



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 2012 OF 1999**

**SIMON KIMONDO MUBEA.....PLAINTIFF**

**=VERSUS=**

**RITA S WAUDO.....DEFENDANT**

**RULING**

1. The plaintiff instituted this suit against the defendant through a plaint dated 18/10/1999. He contended that he was the registered proprietor of Land Reference Number 209/13539/20, pursuant to a lease dated 16/5/1999, made between himself and the City Council of Nairobi. The lease was registered at the Land Titles Registry at Nairobi on 25/5/1999 as IR No 80461/1 (**the suit property**). He added that prior to the grant of the said lease, the defendant occupied the suit property as a tenant of the Council. It was the plaintiff's case that the defendant had refused to either enter into a tenancy agreement with him or vacate the suit premises. Consequently, the plaintiff sought an order of ejectment against the defendant. He also sought mesne profits against the defendant.

2. In her defence, the defendant admitted having been a tenant of the City Council of Nairobi (the Council) and maintained that the Council was still her landlord. She further contended that the conveyance of the suit property to the plaintiff was null and void *ab initio* because relevant legal provisions were not followed. Further, she averred that even if the suit property had been sold to the plaintiff by the Council, the sale was subsequently revoked by the Council through Minute Number 5 of the Council Meeting held on 14/9/1999.

3. The defendant's defence was struck out by Osiemo J on 29/2/2000. Formal proof hearing of the plaintiff's suit subsequently commenced before me on 14/12/2017. On that day, the plaintiff tendered part of his evidence. The case was scheduled for further formal proof hearing on 21/6/2018.

4. Subsequent to that, the defendant brought a chamber summons application dated 30/4/2019 seeking joinder of the Nairobi City County Government and the National Land Commission as parties to this suit. The said application is the subject of this ruling.

5. The case of the applicant is that, according to official records from Survey of Kenya, Land Reference Number 209/13539/20 does not exist. What exists is Land Reference Number 209/13539. She adds that Land Reference Number 209/13539 is public land which is vested in and held by the Nairobi City County Government (the County Government) in trust for the people of the County, and is administered by the National Land Commission on behalf of the County. The applicant further contends that she has been a tenant of the City Council and the County Government since 1970 and has been faithfully paying the requisite rent relating to House No HG93(58/3). The applicant adds that the Title which the plaintiff is waving was the subject of review by the National Land Commission under Article 68 (c) (v) (sic) of the Constitution and Section 14 of the National Land Commission Act and was adjudged to be illegal vide a decision published under Gazette Notice No 6862 of 2017. She contends that in the circumstances, the County Government and the National Land Commission are necessary parties in the effectual and complete adjudication and settlement of all questions involved in this suit.

6. The plaintiff opposes the application through Grounds of Opposition dated 11/7/2019 and Replying Affidavit sworn on 11/7/2019. His case is that the application is *res judicata* and is brought too late in the day, the defendant's defence having been struck out on 29/2/2000. The plaintiff adds that Gazette Notice No 6862 of 2017 was stayed by this Honourable Court pursuant to an order made on 9/11/2017 in **Nairobi ELC JR No 41 of 2017**. The position of the plaintiff is that the defendant's defence having been struck out, and the matter having been set down for formal proof, the joinder of the County Government and the National Land Commission at this stage will serve no purpose other than to derail the cause of justice. The application was canvassed through written submissions which I have considered.

7. What emerges from the materials placed before the court is that, besides this suit, there exists Nairobi ELC Case No 38 of 2006. The said suit is pending hearing and determination before Okongo J. The gist of the dispute in the said suit is that, the City Council of Nairobi (now the Nairobi City County Government) challenges the title held by Mr Simon Kimondo Mubea (the plaintiff in the present suit) and seeks cancellation and revocation of the said title. The said title is the subject of the ongoing formal proof hearing in the present suit.

8. Regrettably, and quite unfortunately, the plaintiff withheld this information from the court when this matter came up for formal proof hearing. In my view, a determination of the County Government's claim in **Nairobi ELC Case No 38/2006** will have a direct legal impact on the formal proof disposal and final decree of this court in the present suit. It would therefore not be appropriate to have the two suits

(Nairobi ELC Case No 2012/1999 and Nairobi ELC Case No 38/2006) proceed separately before two different judges. If that were to be allowed, there would be the undesirable probability that the two different judges might come up with conflicting determinations and orders; a scenario that would undermine the integrity of the court process.

9. Further, what emerges from the materials presented to the Court in this application is that, the title which the plaintiff is relying upon in formal proof was adjudged illegal by the National Land Commission under Article 67(2) (e) of the Constitution and Section 14 of the National Land Commission Act. The National Land Commission's determination has been challenged by the plaintiff and is the subject of litigation in **Nairobi ELC JR No 41 of 2017**. The said judicial review motion, too, is before Okong'o J. The court's finding in the said Judicial review cause will similarly have a legal impact on the formal proof disposal and final decree of the court in the present suit. Regrettably, this important information, was similarly not disclosed to the court at the commencement of formal proof.

10. The totality of the foregoing is that, to avoid the making of conflicting determinations and orders in relation to the same issues or on the same subject matter, both the suit herein and the application under consideration, shall be placed before the Judge seized of Nairobi ELC No 38 of 2006 and Nairobi ELC JR No 41 of 2017 for his appropriate directions and disposal orders.

11. Consequently, I make the following disposal orders in relation to the defendant's chamber summons application dated 30/4/2019.

*a) This suit together with the defendant's chamber summons application dated 30/4/2019 shall be disposed by the court seized of the following related suits: (i) Nairobi ELC No 38 of 2006; City Council of Nairobi v Simon Kimondo Mubea; and (ii) Nairobi ELC JR No. 41 of 2017; Simon Kimondo Mubea v National Land Commission & 2 Others.*

*b) This matter shall be listed for directions before Okong'o J who is currently seized of the other two suits on 23/9/2020.*

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 17TH DAY OF SEPTEMBER 2020.**

**B M EBOSO**

**JUDGE**

**In the presence of: -**

Mr Juma holding brief for Machira for the Plaintiff

Court Clerk - June Nafula