



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW APPLICATION NO. 18 OF 2016

NTARAGWI M'IKIARAAPPLICANT

VERSUS

COUNTY GOVERNMENT OF MERURESPONDENT

JACKSON MUNYUA MUTUERA.....INTERESTED PARTY

R U L I N G

This ruling partly touches on issues raised earlier on where by the Court gave a ruling on 18.10.17 allowing counsel for Exparte Applicant to cross examine Mr. Bikuri who had sworn an affidavit in his capacity as the ICT and planning CEC of the 1st Respondent.

It has emerged that Mr. Bikuri is no longer in service of 1st Respondent Counsel for Respondent prays that the lands administrator in the County Government be called for purposes of giving testimony.

Ex parte Applicant poses a question as to whether the new person will be cross examined on the affidavit of Mr. Bikuri.

An affidavit is personal is to the deponent. It would not be proper for a new person to be cross examined on the affidavit of Mr. Bikuri.

However, Mr. Bikuri swore the Affidavit of 02:05:17 in his official capacity as a C.E.C of 1st Respondent. I have taken judicial notice that there was a change of guard at the County Government after the August, 2017 General Elections.

It is therefore only fair and just that the new C.E.C be given an opportunity to advance the case of the Respondent and to be cross examined.

In the circumstances, I direct that the lands administrator in the County Government do swear his own affidavit as a response to the motion of 02.08.16 and he be cross examined on it.

The other issue raised by Ex Parte Applicant's Counsel touches on the Interested Party. He wants the Court to interpret the status of the Interested Party. It is averred by the Ex parte Applicant that where an Interested Party is served, he doesn't become a party. It is also averred that Jackson Munyua, the Interested Party is not affected by the orders the Exparte Applicant is seeking.

Counsel for the Interested Party avers that they are affected by the orders sought in this suit as the Interested Party has an interest in the suit Ntima/Igoki/2224.

Although I am not yet acquainted with the dispute in case No. 202/1995 which is apparently before me, I find that the record of this Court reveals a lengthy litigation history, traversing various legal forums. Some of the cases include CMCC Meru 164 of 1995 which became High Court 202 of 1995. It is between the present Exparte Applicant as the Plaintiff as against present Interested Party as the Defendant. The subject matter is Ntima /Igoki/2224. It follows that Jackson Munyua has an interest in the suit land. “the provisions of order 53 r (3) (2) of the Civil Procedure Rules states that “the notice shall be served on all persons directly affected.....”

Thus the Interested Party herein falls under the ambit of the aforementioned provision.

In ***Joseph Laboo & 2 others vs. Director Kenya Forest Services & Another ELC 273 OF 2012 ELDORET*** it was held that:-“.....so long as a person could demonstrate that he had a legitimate interest in the subject matter, there was little reason to deny such a person a joinder as an Interested Party....”

In light of the foregoing, I find that the Interested Party is a party who should enjoy all the rights and privilege accorded to a party in a suit. He has a right to file documents geared towards defending his interest. He has a right to legal representation. He can address the Court and he can make submissions before the Court.

I therefore rule that Jackson Munyua is properly before the Court as an Interested Party.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 6th FEBRUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

M. Kariuki for Interested Party present

E. Kimathi for Respondent present

Miss Mammu H/B for Kioga for Exparte Applicant present

HON. L. N. MBUGUA

ELC JUDGE