LR No. 209/5581 (suit property) on behalf of Nairobi City County which is the successor of Nairobi City Council. The suit property had been designated as a children's playground and the special conditions in the grant provided that the grantee was not to subdivide, sell, transfer, sublet or part with possession of the suit property or any part thereof. In contravention of the special conditions, the town clerk of Nairobi city council unprocedurally revoked the special conditions which then paved the way for subdivision of the suit property which was then allocated to some of the Defendants/Respondents. The suit property was later transferred to the 11th Defendant which irregularly caused the subdivisions to be amalgamated.

2. In the Complaint, the suit property was erroneously described as being owned by the University of Nairobi. This is what prompted the Applicant to file an application dated 12th September 2019 which seeks leave to amend the Complaint to show the correct parties.

The Application.

3. The Applicant contends that there were minor errors in the Complaint which need to be corrected. The errors include the wrong description of the ownership of the suit property which was erroneously indicated as being owned by the university of Nairobi.

Opposition by 3rd Respondent

4. The Applicant's application was opposed by the 3rd Respondent through grounds of opposition dated 20th September 2019 and filed in court on the same day. The 3rd Respondent contends that there is no entity known as County Government of Nairobi and that the entity on whose behalf the Applicant seeks to recover the suit property has not been made a party to the suit and therefore the Applicant's application is incompetent.

Analysis

5. I have considered the Application by the Applicant as well as the opposition by the 3rd Respondent. I have also considered the oral submissions during the hearing of the application. The only issue for determination is whether, the Applicant has demonstrated grounds for grant of leave to amend. There is no doubt that the Complaint described the ownership of the suit property as being University of Nairobi. This was obviously an inadvertent error as the rest of the Complaint clearly shows that the suit property belonged to the City Council of Nairobi which is the predecessor of Nairobi City County.

6. The 3rd Respondent's contention is that the Applicant has sought leave to amend the Complaint in terms of the annexed draft. In the annexed draft, the entity on whose behalf the suit property is sought to be recovered is indicated at paragraph one (1) as being County Government of

Nairobi. It is the 3rd Respondent's contention that there is no entity known as county Government of Nairobi. This may be so but the truth of the matter is that there is need to amend the Plaint. it does not mean that if one has prayed for leave to amend the Plaint it terms of the annexed draft, that will be the prayer to be granted . Once leave is granted, the Plaint can always be amended to reflect the true description and cannot be tied down to the draft as annexed.

Conclusion.

7. The Applicant has mandate to recover property on behalf of public entities. There is no legal requirement that the entity on whose behalf a property is to be recovered ought to be made a party to the proceedings. I therefore find no merit in the opposition to the Applicant's Application. I allow the Applicant to amend the Plaint within 14 days from the date of this ruling to reflect the proper owner of the suit property. Costs of this application shall be in the cause.

It is so ordered.

Dated, signed and delivered at Nairobi on this 30th day of January 2020

E.O.OBAGA

JUDGE

In the presence of:-

M/S Okwara for the plaintiff/applicant

Mr. Ochola for Mr. Njenga for 3rd defendant.

Court Assistant: Hilda

E.O.OBAGA

JUDGE