



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. MISC. APPLN. NO. 182 OF 2018

ETHICS & ANTI-CORRUPTION COMMISSION.....APPLICANT

VERSUS

JOSEPH MUTUKU MUIARESPONDENT

AND

FAMILY BANK LIMITED.....INTERESTED PARTY

RULING

1. In the Application dated 26th March, 2019, the Applicant is seeking for the following orders:

a. This Honourable Court be pleased to extend the existing prohibition order issued on the 27th September, 2018 for a further period of six (6) months by prohibiting the transfer, disposal or any other dealing with respect to a parcel of land known as Machakos Block 1/623 (initially part of L.R. No. 909/536 by the Respondent.

b. There be no order as to costs.

2. The Application is supported by the Affidavit of the Applicant's Forensic Investigator who has deponed that he is investigating the unlawful acquisition of parcel of land known as Machakos Block 1/623 (*initially part of L.R. No. 909/536*) (*the suit property*); that the existing prohibition order granted on 27th September, 2018 for six (6) months is set to expire on 27th March, 2019 and that the investigations on the acquisition of the suit property are yet to be completed.

3. According to the Applicant's Forensic Investigator's Affidavit, the investigations with regard to the irregular acquisition of the suit property is very complex and involve interviewing and recording statements of several potential witnesses and that according to the letter dated 16th March, 1974 by the Ministry of Health and addressed to the Commissioner of Lands, L.R. No. 909/536 forms part of ten (10) plots that were allocated to the Ministry of Health for the development of institutional staff houses.

4. According to the Applicant's investigator, the investigations on how the Respondent was registered as the proprietor of the suit property are still ongoing and that in the absence of an extension of the orders of the court, there will be nothing to prevent the Respondent from dealing with the suit property in the intervening period by transferring the land or wasting it.

5. In his Replying Affidavit, the Respondent deponed that the Applicant has not indicated the particulars of fraud that he alleges were committed during the allocation of the suit property; that the Applicant has not sued the Municipal Council of Machakos through its successor and that the County Government of Machakos holds a reversionary interest in the suit land.

6. The Respondent deponed that it is over six (6) months since the Applicant commenced its investigations and that he has borrowed money with a view of developing the suit land.

7. The Interested Party's Small and Medium Enterprises officer deponed that the Applicant has carried out extensive investigations within the six (6) months that it was granted by the court and that there are no more investigations required to be carried out. All the parties filed their respective submissions and authorities which I have considered.

8. The Originating Motion dated 26th March, 2019 seeks for the extension of "the existing prohibition order issued on the 27th September, 2018 for a further period of six (6) months by prohibiting the transfer, disposal or any other dealing with respect of parcel of land known as

Machakos Block 1/623 (initially part of L.R. No.909/536”.

9. Considering that the orders of extension that have been sought in the Application dated 26th March, 2019 were to last until 26th September, 2019, which is a period of twelve (12) months with effect from 27th September, 2018, I find that the Application is now spent.

10. Due to the lapse of the orders being sought by the Applicant by effluxion of time, the Application dated 26th March, 2019 is marked as spent.

11. Each party will bear its/his own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 18TH DAY OF OCTOBER, 2019.

O.A. ANGOTE

JUDGE