



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

ELC CASE NO. 317 OF 2015

RYAN KIPKOECH ONYANGO.....PLAINTIFF

VERSUS

DR. ASARIA ONYANGO.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

THE ATTORNEY GENERAL.....3RD DEFENDANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION –INTENDED INTERESTED PARTY

RULING

1. Ethics and Anti-corruption Commission, the Intended Interested Party, filed the Chamber Summons dated 3rd September 2018, brought under **Sections 1A, 1B and 3A of the Civil Procedure Act** and **Order 1 Rule 10 and 25 of the Civil Procedure Rules**, seeking to be granted leave to join the proceedings as an Interested Party. They also seek to be served with the Plaintiff's pleadings, and be at liberty to file their response thereto. The application is based on the five (5) grounds on its face and supported by the affidavit sworn by Charles Kiptanui, a forensic investigator with the Intended Interested Party on the 3rd September 2018.

2. The application is opposed by the Plaintiff through the replying affidavit sworn on the 29th September 2018, among others challenging the supporting affidavit allegedly on the basis that the advocate who commissioned it has been admitted in hospital since June 2018, and could therefore not have commissioned the affidavit as alleged.

3. The application came up for hearing on the 14th November 2018 when Mr. Robert Bii and M/s Imbayi for the Intended Interested Party and the Plaintiff respectively, presented their rival oral submissions for and against the application. M/s Aliongo for the 3rd Defendant, and holding brief for Masake for 2nd Defendant, informed the court that though they had not filed any documents in respect of the application, they nevertheless supported it.

4. The following are the issues for the court's determination;

a) Whether Ethics & Anti-corruption Commission is a necessary party in the proceedings, and whether their joinder would assist the court to determine the issues over the suit property ownership.

b) Who pays the costs.

5. The Court has carefully considered the grounds, affidavit evidence, oral submissions by Counsel, the pleadings so far filed and come to the following findings;

a) That from the pleadings in the undated plaint filed on the 17th November 2015, the 2nd Defendant's defence dated the 15th February 2016 and that of the 3rd Defendant dated the 22nd February 2016, the question of whether or not the suit property was public land, and if so whether it was regularly, legally and procedurally allotted to the Plaintiff, will be among the issues to be determined in the trial.

b) That in view of the Statutory mandate conferred upon the Intended Interested Party, **Section 11 (1) (j) of the Ethics & Anti-Corruption Commission Act**, which includes recovery of public land that has been illegally acquired, the court finds that the participation of the Commission in these proceedings will go a long way in helping the issues of ownership of the suit land to be determined once and for all.

c) That though the Plaintiff questioned the commissioning of the supporting affidavit, deponing that the said commissioning officer was admitted in hospital from June 2018, and therefore could not have commissioned the affidavit on 3rd September 2018, no evidence to support the alleged hospital admission for that period was availed to the court. That under **Section 107 of the Evidence Act Chapter 80 of Laws of Kenya**, the party that alleges has the duty to offer prove and the court finds that the Plaintiff has not discharged that burden.

6. That in view of the foregoing, the court finds merit in the Chamber Summons dated the 3rd September 2018. The application is allowed in the following terms;

a) That the Intended Interested Party allowed to be enjoined in the proceedings as the Interested Party.

b) That the Plaintiff do file and serve amended plaint enjoining the Ethics & Anti-Corruption Commission as the Interested Party in 21 days.

c) The Defendants who have already filed their statement of defence are granted leave to file and served amended defences enjoining the Interested Party.

d) The costs be in the cause.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 6TH DAY OF MARCH 2019

In the presence of:

Plaintiff Absent

Defendants Absent

INTERESTED PARTY Absent

Counsel Mr. Yogo for Odeny for Plaintiff

Mr. Bii for Interested Party/Applicant

S.M. KIBUNJA

ENVIRONMENT & LAND

JUDGE