



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAJIADO**

**CIVIL CASE NO. 43 OF 2018**

**ALTANA CORPORATIONS LIMITED.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**CLARENCE MATHENY LEADERSHIP**

**TRAINING INSTITUE.....DEFENDANT/RESPONDENT**

**NATIONAL LAND COMMISSION.....GARNISHEE/RESPONDENT**

**ETHICS AND ANTI CORRUPTION**

**COMMISSION.....INTENDED INTERESTED PARTY/APPLICANT**

**RULING**

The proposed Interested Party (Applicant) took out a notice of motion dated 6<sup>th</sup> February 2019 and filed on the same date, the application was moved under certificate of urgency, which is expressed under the provisions of Article 22 of the Constitution 2010, section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act, Order 1 Rule 10(2) of the Civil Procedure Rules and all other enabling provisions of the law. The application prayed for the following orders:

1. That the application be certified urgent and be heard ex parte at the first instance
2. That leave be granted to the Ethics and Anti-corruption commission to join in these proceedings as an interested party or in any other capacity as the court may deem fit to order
3. That the plaintiff/applicant, Altana corporations limited do serve the commission with all pleadings filed on its behalf and the Ethics and Anti-Corruption Commission be at liberty file pleadings in response thereto within such time frame and on such time frame and on such terms as the court may direct or order
4. That pending the hearing and determination of this application, this Honourable Court be pleased to stay its order made on 28/11/2018 and 4/2/2019 directing that the National Land Commission may pay to the defendant/respondent the undisputed amount of Ksh. 787,989,569 and deposit the disputed portion of the claim in joint interest earning account.
5. Pending the hearing and determination of fair value of the parcel of land subject matter of his application known as LR No. Ngong/Ngong/15559, this High Court review orders made on 28/11/2018 and 4/2/2019 and order that;
  - (a) Amount of 787,989,569 be deposited in a joint interest account or in the alternative be deposited in court
6. Cost of this application be provided for

The orders are premised on the following grounds;

1. Intended Interested Party is investigating allegations of irregular compensation of private land known as LR No. Ngong/Ngong/15559 by the NLC (hereinafter garnishee) to the defendant which compensation is the subject matter of the suit.
2. Intended Interested Party wishes to be enjoined in this matter and be heard on the issue of fair compensation value and the question of sanctity of the agreement for the purported consultancy fee

3. Unless the application I heard urgently and the orders sought are granted the parties are likely to use the court to enforce both a fraudulent compensation scheme and a consultancy contract predicted on crime.
4. Pending the hearing and determination of this application, this Honourable Court be pleased to stay its order made on 28/11/2018 and 4/2/2019 directing that the garnishee to pay to the respondent the undisputed amount of 787,989,569 and deposit the disputed portion of the claim in a joint interest account
5. It would be fair that pending hearing on the issue of fair compensation value and the question of sanctity of the agreement for the purported consultancy fee, this High court be pleased to review the orders made on 28/11/2018 and the amount Ksh. 787,989,569 be deposited in court
6. The subject matter touches on a public interest issue of irregular compensation of private land using public funds
7. Monies involved are public funds and it is important that the public pays that which is just and fair value for the land being compulsorily acquired. In the circumstances of this matter the intended interested party should be enjoined in this matter before payment is released by the Garnishee to the defendant or any other party.

Anne Murigi, a forensic investigator with the Intended Interested Party, sworn a supporting affidavit on 6/2/2019, she deponed that the commission received credible report of fraudulent compensation by way of exaggeration of compensation value in respect to private land known as LR No. Ngong/Ngong/15559, by the National Land Commission to the defendant, which compensation is subject matter of this suit. She further averred that the Intended Interested Party commenced investigations together with other investigators to ascertain the fair compensation value of the property. The deponent alleges that there was collusion amongst public officials undertaking valuation on behalf of Kenya Railways and the Garnishee on one part and the plaintiff together with the defendant on the other part, to inflate the value of the land which is the subject matter of this suit to the detriment of the public. The deponent further alleges that the amount of Ksh. 139,895,511 is not consultancy fees as claimed by the plaintiff but it is a bribe to public officers of the National Land Commission and Kenya Railways as a benefit of the exaggerated value. She avers that in the process of compulsory acquisition there is no need of consultancy services; process of compulsory acquisition should be statutory, open and transparent.

On the issue of the commission being enjoined in this suit as intended Interested Party, she avers that the parties are likely to use the court to enforce both a fraudulent compensation scheme and a consultancy contract predicted on crime. The monies involved being public funds; it is imperative that the public pays that which is just and fair value for the land being compulsorily acquired. The Intended Interested Party wants to be heard on the issue of fair compensation value and the question of sanctity of the agreement for the purported consultancy fee.

Pius Maithya, a Forensic Investigator with the Ethics and Anti-Corruption Commission, deponed a supplementary affidavit sworn on 6/2/2019. He deponed that commission received credible reports of fraudulent compensation by way of exaggeration of compensation value, in respect of private land known as LR No. Ngong/Ngong/15559 by the National Land Commission (hereinafter referred to as the Garnishee) to the defendant which compensation is the subject matter of the suit. In addition, he averred that the property was valued as at 5/2/2019 to be the sum of Ksh. 690,697,077; he annexed a valuation report as exhibit marked as "PM1".

Mr. Echesa, Learned Counsel for the defendant raised a preliminary objection on a point of law in opposition to the Intended Interested Party application dated 6/2/2019. There in the defendant states that by dint of Article 162(2) of the Constitution and Section 128 of the Land Act 2012, the High Court lacks jurisdiction to give any order in relation to determination of fair value of land as sought by application dated 6/2/2019. The dispute in relation to compulsory acquisition of land vests exclusively with the environment and Land /court by virtue of section 13(2) of the environment and Land Court Act, 2011. The defendant prayed for the court to strike out the application in limine.

The defendant's counsel took out his grounds of opposition filed on 7/2/2019, expressed under order 51 rule 14(1) of the Civil Procedure Rules, 2010; the following points were raised in opposition to the application dated 6/2/2019:

1. The subject matter before court does not relate to determination of quantum of compensation or determination of fair value of LR No. Ngong/Ngong/15559 with regard to which an order for joinder within the alleged Interested Party can substantively respond to pleadings filed herein;
2. No provisions of law have been cited in the application that empowers the court to examine and or grant orders affecting an award of compensation that by virtue of section 113 of the Land Act final conclusive and any questions thereon are to be exclusively determined by the Environment and Land Court by dint of section 128 of the Land Act and section 13(2) of the environment and Land Act.
3. The grant of order sought by the application dated 6/2/2019 to divert compensation for compulsory acquisition indefinitely and effectively render the defendant's land incapable of being possessed/compulsorily acquired in terms of section 120 and 125 of the Land Act any entry is in breach of Article 40(3) of the constitution
4. Grant of the prayers sought in the application seeks by effect to deprive the defendant of compensation on account of the expressed intention for compulsory acquire its land, thereby equitably there would be no legit basis for the arbitrary possession take over and entry upon the defendant's land until the rights under Article 45 of the constitution is upheld and compensation for compulsory acquisition paid to the defendant
5. Court has preciously determined that the undisputed amount of compensation is not within its jurisdiction, thus the grant of prayers sought by the present application would be contradiction and the same would render the court to be sitting on appeal of its own decision made on 28/11/2018

Mr. Elachi counsel for the defendant argued for his preliminary objection, he canvassed that the Intended Interested Party is concerned with valuation specifically prayer No. 5, hence the High court has no jurisdiction to deal with land matters. Learned Counsel expressed his view that quantum of compensation is to be redressed by the environment and Land court. This court was directed to the case of **Abdulla Akio & Others v Kenya Urban Roads Authority 2018 eKLR**: The court held that:

***“the authority of the court is determined by the existence or lack of jurisdiction to hear and determine disputes in essence jurisdiction is the first hurdle that a court will cross before it embarks on its decision making function.”***

Learned Counsel referred this court to section 13 of the environment and Land Court Act and the mandate has to be discharged, the orders being sought are in respect of the process of compulsory acquisition and right to private property. If there is an issue on the fair compensation they should move to the environment and land court and not was requested to down its tools and determination its jurisdictional issue. In conclusion, learned counsel prays for the court to uphold the objection to strike out the application dated 6/2/2019.

Mr. Muraya, Counsel for the Intended Interested Party argued against the preliminary objection, the nature of the application is directed to prayer No. 5 not determination of the value of the parcel of land. The application before court is joinder, in accordance to order 1 rule 10(2) of the Civil Procedure rules. The proposed Interested Party has an interest in the matter; the dispensation of the money is from public funds. He referred to the case of Republic v the National Land Commission Judicial Review No. 3 of 2015 where the members of Kokwembei community were allowed to join the suit as Interested Parties. The EACC has undisputed mandate of investigating misappropriated funds and if there is any bribery scheme in the consultancy agreement. The mandate of the EACC is undisputed, it has the power to investigate the compulsory acquisition done by the expenditure of the public fund; any abuse, misappropriation is indeed an offence under section 45 of the Anti-Corruption and Economic Crimes Act.

### **Analysis and Determination**

#### **Whether it is in the interest of justice for the applicants to be joined as Intended Interested Parties in relation to their application dated 6<sup>th</sup> February 2019.**

The governing procedure for joining an Interested Party is indicated by order 1 rule 10(2) of the Civil Procedure Rules, 2010, which contemplates an application for joinder of parties where proceedings are still pending before court, it provides that;

***“the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit be added.”***

Joinder of an Interested Party is clothed in Article 22 of the Constitution of Kenya which stipulates as follows: ***“22(1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened (2) in addition to a person acting in their interest, court proceedings under clause (1) may be instituted by –(a) a person acting on behalf of another person who cannot act in their own name (b) a person acting as a member of, or in the interest of, a group or class of persons; (c ) a person acting in the public interest; or (d) an association acting in the interest of one or more of its members.” 7(1) a court on its own motion join any interested person to the proceedings before it.”***

Rule 2 of the Constitution of Kenya (protection of rights and fundamental freedoms) practice and procedure rules, 2013 defines an interested party as; “a person or an entity that has an identifiable stake or legal interest or duty in the proceedings and may not be directly involved in the litigation.”

Further, legal notice 117 of 2013 provides that, ***“a person with leave of the court may make an oral application to be joined as an interested party or the court, on its own motion, may also be joined as an interested party to the proceedings before it.”*** Black’s Law Dictionary 9<sup>th</sup> Edition page 1132 defines an interested party; ***“A party who has a recognizable stake (and therefore standing) in the matter.”***

The proposed interested party was invited to this suit by the Director of public Prosecutions, who had received a letter of complaint dated 21/1/2019 by the defendant in this suit, wherein the defendant was aggrieved by an irregular interlocutory judgment entered by the Deputy Registrar at Kajiado. The Director of Public Prosecutions replied to the said letter on 21/1/2019 and copied the same together with a letter from the complainant and the legal representative of the complainant to the intended interested party. The intended interested party was seized of this matter and sought to be enjoined in this suit vide their application dated 6/2/2019.

The proposed interested party should demonstrate that, in joining these proceedings, it has an identifiable legal interest and their involvement will effectively and completely help this court adjudicate upon and settle all questions involved in the suit. This assertion was further discussed in the case of; **JMK v MWM & MFS Civil Appeal No. 15 of 2015 (Makhandia, Ouko, M’inoti, JJA** stated as follows:

***“Order 1 Rule 10(2) of the Civil Procedure Rules empowers the court, at any stage of the proceedings, upon application by either party or suo moto, to order the name of person who ought to have been joined or whose presence before court is necessary to enable the court***

Effectually and completely adjudicate upon and settle all questions involved in the suit to be added as a party. The section should be interpreted liberally and widely and should not be restricted merely to the parties involved in the suit, but all persons necessary for a complete adjudication should be made parties. See Sakar’s code of civil procedure (11th edition, reprint, 2011 vol. 1 page 887).

The court further cited the **Tanzanian case of Tang Gas Distributors Limited v Said and Others [2014] EA 44** which took to consideration their equivalent of order 1 Rule 10(2) of their Civil Procedure Rules as follows:

***“That the power of the court to add a party to proceedings can be exercised at any state of the proceedings, that a party can be joined even without applying, that the joinder may be done either before or during the trial, that it can be done even after judgement where damages are yet to be assessed; that it is only when a suit or proceeding has been disposed off and there is nothing more to be done that the rules become inapplicable and a party can even be added at the appellate stage”***

The breadth of the language in these decision and the provisions of the Civil Procedures Rules is clear. The court has a fundamental duty to do whatever it thinks appropriate in the interest of justice. In doing so the court analysis of the evidence before it is to determine whether the dominant purpose of the proposed interested party is to serve a collateral purpose or it is for the enforcement of the Rule of Law. The Rule of Law is out of the national values as set in Article 10 of the constitution which binds all state officers and organs like the National Land commission. The Article requires that the National Land commission in discharging its mandate under the constitution, or applies or interprets any law or makes or implements public policy decisions be bound by the National values and principles of government like integrity, transparency and accountability. Clearly this is a matter arising out of a compulsory acquisition of the 1st defendant parcel of land for the government to construct Standard Gauge Railway. At the moment there is an award payable to the 1st defendant but still lying in the account of National Land commission. At various levels, including this court the 1st defendant has attempted to access the funds due and in his favour with little success. However, the discussed contents from the affidavit of the interested party apparently impugns the award given to the 1st defendant. The intended party has alluded to in the suit papers that the requisite parameters applied in arriving at the award fall far short of transparency and accountability material to such claims

On analysis of the interested party application, they demonstrate legal interest in two issues, fair compensation value and sanctity of the agreement for consultancy fees. The interested party are of the view that the compensation scheme is fraudulent and the consultancy contract between the plaintiff and defendant is allegedly founded on crime.

They went further to invoke section 23 of the Anti-Corruption and Economics Crimes Act 2003, which grants the investigators at the commission powers to conduct investigations into complaints received at the Ethics and Anti-Corruption commission and make recommendations pursuant to such investigations. They also relied on Section 11(d) of the Ethics and anti-corruption Act, which mandates the commission to investigate and recommend to the director of public prosecutions, the prosecution of any acts of corruption or violation of the codes of ethics or other matters prescribed under the Act or any other Law enacted in pursuant to chapter 6 of the constitution.

In the instant case functions of the Ethics and Anti-corruption commission, the intended interested parties, are provided in Section 11 of the Ethics and Anti-Corruption Commission Act which states as follows:

- (1) In addition to the functions of the Commission under Article 252 and Chapter Six of the Constitution, the commission shall:
  - (a) In relation to state officers
    - (i) Develop and promote standards and best practices in integrity and Anti-corruption;
    - (ii) Develop code of ethics
  - (b) Work with other state and public offices in the development and promotion of standards and best practices in integrity and anti-corruption.
  - (c) Receive complaints on the breach of the code of ethics by public officers;
  - (d) Investigate and recommend to the Director of Public Prosecutions the prosecution of any acts of corruption, bribery or economic crimes or violation of codes of ethics or other matter prescribed under this Act, the anti-corruption and Economic Crimes Act or any other law enacted pursuant to chapter six of the constitution.
  - (e) Recommend appropriate action to be taken against state officers or public officers alleged to have engaged in unethical conduct;
  - (f) Oversee the enforcement of codes of ethics prescribed for public offers;
  - (g) Advice, on its own initiative, any person on any matter within its functions;
  - (h) Raise public awareness on ethical issues and educate the public on dangers of corruption and enlist and foster public support in combating corruption but with due regard to requirements of the Anti-corruption and Economic Crimes Act, 2003 No. 3 of 2003), as to confidentiality;
  - (i) Subject to Article 31of the constitution, monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and
  - (j) Institute and conduct proceedings in court for purposes of the recovery or protection of public property, or for the freeze or confiscation of proceeds of corruption or related to corruption, or the payment of compensation, or other punitive and disciplinary measures.

The proposed interested party have averred in their supporting affidavit and supplementary affidavit serious allegations of corrupt practices by the parties to this suit, they brought out practices such as; fraudulent compensation, bribery and abuse and misappropriation of public funds. Subject to the Ethics and Anti-corruption commission Act, they are provided with authority to investigate corrupt practices by public bodies and issues relating to protection of public property which are related to corruption.

I am of the view that the application to join as interested party is meritorious and in the interest of justice qualified to join as interested parties. The applicants have demonstrated to the court that they have an identifiable legal interest in the proceedings, and their participation to this suit will assist this court in adjudicating and settling all matters in relation to this dispute.

Allowing the interested party to join in the proceedings will be to give effect to Article 159 of the constitution on the principle of substantial justice without undue regard to technicalities of procedure. This will also accomplish the overriding objective as envisaged in the Civil Procedure Act, which is to facilitate just, expeditious, proportionate and affordable resolution of disputes.

In a case of this nature one can be mistaken to think that the plaintiff is being compelled to litigate with a party not of his own making. Indeed, it is understandable why the plaintiff and the defendant vigorously opposed the interested party being given any such audience with the court. From my analysis of the events since this claim was filed before this court in November, 2018, the public interest, in the orderly compulsory acquisition and payments made cannot just be wished away. It will be observed however that there is one key distinctive feature of this case to be served; the public interest in compulsory acquisition and economical utilization of tax payers money.

The interested party at the core of this dispute is the compulsory acquisition award. The interested party is claiming relief against the plaintiff and the defendants which arose from the series of transactions that led to the award entered in favour of the 1st defendant. In respect to the principle of equality of arms, the Ethics and Anti-corruption commission are allowed to join in these proceedings as an interested party.

Further, the court takes cognizance of the fact that the 1st defendant land has already been acquired by the Kenya Government for purposes of actuating one of key pillars on infrastructure development. Indeed, it is in the public domain that financing the flagship project of Standard Gauge Railway is depended upon international financing and other development partners who expect return for investment from citizens of this Republic. It would not serve the common public good if the project is delayed due to multiplicity of proceedings in our courts. It must be emphasized that at the end of it all the loser is the Kenya People who shoulder the burden of repaying the loans with interest. This makes it more compelling for the interested party to move with expediency and speed to effectively and completely determine the issue on the value of the property to bring this matter to a formal closure.

For my part a fair balancing test that has to be considered in the facts of this case is the nature of the right to private property protected under the constitution and the government interest to acquire such rights for infrastructural development. It is important when the exercise of compulsory acquisition has been fully accomplished the compensation due to the owners of property should be paid out expeditiously. This does not seem to be the case in this matter where the undisputed amount remains unpaid to this day.

### **Whether the Preliminary Objection is Sustainable**

The defendant raised a preliminary objection filed on 7th February, 2019 it was canvassed on the grounds of jurisdiction, specifically on the issue of compulsory acquisition of land. The essence of preliminary objection was given by JA Old Sir **Charles Hewbold P. In Mukhisa Biscuits Manufacturing Co. Ltd vs West End Distributors 1969 EA**, stated that;

***“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication of pleadings and which if argued as a preliminary point may dispose off the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by a contract giving rise to the suit to refer the dispute to arbitration. Further, a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any facts are to be ascertained or if what is sought is the exercise of judicial discretion.”***

The defendant is of the view that the High court should down their tools and discontinue proceedings on the basis of lack of jurisdiction in environmental and land matters. The High court and the Environment and Land Court have the same status but not of the same jurisdiction, as envisaged in Article 165(5) of the constitution of Kenya, 2010, states as follows;

The High court shall not have jurisdiction in respect of matters- (a) Reserved for the exclusive jurisdiction of the supreme court under this constitution; or falling within the jurisdiction of the courts contemplated in article 162 The jurisdiction of the High court and environmental, land court is anchored in article 162 of the constitution of Kenya, 2010 reads as follows; (2) Parliament shall establish courts with status of the High court to hear and determine disputes relating to: b) the environment, use and occupation, and title to land. (3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause 2.

Pursuant to clause 3 above, parliament enacted the Environment and Land Act No 19 of 2011. Section 13(2) of the said Act, sets out the jurisdiction of the ELC and provides as follows: (1) The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with article 162(2) (d) of the constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land; (2) In exercise of its jurisdiction under article 162(2) (b) of the constitution, the court shall have power to hear and determine disputes- (a) Relating to environmental planning and protection, climate issues, land use, planning, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources; (b) Relating to compulsory acquisition of land;(c) Relating to land administration and management (d) Relating to public, private and community land and contracts, choses in action or any other instrument granting enforceable interest in land; and (e) Any other dispute relating to environment and land.

Further section 128 of the Land act states that, ***“any dispute arising out of any matter provided for under this Act may be referred to the***

**Land and Environmental Court for determination.”**

The explanation of jurisdiction in respect to the High court and the Environment and Land court was discussed in detail in the Supreme Court case of **Karisa Chengo Jefferson Kengha and Kitiao Charo Ngati vs Republic (2015) eKLR**, the court acknowledged that the high court and the environment and land court are of the same status but not jurisdiction; status denotes hierarchy while jurisdiction covers the sphere of the court’s operation. Article 165(5) of the constitution precludes the high court from entertaining matters reserved to the jurisdiction of the Environment and Land court and the ELC cannot entertain matters reserved to the jurisdiction of the High court.

Following the above dictum, in the present case, jurisdiction of this court is challenged on the basis of compulsory acquisition which is a contested issue in this matter. The defendant’s suit land was earmarked for compulsory acquisition by the government for infrastructure development. The award to the 1<sup>st</sup> defendant by the National Land commission was to be released to relinquish any rights, title, interest and liens in respect of the suit land. The proposed interested party challenged the award given to the defendant by the national land commission claiming that the value accorded to the land was excessive and exaggerated denying the government value for money. However, as that may be the issue of compulsory acquisition is in the realm of the Environment and Land Court. I am in full agreement with the submissions by the 1<sup>st</sup> Defendant’s Counsel particularly on the observations made with regard with the legal threshold to be met by a registered owner of a property subject matter of compulsory acquisition. When a question arises as to the interpretation of the award and this efficacy the pursuer is ordained to file such proceedings at the ELC Court. I am therefore reluctant to get drawn into a discussion of tangential points of law while this action is not vested in this court.

Before I pen off I find it necessary to turn our attention to the origin of this suit which was commenced by way of a plaint on 2nd November, 2018. The plaint induced the following cause of action; (a) Breach of contract (b) Privity of contract (c) Consideration (d) Termination of a contract

The matter in contention in the main suit is the consultancy agreement entered into on 22nd May 2018, between Clarence Mathenya leadership training institute and Altana corporations limited, the plaintiff and defendant therein. The issue is that the plaintiff vide the consultancy agreement is entitled to 15.3% of the award given to the defendant by the National land commission. On the other hand, the defendant challenged the consultancy authenticity of the agreement; the defendant asserts that the consultancy agreement was procured through black mail, intimidation duress and threats by the plaintiff representative working in conjunction with the National Land Commission. Further, the defendant asserts that the plaintiff’s operations are in bad faith with the intention of extorting money from them. This court has inherent jurisdiction to hear the cause of action brought up in the main suit. Consequently, the only distinctive feature with the instant suit and the one intended to be filed by the Interested Party is a question on the interpretation of the consultancy agreement. I do not think however, that the court should have separated the contract arising out of the compulsory acquisition to rule out jurisdiction of the ELC Court.

**Decision**

Accordingly, considering the facts of this case and submissions by counsels the application by the Interested Party though belatedly filed succeeds in the followings respects: that the applicant be and is hereby added as an Interested Party in the current suit for it has demonstrated a direct and substantial interest in the matter which may affect them prejudicially in the event the proceedings commenced proceed without their participation. Their plea of joinder can be said to be a matter of necessity by virtue of the constitutional and statutory mandate. The preliminary objection by the 1<sup>st</sup> defendant in so far as joinder of party is concerned, lacks merit and is therefore dismissed.

Further, the Interested Party be and is hereby granted leave to be enjoined in the proceedings filed in this court in HCCC No. 43 of 2018 by the plaintiff as against the defendants. In the circumstances the plaintiff and the defendants do serve the Interested Party with all the pleadings, affidavits and material touching on their respective aspects of the claim. Further it is quite clear that this court has no jurisdiction to consider the parameters, guidelines, the Land Act Provisions and policy regulatory framework to come up with the best award and value for money with regard to LR No. Ngong/Ngong/15559. Nonetheless, the court has the power under the inherent jurisdiction to exercise discretion to preserve the substratum of the intended suit so as not to render it nugatory. The order on interim interdict of stay of release of the award shall be in existence for a period of 15 days as a condition for the Interested Party to approach the ELC Court. In the event the Interested Party fails to comply with the aforesaid order the temporary stay automatically lapses.

I am satisfied that it’s in the interest of justice to do so to stay the release of the amount pending the hearing and determination of the dispute. In order to assure the 1<sup>st</sup> defendant that the applicant is only motivated by a desire to achieve justice and not calculated to deny him the fruits of his award, the entire award be and is hereby ordered to be deposited at a joint earning interest account of the Interested Party and both counsels for the Plaintiff and the Defendant to the suit or in the alternative have the entire amount deposited with the Registrar of the High Court within 7 days from today’s date to monitor compliance with the above order is hereby scheduled on the 20<sup>th</sup> February 2019. Each party may be at liberty to apply. The costs of this application be in the cause.

**Dated, Delivered and Signed in Open Court at Kajiado this 14<sup>th</sup> day of February 2019.**

.....

**R. NYAKUNDI**

**JUDGE**

**Representation**

Mr. Muraya for EACC – Present

Mr. Echessa for the 1<sup>st</sup> Defendant – Present

Mr. Mbutia for National Lands Commission - Present