



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 20 OF 2013**

**IN THE MATTER OF : ARTICLES 19,22,23,40,47,50 AND 64 OF THE CONSTITUTION OF KENYA**

**IN THE MATTER OF: THE LAND REGISTRATION ACT CAP 3 OF 2012**

**THE LAND ACT CAP 6 of 2012 AND THE TRUST LAND ACT CAP 288 LAWS OF KENYA.**

**IN THE MATTER OF: THE GOVERNMENT LANDS ACT (CAP.280)**

**IN THE MATTER OF: THE PURPORTED REVOCATION OF TITLES**

**L.R. NO. MN/III/2947 AND L.R.NO. MN/III/2948**

**BAHARINI DEVELOPMENTS LIMITED ..... PETITIONER**

**AND**

**REGISTRAR OF TITLES .....1ST RESPONDENT**

**THE COMMISSIONER OF LANDS .....2ND RESPONDENT**

**AND**

**KENYA AGRICULTURAL RESEARCH INSTITUTE ..... INTENDED INTERESTED PARTY**

**RULING**

[1] Kenya Agricultural Research Institute (KARI) brings this application praying for leave that it be made an interested party in this suit. It states that the suit properties belong to it by virtue of its mandate from the Government of the Republic of Kenya. It argues that it has always and is still in occupation of both subject properties in this case and that the petitioners claim over the same is an infringement over the applicants quiet possession over the same. It argues that the circumstances under which the said properties were alienated to the application is unknown to KARI. It argues that there is an already existing suit pertaining to the subject matter hereof being Mombasa *High Court Civil Suit No. 580 of 2011*. It argues that it is in the interest of justice that KARI be joined as a party to this suit. The applicants application is supported by the affidavit of Inyanga Pole farm Manager in the applicants Coast Regional Research Centre at Mtwapa which was allocated on a plot measuring approximately 13.6

hectares of which both subject properties form part. The manager explained that KARI is a public Institution mandated to conduct Agricultural Research for public good under the Ministry of Agriculture and established under the Science and Technology Act Cap 250 Laws of Kenya. He explains how KARI was established in 1979 and that since then it has been on the subject properties.

The manager explained how he learned in 2002 that the land for the research centre had been unlawfully taken over by unknown persons and that the staff were unlawfully evicted by land grabbers. He further explained KARI is in court in *Mombasa High Court Miscellaneous application no. 27 of 2008* where they have been granted conservatory orders and in *Mombasa HCCC.NO. 580 OF 2011* where the petitioner herein has successfully obtained stay orders against KARI. He argued that denying the applicant from being joined as a third party would seriously prejudice the applicant.

[2] The petitioner opposed this application through a replying affidavit of Jatin Patel its director who argued that the petitioner is a bonafide purchaser for value without notice of LR. NO MN/111/2947 and LR MN/III/2948 the suit properties. It averred that it purchased the properties in 2010 and attached copies of transfer documents. It argued that the interested party has not been a registered owner of the said properties and that it did not produce documents to prove ownership of the suit properties. That the court has already issued orders preventing the interested party from dealing with suit properties. Finally that the petition merely deals with violation of the petitioners rights as described in the petition.

[3] Mr. Keengwe for the interested party argued that the petitioners have been granted injunctive orders against the interested parties in *Mombasa HCCC NO. 580 of 2011* and that if ownership is the issue in that case, that it goes without saying that the interested party must be given audience in this suit. He argued that the gazette notice in issue in *HCCC. NO. 580/2011* is all about ownership. He argued that they have set their claim about ownership in their supporting affidavit in this case. The deponent argued that this court in *HCCC NO. 580/2011* has made a finding that there is an issue and that this court has identified it as triable issue and that to shut out the applicant in this case would be tantamount to making orders that are contradictory. That the orders that shall be made in this case shall adversely affect the applicants herein.

[4] Mr. Eredi State Counsel supported the application. He said that this was a constitutional Petition and the issue was not only about revocation. It was also about ownership. That the court will not only deal with the administrative function. It will also deal with the issue and process of ownership.

[5] Miss Mucheru for the petitioner opposed the application. She argued that the petition is about gazette notice which revoked titles. She recognized that the interested party was a defendant in *Mombasa HCCC 280 of 2011* and that indeed the petitioner has injunctive orders against the applicant herein. She denied that the applicant is in possession and argued that it is indeed the petitioner who is in occupation. She argued that in this case, the interest of justice shall not be served by enjoining a third party. Counsel argued that the applicants are not involved in publication of gazette notices and that they have not shown what of their rights will be affected.

[6] There is no doubt that the petitioners here and the applicant have another case in this court *Mombasa Civil Suit No. 580 of 2011. Baharini Development Limited vs Kenya Agricultural Research Institute*. The Petitioners have obtained injunctive orders against the applicants herein. The orders were given by this court. In the current petition the petitioners have petitioned the court for a declaration that the revocation by the registrar of titles of LR No. MN/111/297 and LR. No. MN.III/2948 is unconstitutional, null and void and that grants issued to the petitioners in respect of the aforesaid lands is conclusive evidence of ownership and that the petitioner is the absolute and indefeasible owner of the suit property.

In granting the injunctive orders to the petitioner in *HCCC NO. 580 of 2011* Justice Tuiyot rendered himself thus:-

*"The defendant has shown on a prima facie basis that its claim on the suit land is not trifle. The public claim deserves some protection. I am therefore attracted to a decision that addresses the anxieties*

