



**REPUBLIC OF KENYA.**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELC CASE NO. 10 OF 2017**

**MUMIAS TEACHERS HOUSING**

**CO-OPERATIVE SOCIETY LTD.....PLAINTIFF/REPOENDENT**

**VERSUS**

**ONYO WAZIRI.....DEFENDANT/APPLICANT**

**RULING**

The application is dated 16<sup>th</sup> September 2019 and is brought under section 1A, 3A of the Civil Procedure Act, Order 1 Rule 10 of the Civil Procedure Rule, Article 159 of the Constitution seeking the following orders:-

1. That the Land Registrar, Kakamega County, the National Land Commission and the Permanent Secretary, Ministry of Lands and the Honourable Attorney General be enjoined this suit.
2. That the plaint be amended to that effect.
3. That this honourable be pleased to give directions.
4. That costs of this application be provided for.

It is premised on the following grounds that the applicant is the legal representative of Abdi Waziri Omolo (deceased). That the deceased is the registered proprietor of L.R. No. S.Wanga/Lureko/1269 measuring approximately 0.14 ha. That the deceased bought the land from the late Mzee Hussein Mambo in 1993 and title deed subsequently issued. That the deceased conducted due diligence by conducting an official search on the suit land at the land's office at Kakamega. That the deceased appeared before the Land Control Board (an agent of the National Government represented here by the proposed defendants) who gave him consent to register himself as the owner of the suit land and subsequently the Land Registrar issued him a title deed which is conclusive proof of ownership. That the said title to the suit land was acquired legally as per the laid down procedures in the relevant land laws. That new evidence has emerged that there is a Task Force Report which indicates that the suit land was allegedly acquired by the government prior to the deceased's registration. That the proposed defendants are the custodians of all land records thus they ought to have been aware of the position of the suit land and therefore the applicant denies the alleged acquisition as at the time the deceased was buying the land. That after purchasing the land, the deceased embarked on serious developments by putting up a residential house, planting trees, connecting piped water and electricity and at no time was he ever stopped by the defendants or the proposed defendants. That the current value of the suit land and developments thereon is Ksh. 6,000,000/= (Six Million Shillings). That should the court find that the defendants are not culpable then it must find that the proposed defendants jointly and severally liable under the doctrine of misrepresentation and therefore they should fully compensate the applicant for all the developments thereon and settle her elsewhere. That the government was negligent in issuing the applicant with a title deed and is guilty of misrepresentation.

The respondent submitted that the plaintiff instituted the current suit against the defendant who is deceased on 19<sup>th</sup> January, 2017. That, upon reading the supporting affidavit and annexures which included all ownership and other supporting documents in favour of the plaintiff/respondent, this honourable court granted orders of injunction against the defendant/applicant on 20<sup>th</sup> January, 2019. That, it is therefore not true that there is new evidence that has emerged as the defendant/applicant has all along been seized of this information before he entered appearance and filed his replying affidavit dated 27<sup>th</sup> January, 2017 to their application dated 19<sup>th</sup> January, 2017. That on 28<sup>th</sup> February, 2019, the plaintiffs suit then proceeded for hearing after both parties had complied with the provisions of Order 11 of the Civil Procedure Rules 2010 with the County Government Surveyor, Mr. Ezekiel Nandwa adducing evidence that the suit land was government land procedurally and legally allocated to the plaintiff/applicant and fell within the perimeters of the land acquired by the government in Mumias town and which is currently being handled by the task force implementation committee. That, this honourable court clearly indicated that it cannot proceed to hear and adjudicate upon this matter and other related matters namely Kakamega ELC No. 106 of 2017 and Kakamega ELC No. 107 of 2017 affected by the same task force reported and the report of the District Land Registrar produced in court on 28<sup>th</sup> February, 2019 before the plaintiff's witness was stood down. That the defendant's advocate undertook to consult his client and the others in the above-mentioned related cases with a view of withdrawing them and placed a time wasting burden on this honourable court of mentioning the matters on 8/4/2019, 13/5/2019 and on 8/7/2019 when the defendant/applicant suddenly changed her mind to seek enjoining the proposed defendants.

This court has considered the application and the submissions therein. On perusal of the court record I find that on 28<sup>th</sup> February, 2019, the plaintiffs suit proceeded for hearing with the County Government Surveyor, Mr. Ezekiel Nandwa adducing evidence that the suit land was government land procedurally and legally allocated to the plaintiff/applicant and fell within the perimeters of the land acquired by the government in Mumias town and which is currently being handled by the task force implementation committee. That there is a caveat on the land. The court was of the view that it cannot proceed to hear and adjudicate upon this matter and other related matters namely Kakamega ELC No. 106 of 2017 and Kakamega ELC No. 107 of 2017 affected by the same task force and the report of the District Land Registrar

produced in court on 28<sup>th</sup> February, 2019 before the plaintiff's witness was stood down. A consent was entered that the interested party was to give the position of the said parcel of land which had been acquired by government. This position has never been given to this court and instead this application was filed. I find this is an abuse of the court process and hence I dismiss this application and costs to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED THIS 30<sup>TH</sup> DAY OF APRIL 2020**

**N.A. MATHEKA**

**JUDGE**