



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC (CIVIL APPLICATION) NO 1015 of 2016 [OS]

BANQUE VILLA ESTATE MANAGEMENT LTD.....PLAINTIFF

=VERSUS=

KENYA VETERINARY VACCINES

PRODUCTION INSTITUTE.....DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 19th August 2016. The applicant seeks orders restraining the respondent from closing an access road passing through LR No.209/13409.
2. The applicant is a Management Company for the estate called Banque Villa Estate which is erected on LR No. 209/13294/1 & 2. The Estate was developed by the Kenya Bankers Savings and Savings Credit Co-operative Society Limited and sold to its members. The respondent is owner of LR No. 209/13409.
3. As at the time the owners of the houses at Banque Villa Estate bought their houses, the only access road to their estate was through the respondent's property. The residents of the estate have been accessing their houses through the access road since the year 2010. The applicant came to court when the respondent threatened to close the access road.
4. The applicant contends that the estate is landlocked and has now made an application to court under section 140 of the Land Act for an access order. The buyers of the houses in the estate were not aware of the dispute between the respondent and the society which constructed the houses. The land on which the houses were built had been acquired irregularly but has since been regularized by the National Land Commission after it was found that the same had been sold to innocent purchasers.
5. The respondent opposed the applicant's application based on a replying affidavit sworn on 23rd September 2016. The respondent contends that the supporting affidavit to the notice of motion does not disclose who drew it; that the originating summons is not signed and dated while the supporting affidavit to the originating summons is not dated.
6. The respondent further contends that the land on which the estate stands was irregularly acquired and that the respondent is claiming the land through ELC Petition No. 939 of 2014. The estate is not landlocked as there was an access to the same which seems to have been blocked by a private developer .
7. I have considered the applicant's application as well as the opposition thereto by the respondent. I have also considered the submissions by the parties herein. There is no doubt that the land on which the estate stands was irregularly acquired. The issue of acquisition became subject of a complaint to the National Land Commission which investigated the same and found that though the land was irregularly acquired, it has since been sold to third parties who are innocent purchasers for value. The commission directed that the titles should not be revoked.
8. It is clear that the owners of the estate purchased their houses in 2010. They have been using the access road through the respondent's property since then. Though there are claims that there existed an official access road to the estate which access was blocked by a private developer, there is no evidence of the claims.
9. The applicant had tried to negotiate for an alternative access road without success. There is need to ascertain the circumstances under which the estate became landlocked. Until this is ascertained, it will be fair that the access road through the respondent's property remain open.
10. The Notice of Motion is dated. The drawer is disclosed and all the supporting affidavits to the notice of motion and originating summons

are signed and dated. I do not therefore understand the basis of the respondent's contention to the contrary. This is a clear case where orders prayed for should be granted. I therefore allow the applicant's Notice of Motion dated 19th August 2016 in terms of prayer (3). Costs of this application shall be costs in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 5th day of February ,2018.

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the time and date of delivery of Ruling.

Court Assistant : Kajuju

E.O.OBAGA

JUDGE