



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI LAW COURTS

ELC NO. 925 OF 2015

LALY FURNISHING HOUSE LIMITED.....PLAINTIFF

=VERSUS=

KENYA NATIONAL HIGHWAYS AUTHORITY...1ST DEFENDANT

CHINA ROAD AND BRIDGE CORPORATION....2ND DEFENDANT

RULING

1. The defendants/applicants filed a chamber summons application dated 11th September 2018 in which they seek to enjoin the National land Commission (NLC) as the third defendant. The applicants contend that as the title to the suit property which has since been recommended for revocation was undertaken by NLC, it is important that NLC be brought in as a defendant so that the issues involved in this case can be determined effectually and completely.

2. The application by the applicants is opposed by the plaintiff/respondent which contends that enjoining the NLC would be giving NLC an opportunity to rubberstamp the illegal action which they did. The respondent further contends that this suit was filed before the title to the suit property was revoked and that this case is already set down for hearing on 11th February, 2019 and to allow the application would delay the finalization of the case.

3. I have considered the application by the applicants and the opposition to the same by the respondent. The only issue for determination is whether the NLC should be enjoined as a defendant. The principles upon which a party can be enjoined as a defendant are now fairly well established. Among the considerations is whether the party sought to be enjoined will assist the court in effectually and completely adjudicating the issues in controversy. In this case the respondent is seeking compensation in respect of its land which it contends was illegally taken for construction of the interchange of the southern by-pass at Mombasa Road.

4. The Kenya National Highway Authority had allowed the second applicant to take possession of the suit property and construct the southern bypass. Subsequently, the title to the suit property was recommended for revocation by NLC. The applicants are now contending that NLC is a necessary party as it will assist the court in arriving at a just decision as regards the issues behind the claim in this case.

5. There is no doubt that NLC has recommended for revocation of the title which the Respondent had. The validity or otherwise of this title is the one which will inform the decision whether to compensate the respondent or not. NLC is the successor of the commissioner of lands who issued the impugned title. The NLC had already recommended revocation of the title as per its constitutional mandate.

6. It is important to bring NLC on board so that it will assist the court to reach a determination on the issues in this matter. The fact that the matter is slated for hearing on 11th February 2019 is no ground for denying the application. I find that the application by the applicants is well founded. The NLC is added as the third defendant in this suit. The pleadings shall be amended within 14 days to include NLC as third defendant. Summons to be served upon the added party only. Costs of this application shall be in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of February 2019.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Gichuhi for Mr Orego for 1st and 2nd defendant/applicant

Mr Ooko for Plaintiff/Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE