



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
COMMERCIAL AND ADMIRALTY DIVISION
MISCELLANEOUS APPLICATION NO. 314 OF 2015
IN THE MATTER OF ANTOW TRADING COMPANY LIMITED
AND
IN THE MATTER OF THE COMPANIES ACT
AND
IN THE MATTER OF AN APPLICATION BY JACOB KIKURU NGOLETUM,
MICHAEL LOBUIN NENEE, MAHMOUD CHEMWOR TARUS FOR AN ORDER
CHALLENGING THE RESTORATION OF THE COMPANY IN THE REGISTER
OF COMPANIES UNDER SECTION 339 OF THE COMPANIES ACT, CHAPTER 486 OF THE
LAWS KENYA.

RULING NO.2

1. This is an application by **SATO PROPERTIES LIMITED**, which is seeking to be enjoined to this suit as an Interested Party.
2. The applicant asserts that it is the registered proprietor of the property **L.R. No. 1870/1/217 RING ROAD, WESTLANDS, NAIROBI**.
3. It is the contention of the applicant that the company **ANTOW TRADING COMPANY LIMITED**, was laying claim to the ownership of the suit property.
4. And it is true that the company was asserting that the applicant had illegally obtained the title to the suit property.
5. The issue as to the ownership of the suit property was the subject matter of the case, **SATO PROPERTIES LIMITED Vs CITY COUNCIL of NAIROBI & OTHERS ELC No. 935 of 2012**.
6. In my considered opinion the proper court which was best suited to resolve the dispute about the ownership of the land in question is the **ENVIRONMENT & LAND COURT**. Therefore, as that Court was already handling a case in which the subject matter was the ownership of the land, it would be wrong for this court, (*which is in the Commercial Division of the High Court*), to take any action which might impinge the work already being undertaken by the Environment & Land Court.

7. In those circumstances, the question which the respondents have raised is what interest, if any, the applicant would have in this case.

8. The respondents answer was that the presence of the applicant in this case is not necessary, in order to enable the court to effectually and completely adjudicate upon and settle the questions in issue in this case.

9. It is the position of the respondents that the only issue in dispute in this case was whether or not the company, **ANTOW TRADING COMPANY LIMITED**, ought to have been restored.

10. The court notes that the substantive reliefs sought in the petition herein were as follows;

“a) THAT the name of the company may be restored back to the register of companies under the provisions of section 339 (6) of the Companies Act Cap 486.

b) THAT the business, assets and property of your petitioner do revert and vest in the petitioner in the same manner and position they were before striking off.

c) THAT the Registrar of Companies do advertise in the Kenya Gazette in its official name in Kenya Gazette this Honourable Court’s orders to be made in this petition.

d) THAT the costs of this petition be awarded to the petitioner.

e) THAT such further and/or other relief that this Honourable Court deems fit and just to grant in the circumstances?.

11. It is obvious that the restoration of the company back to the Register of Companies was not intended to be an end in itself. The Company also expressly urged the court to order that its business, assets and property should revert and vest in the petitioner, in the same manner as before the time when the company was struck off.

12. One of the properties mentioned by the petitioner in this case is **L.R. No.1870/1/217**.

13. And the petitioner pointed out that that property was the subject matter of the court case pitting **SATO PROPERTIES LIMITED** against the **CITY COUNCIL** of **NAIROBI** and other persons.

14. If the court were to grant the order declaring that the assets and property do revert to **ANTOW TRADING COMPANY LIMITED**, that would impact directly upon **SATO PROPERTIES LIMITED**.

15. In the case **MARIGAT GROUP RANCH & OTHERS Vs WESLEY CHEPKOIMET & 19 OTHERS [2014] eKLR** the court said;

“An interested party would be a person who has a close connection to the subject matter of the suit yet not claiming any rights over it?.

16. In this case, the applicant has a close connection with the subject matter of the petition, although the applicant was not claiming any rights over the said subject matter, in this case. The proprietary claims are pending in a separate case, which is still pending before the **ENVIRONMENT & LAND COURT**.

17. However, I find and hold that the interests of justice demand that the applicant be allowed to keep an eye on this case, from the inside, lest orders be made in its absence. Such orders could be prejudicial to the applicant.

18. Therefore, I find that the applicant is an Interested Party.

19. Accordingly, I order that the applicant, **SATO PROPERTIES LIMITED** be enjoined forthwith to this case, as an Interested Party.

20. The costs of the application for joinder shall be in the cause.

DATED, SIGNED and DELIVERED at NAIROBI this 6th day of January 2017.

FRED A. OCHIENG

JUDGE

Ruling read in open court in the presence of:

Miss Osongo for Mutai for the Petitioner

Kabue for the Respondent

A.B. Shah for the Interested party

Jomo for Jeneby Too

Collins Odhiambo – Court clerk.