



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**ELC. PET NO. 5 OF 2017**

**MICHAEL BETT SIROR.....PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**1. STEPHEN SUGUT**

**2. JEREMIAH CHERUIYOT**

**3. JACKSON KOECH**

**4. JOSEPH MITEI**

**5. RAPHAEL KOECH**

**6. KIPKEMOI RUTO**

**7. PAUL K. RUTO**

**8. K. KETER**

**9. BENJAMIN TIROP**

**10. KIMUTAI NGENY**

**11. CHERUIYOT CHEPKWONY**

**12. VERONICA CHEPCHOR**

**13. ROSEBELLA MAIYO.....INTERESTED PARTIES**

**BETHAM INVESTMENT CO. LTD.....PROPOSED INTERESTED PARTY/APPLICANT**

**RULING**

**1. The applicant herein filed an application dated 21/2/2019 seeking the following orders:-**

**(a) That this application be certified as urgent and be heard on priority basis.**

**(b) That this court be pleased to enjoin BETHAM INVESTMENT COMPANY LIMITED as the 2<sup>nd</sup> Petitioner or Interested Party in the proceedings herein.**

**(c) That the Petitioner, Respondents and Interested Parties be ordered to serve the applicant with all the pleadings in relation to this proceedings.**

**(d) That any other incidental relief that this court will be deemed fit to meet the ends of justice.**

**(e) Costs of this application be provided for.**

2. The applicant's grounds for the application are that the Proposed 2<sup>nd</sup> Petitioner is the legal proprietor of parcel of land known as **LR.6641/51** measuring about **430 acres**; that the said property is one of the title resulting from the parcel of land known as **LR. 6614/6** which is the subject of the proceedings herein; that pursuant to the criminal investigation carried out by the Director of Criminal Investigation, it is now clear that LR.6614/51 was the subject of fraudulent acts initiated by some of the interested parties and carried out by the Director of Survey and the Chief Land Registrar; that it is clear from the ongoing criminal investigation that the proposed petitioner's parcel of land known as LR. 6641/51 is one of the parcels that were fraudulently converted by the State into freehold parcel number **Cheranganyi/Block 14 (Tunen Farm)**; that the Proposed Petitioner's constitutional rights have been violated through the said conversion of property from leasehold to freehold and the subsequent preparations of title deeds by the State in readiness to issue to members of public; that the Proposed Petitioner would be directly affected by the decision of this court and it is only fair and just that it be enjoined to those proceedings and that none of the parties herein would be prejudiced if this application is allowed.

3. The application is supported by the affidavit of **David Kipchumba Siror**, one of the **Directors of Betham Investment Co. Ltd** sworn on **21/2/2019** which emphasis on the above grounds.

4. The 3<sup>rd</sup> Interested Party, **Jackson Koech** filed a sworn replying affidavit **15/3/2019** on his own behalf and on behalf of the Interested Parties Nos. **1, 4 -13** herein. He deponed that **David Kipchumba Siror** the deponent of the supporting is a son to the petitioner herein; that **LR.6614/51** is merely one of the parcels resulting from subdivision of **LR. 6614/6** which is in the name of the petitioner; that in paragraph **47(a)** of the petition the petitioner seeks an order prohibiting the 1<sup>st</sup> respondent from processing titles in favour the interested parties over **LR.6614/6** and the resultant subtitles that is **LR. 6614/51 - 67** all-inclusive as well as an order of injunction restraining the respondents and the interested parties from interfering with the petitioner's proprietorship of those land; that the interest of the applicant is well taken care of in the petition and that joinder of the applicant would only serve to delay the finalization of the petition. He further depones that on the basis of advice by his advocate the issues of fraud and private land interests ought to be pursued through avenues other than a constitution petition. He states that the applicant has all along with aware of these proceedings and has brought the application at a very late stage and as an afterthought and that the Chief Land Registrar and the Director of Surveys are not parties to the said application.

5. In reply to the application the 2<sup>nd</sup> Interested Party filed a replying affidavit sworn on **28/3/2019**. He depones that the property is still registered under the petitioner's name; that he has never known of the applicant's involvement in the subdivision process; that there is no proof of tampering with the subdivision process and preparation of title deeds; that particulars of the alleged fraud on the part of the interested parties and the conversion of the freehold title have not been given to a sufficient degree to enable him respond adequately; that in any event the proposed petitioner has not demonstrated how the alleged conversion affects his interests over the suit property, that allowing the application would occasion more delay; that about 360 interested parties have purchased various portions of the suit property and the earlier application of the interested parties having been disallowed on 28/2/2018 the instant application too should be disallowed.

6. The 1<sup>st</sup>, 3<sup>rd</sup> - 13<sup>th</sup> Interested Parties filed their submissions on **2/5/2019** while the 2<sup>nd</sup> Interested Party filed his on **9/5/2019**. I have perused through the record and I have not seen any submissions filed by the Respondents.

7. The Interested Parties cited the case of **Francis Kariuki Muruatetu & Another -vs- Republic & 5 Others [2016] eKLR**.

8. I have considered the application and the responses it appear to me that in 2016 a company limited by shares by the name of Betham Investment Company Limited was incorporated under the Companies Act 2015. A certificate of incorporation No. PVT/2016/021852 is annexed to the supporting affidavit. No. Form CR12 from the Registrar of Companies has been attached to show who the directors of that company are though it is intimated in other annexures to the affidavit that the petitioner and his son are directors while one Joyce Chumba is a secretary. This petition was commenced in the year 2017. Exhibit "DSC2" in the supporting affidavit is a copy of title to LR.6614/51 originally issued in the name of petitioner but having an endorsement thereon showing that on 29/12/2016 it was transferred to the applicant.

9. Further documents annexed to the supporting affidavit suggest that there are investigation being conducted or which have been conducted by the Director of Criminal Investigation in relation to a claim of alleged fraudulent subdivision and registration of titles in respect of the parcels of mentioned in this petition.

10. There is *prima facie* evidence therefore that the land comprised in LR.6614/51 does not belong to the petitioner but to the applicant. This court may never know why it took the applicant this long to bring the instant application. However the most important thing that in the current scenario this court appreciates is that Betham Investment Co. Ltd is an entity separate from the petitioner and his son within the definition of a company in the renounced case of **Salomon -vs- Salomon**.

11. I cannot subscribe to the submission made by the interest parties that the petitioner effectively represents the interests of the applicant adequately to the extent that the latter's joinder should be considered as absolutely unnecessary.

12. In the same vein, owing to the separate personality and existence of Betham Investments Co. Ltd as a legal entity on its own, I cannot, and the interested parties have not convinced me to do so, attribute any blame for any further delay that may be occasioned by the joinder of the proposed co-petitioner if its application succeeds. Long ago it was said that the wheels of justice grinds slowly. This petition cannot be expedited, at the risk of prejudicing the rights of an entity that rightfully desires joinder, by failing to enjoin it to defend its interests while no one else apparently can or will.

13. For the above reasons I find that the application by the applicant has merit and that the objections by the interested parties are unwarranted.

14. I therefore grant the application and I order that the applicant be enjoined as the **2<sup>nd</sup> petitioner** herein. However, realizing the close relationship between the petitioners and the manner in which giving the petitioners a free hand may unnecessarily delay the disposal of this petition I also direct that for efficient case management the two petitioners shall confer and agree on the way forward in the amendment of the petition and that through the joint efforts of the two petitioners the petition shall be amended and supported by any further affidavit and written submissions as the 2<sup>nd</sup> petitioner may deem proper within **21 days** of this order, failure to which the orders of joinder herein shall automatically stand vacated and the petition herein shall proceed to hearing with the pleadings as they were before the joinder. Further this petition shall be mentioned on **18/6/2019** in the presence of all the parties for issuance of a date for highlighting of submissions

**Dated, signed and delivered at Kitale on this 14<sup>th</sup> day of May, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**14/5/2019**

**Coram:**

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Teti holding brief for Sang for 2<sup>nd</sup> respondent

N/A for the applicant

N/A for the petitioner

N/A for the other interested parties

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**14/5/2019**