



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 384 OF 2009

ANNE GLOAG.....PLAINTIFF

=VERSUS=

MOSES GITHINJI AND 121 OTHERS.....DEFENDANTS

AND

NATIONAL LAND COMMISSION.....INTENDED INTERESTED PARTY

RULING

1. The Defendants/Respondents filed a Notice of Motion dated 4th May 2016, in which they seek orders that the National Land Commission (NLC) be enjoined in this suit as an interested party. The applicants had been sued in this case by the respondent over ownership of **LR No. 209/9366**. This case was fully heard and a judgement was delivered on 19th July 2013, by lady justice Gitumbi.

2. The applicants filed a notice of appeal on 24th July 2013. On 15th July 2014, they filed an application for stay of execution and review of the judgement of 19th July 2013. The applicants also filed an application for injunction in the Court of Appeal under Rule 5(2) of the Court of Appeal Rules. The application which was filed on 15th July 2014, has not been prosecuted. The fate of the application in the Court of Appeal is not known.

3. The applicants are now contending that they have discovered that LR No. 209/9366 (suit property) was public land and that since NLC is mandated to deal with issues pertaining to public land, they should be enjoined so that the ownership of the suit property can be determined.

4. The respondent has opposed the applicants' application based on grounds of opposition filed on 10th November 2016. The respondent contends that the applicants' application is an abuse of the process of the court. There is already a judgement in favour of the respondent and it is therefore impossible to enjoin the NLC .

5. I have considered the applicants' application as well as the opposition to the same by the respondent. I have also considered the submissions by the applicants. The only issue for determination is whether the NLC should be enjoined in this case. There is no contention that there is already a judgement in this case. The purpose of joinder of a party into a suit is to enable the court to determine the case if it is proved that the presence of such party is necessary.

6. In the instant case, there is already a judgement which has been delivered. The applicants are not seeking setting aside of the judgement to pave way for joinder of the NLC. It will therefore be an exercise in futility to enjoin NLC at this stage. Though the applicants had filed a separate application for review of the judgement, that application is yet to be heard and in any case, I doubt if it will ever see the light of the day in view of the Appeal which the applicants have preferred.

7. The applicants are pursuing an appeal. The NLC which is sought to be enjoined is also seeking to review grants including the one in respect of the suit property. Whether NLC can review a matter where Judgement has been given is another issue for a different forum. As matters stand, NLC cannot be enjoined in this suit where judgement has already been delivered. The upshot of this is that the applicants' application fails and the same is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 15th day of March 2018.

E.O.OBAGA

JUDGE

In the presence of ;-

Mr Mureithi for Mr Mageto for defendant

Court Assistant: Hilda

E.O.OBAGA

JUDGE