



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 15 OF 2018

PAUL PKEMOI KIDE.....PLAINTIFF

VERSUS

PHILIP KIMUTAI KIBOR.....1ST DEFENDANT

AGRICULTURAL FINANCE CORPORATION.....2ND DEFENDANT

RODSTAR CONSTRUCTION CO. LTD.....3RD DEFENDANT

CHELU INVESTMENTS LIMITED.....INTERESTED PARTY

RULING

1. The application dated **25/10/2019** and filed in court on the same date has been brought by the Interested Party seeking the following orders:

(1) That this court be pleased to lift the injunction imposed upon parcel of land described as No. 6125/12 measuring 96 acres as mutated from the original title No. 6125/10.

(2) That each party be at liberty to apply and/or move the court for leave to amend their pleadings.

(3) That the costs of this application be in the cause.

2. The application is premised on the grounds set out in the notice of motion and is supported by a sworn affidavit, also dated **25/10/2019**. It is brought under **Section 1A, 3 and 3A and 63 (e)** of the **Civil Procedure Act** and **Order 1** of the **Civil Procedure Rules**.

3. The grounds on the face of the application upon which the application is made are that the original title on the land which forms the subject matter of this suit comprised in **LR. No. 6125/10** measuring **200 acres** in total; that upon survey the interested party is in possession and actual control of **96 acres** forming part of the parcel known as No. **6125/12** measuring **100 acres** which land the interested party purchased from **Rodstar Construction Co. Ltd**, the **3rd** defendant herein; that any injunction of court should not affect the portion actually occupied by the interested party; that the injunction granted to the plaintiff also affects the portion occupied by the interested party and thus prejudices it and should be lifted with regard to that portion; it is averred that the respondent will not suffer any prejudice if the orders prayed for are granted.

4. The application is not opposed by any of the parties.

5. I have examined the court record and found that when the interested party first approached this court vide an application dated **6/2/2019** seeking the same orders this court declined those orders on the basis that the interested party did not disclose which of the subdivisions cover the acreage the interested party purports to have bought from the **3rd** defendant. Now that the interested party has availed sufficient evidence of the portion purchased and has shown that it does not interfere with the land claimed by the plaintiff, and the application is not opposed, this court finds no ground on which to deny the application dated **25/10/2019**.

6. The upshot is that the application dated **25/10/2019** is granted in terms of prayer No. **(1) (2) and (3)** thereof. For clarity, the orders of interim injunction pending the hearing and determination of this suit issued on **15/11/2018** will from the date of this order cease to cover or apply in respect of **LR. No. 6125/12**.

Dated, signed and delivered at Kitale on this 28th day of November, 2019.

MWANGI NJOROGE

JUDGE

28/11/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for Interested Party

Mr. Ngeywa for the 1st and 2nd Defendants

N/A for the plaintiff

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/11/2019