



REPUBLIC OF KENYA

High Court at Eldoret

Petition 2 of 2011

MARIA SOTI EDUCATIONAL TRUST PETITIONER

VERSUS

THE REGISTRAR OF TITLES 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

AND

KENYA FOREST SERVICES 1ST PROPOSED INTERESTED PARTY

KENYA ANTI-CORRUPTION COMMISSION2ND PROPOSED INTERESTED PARTY

MARIA KESUMO KEMBOI

BIWOTT TARUS

EVERLYN MWANZO 3RD PROPOSED INTERESTED PARTIES

RULING

There are two applications dated the same date the 1st March, 2011 filed by the two parties. In both the Applicants seek leave to be enjoined in these proceedings as interested parties.

One is filed on behalf of Kenya Anti-Corruption Commission (as it then was) now named Ethics and Anti-Corruption Commission (hereinafter the Commission). It is a Chamber Summons brought under Sections 1A, 1B and 3A of the Civil Procedure Act and Order 1 rule 10 and 25 of the Civil Procedure Rules.

The main grounds upon which the Commission has come to court, is that it is investigating allegations that L.R. No. 19054 was fraudulently, illegally or otherwise unlawfully allotted to the Petitioner, that in the course of investigation by the Commission, it has been established that the Petitioner has filed these proceedings seeking, inter alia, to restrain the state from making any claim to ownership of that suit property, that the outcome of these proceedings may impact on the mandate of the Commission, that the Commission is also desirous of filing a replying affidavit to assist the court in coming to a just determination and that the Commission is a proper and/or necessary party in these proceedings given its mandate and its statutory obligation to recover public assets lost through corrupt conduct.

The second is filed on behalf of Kenya Forest Service. It is a Chamber Summons brought under Article

159 of the Constitution, Section 3 and 3A of the Civil Procedure Act, Order 1 Rule 10 (2) and Rule 25 of the Civil Procedure Rules.

The main grounds upon which it is based are that Land Tile No. LR. No. 67900 - LR. No. 19054 was excised from Kaptagat forest, that the subject matter herein being LR. No. 67900 – LR. No. 19054 which title has been revoked falls within the mandate of the interested party, that it is in the interest of justice that Kenya Forest Service is joined as an interested party and that no prejudice will be suffered by the Respondents.

The supporting affidavits are sworn on 1st March, 2011 by Ngaah Jairus and Daisy Mutai respectively. Ngaah Jairus (now a Judge of the High Court) worked as an advocate with the Commission while Daisy Mutai is an advocate with the law firm of M/s. Kalya and Company advocates that represents the Kenya Forest Service. Each of the supporting affidavits basically reiterates the grounds upon which the applications are filed.

For purposes of record, Kenya Forest Service is named as the 1st Interested Party while the Commission is the 2nd Interested party. When parties appeared in court for hearing of the applications, they informed court they intended to rely on written submissions. Only the Petitioner opposed the two Interested Parties from being enjoined in these proceedings. The Office of the Attorney General appeared for both 1st and 2nd Respondents and it had no opposition to the requests.

On the same date, 26th February, 2013, Miss Kiplimo came on record as holding brief for Miss. Kipseii for 3rd Interested Party. The record however shows that Miss Kipseii advocate has to date never filed an application seeking the joinder for her client. Indeed the identity of this party was neither disclosed, hence no reference in this ruling is made of the anonymous party.

Both applications are vehemently opposed by the Petitioner. Two sets of Grounds of Opposition have been filed. Both are dated 15th March, 2011 but each set is in respect of each Interested Party. The Petitioner cites that both Kenya Forest Service and the Commission have no locus standi and that the office of the Attorney General is mandated by the Constitution to represent the government and all public bodies. In fact, the petitioner, in its submissions describes the Interested Parties as busy bodies and intermeddlers whose aim is to make a duplication of arguments and waste the court's time. That if the court allowed the applications, it would be down-playing the competence and capability of the Office of the Attorney General.

On its part Kenya Forest Service submitted, among other reasons that the Petition was initiated following a vacation notice issued by the Zonal Forest Officer, Keiyo Zone and that the subject plot was excised from Kaptagat Forest which falls under the jurisdiction of Kenya Forest Service, hence the interest of Kenya Forest Service in the Petition.

The Commission, submitted that it made its application based on Section 7 of the Anti-corruption and Economic Crimes Act, 2003 which gives the Commission the authority to investigate corruption and economic crimes. The Section also states that any person may be investigated for these offences which in the opinion of the Commission, are suspected to have been committed. That based on its mandate, it is in the public interest to be enjoined as an Interested Party to these proceedings.

It is important to briefly give a background to this Petition so as to shed light on why the Applicants are interested in the matter.

Maria Soti Educational Trust (Petitioner) was established as the object of a charity to provide and impart Primary and Secondary education and training. Created under a Trust, the Trustees were tasked with purchasing suitable land/parcels, provide furnishings and fittings, fund raise and employ teachers among other activities needed to set up the institution.

The Petitioner received a letter dated 24th January, 2011 giving it a Vacation Notice to leave LR. No. 67900 – LR. No. 9054. It came to court and filed the Petition herein alleging that its Constitutional rights

have been violated, that is, its right of protection of title to property as enshrined in Article 40 of the Constitution and right to a fair hearing under Article 50 of the Constitution. It claimed its right to own land has been violated by the Respondents' purport to revoke the title of the subject land.

Petitioner asserts that the property was lawfully acquired and owned. A certificate of title was issued to it showing conclusive right of ownership under the Registration of Titles Act Cap 281 (now repealed) on 7th December, 1995. It sought a mandatory injunction compelling the First Respondent to cancel the purported revocation of its title to LR. No. 67900 – LR. No. 19054.

I have appraised myself with the two applications, Grounds of Oppositions, the written submissions and the cited case law by all parties. In all, I must consider whether both Interested Parties have locus standi in this Petition that justifies them being enjoined as Interested Parties.

The case of **PRISCILLA NYOKABI KANYUA -VS- THE ATTORNEY GENERAL AND ANOTHER (2010) e KLR** went to great lengths to show how the subject of locus standi had evolved through various court decisions to the standing it is held today.

In the case, Ms. Priscilla Kanyua, the then Executive director of Kituo Cha Sheria, a non-governmental organization was termed as a busy body and was said to be lacking proper legal standing to file the suit, which was filed on behalf of the inmates of Shimo La Tewa Prison. The prisoners sought to be included in the voting during the National Constitutional Referendum. The Court held:-

“Miss Kanyua claim to standing on the basis of being an officer of an organization which champions the interests of the public in the matters concerning human rights and marginalized such as prisoner demonstrates she is entitled to bring the case.”

In the case of **RUTURI & ANOTHER -VS- MINISTER OF FINANCE AND ANOTHER (2001) 1 EA 253 (HCK)** court was of the view that what gives locus standi is a minimum personal interest and such interest gives a person standing even though it is quite clear that he would not be more affected than any other member of the population. That moreover, organizations have rights similar to those an individual private member of the public.

In this regard, both Applicants have demonstrated their minimum interests in this petition which no doubt mitigates their quest to come on record as interested parties.

In the case of **MEME -VS- REPUBLIC & ANOTHER (2004) 1 KLR, 638** an application was made regarding the issue of joinder in a Constitutional Reference. The court was of the view that in public applications such as those falling under Judicial Review and Constitutional Reference, it is desirable that the widest possible participation should be allowed and not restricted to technical rules.

The same view in the **RUTURI & ANOTHER CASE (SUPRA)** is upheld in **KENYA BANKERS ASSOCIATION AND OTHERS -VS- MINISTER FOR FINANCE AND ANOTHER (2002) 1 KLR 61** in that what gives locus standi is a minimus interest which gives a person a standing even if he would not be affected than any other member of the public.

The court went on to demonstrate, in its holding what interest Kenya Bankers Association had, which included, inter alia, **“it is convenient and prevents a multiplicity of suits”**.

The Kenya Forest Service, for instance will be directly affected by orders the court will give in the final end as a custodian of forest land in Kenya. The Commission on the other is a representative of public interest matters relating to ethics, which it has demonstrated. Both parties have an interest in their own rights, which interests are so noble to their respective organizations.

Court cannot assume their locus standi and to describe them as busy bodies does not in any way suit the interest they represent in their own behalf and that of the public.

Moreso, the Applicants have demonstrated they come to court in good faith (acting bona fide) and their objective is not to waste this court's time.

In the result I find that they have demonstrated sufficient interest in this Petition and they should be enjoined as Interested Parties respectively. In effect both applications are allowed with costs in the cause.

DATED, SIGNED and DELIVERED at **ELDORET** this 11th day of April, 2013.

G. W. NGENYE – MACHARIA
JUDGE

In the presence of:

Mwinamo holding brief for Ngigi Mbugua for Petitioner

No appearance for 1st and 2nd Respondents

Mr. Mwinamo holding brief for Maritim for 1st Interested Party

Miss Natome for 2nd Interested Party