



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 199 OF 2013

ISSA KHER MOHAMUD MOHAMED & ANOTHER.....PETITIONERS

=VERSUS=

THE MINISTER OF STATE FOR PROVINCIAL

ADMINISTRATION & INTERNAL SECURITY & 3 OTHERS.....RESPONDENTS

AND

KENYA CIVIL AVIATION AUTHORITY & ANOTHER.....INTERESTED PARTY

AND

NAIROBI CITY COUNTY GOVERNMENT.....PROPOSED 5TH RESPONDENT

RULING

1. This is a ruling in respect of a chamber summons dated 19th April 2016 which seeks joinder of Nairobi City County as the 5th Respondent in this suit. This Application was brought by the Attorney General who is the 4th Respondent. The Application was necessitated by a petition in which the Petitioners seek to stop the Respondents from demolishing an hotel erected on LR No.36/II/302 at Eastleigh in Nairobi.
2. The 1st Petitioner is the registered owner of the land on which an hotel owned by the 2nd Petitioner is built. Sometime in 2011, the hotel was marked for demolition on the ground that it is too close to Eastleigh Air Base and that its height is an obstacle to the aircrafts which use the Air Base.
3. The Applicant argues that the building plans for the hotel were approved by the Nairobi City Council which is the predecessor of Nairobi City County which is sought to be enjoined as 5th Respondent. The Applicant argues that the joinder of Nairobi City County is necessary to enable the Court determine the Petition completely and effectually.
4. The Applicant's application is opposed by the Nairobi City County based on grounds of opposition filed in Court on 25th May 2016. The Nairobi City County contends that the Petition does not disclose any cause of action against it and that therefore its joinder is not necessary. The Nairobi City County further argues that there is no relief which the Petitioners are seeking from it and that the Petition herein can be determined without it being enjoined as a party.
5. I have carefully considered the Applicant's application as well as the opposition to the same by the Nairobi City County. I have also considered the submissions by the Applicant and the Nairobi City County. The only issue for determination is whether the Nairobi City County should be enjoined in this Petition. The issue in contention in this Petition is whether the building which was earmarked for demolition was built in accordance with the requirements of the International Civil Aviation Organization as regards obstacle restriction.
6. The Petitioners in their petition have contended that the building was put up after the Nairobi City Council approved the building plans. In approving the building plans, the Nairobi City Council was expected to involve the Moi Airbase officers who would have put in their comments as the building is near the Moi Airbase and the building has to have a certain height which will not interfere with the safety of the aircrafts. The Nairobi City County is therefore a necessary party to enable the court to effectually and completely adjudicate upon and settle the questions involved in the Petition. I therefore allow the application by the Applicant. The Nairobi City County is hereby enjoined as the 5th Respondent. Pleadings to be amended within 21 days. The pleadings shall be served upon the added party only. Costs shall be in the cause.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* on this 19th day of *December 2019*

E.O .OBAGA

JUDGE

In the Presence of:-

Mr Matundura for Mr Mogaka for 5th Respondent and

Mr Muturi for Mr Mwangi for Petitioner

Court Assistant: Hilda

E.O.OBAGA

JUDGE