



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

PETITION NO. 3 OF 2016

WILLIAM ABOK.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

TURKANA COUNTY LAND MANAGEMENT BOARD.....2ND RESPONDENT

THE HON. ATTORNEY GENERAL.....3RD RESPONDENT

JOHN EGIELAN.....4TH RESPONDENT

AND

REDEEMED GOSPEL CHURCH.....APPLICANT

RULING

1. The application dated 15/1/2018 seeks an order that the Redeemed Gospel Church - Lodwar be enjoined as an interested party in these proceedings.
2. The application is made on the basis that the Church bought a portion of the suit land measuring 5 acres from the petitioner and immediately took possession and occupation thereof and constructed a School and a Mission Centre and is still in possession thereof; Therefore, states the applicant, it is likely to be affected by any adverse orders that may be made in these proceedings, and it risks being condemned unheard.
3. The application is supported by the affidavit of one John Masika, a Pastor with the applicant. The application is opposed. The 4th respondent has filed a replying affidavit that he swore on 22/1/2018. He states that the application is defective for want of citation of the proper rules under which it is brought. He also states that no contract of sale of land to the Church was exhibited in the supporting affidavit. Thirdly no rights have crystallized in favour of the applicant over the land as no survey subdivision, planning or transfer of the land has occurred and that in any event the only remedy that may be available for a failed or voided transaction, which the 4th defendant appears to think this is one, can only be a claim for a refund of consideration by the recipient.
4. Pursuant to that reply, the applicant filed a further affidavit sworn by John Masika which exhibited the sale agreement between the Church and the petitioner dated 18/8/2014 and another between the Church and one "William Abou" dated 20/8/2014.

5. I have looked at the decisions filed in court by Mr. Ngigi for the 4th respondent. However in my view this is a case in which the parties' rights to real property are concerned. It is not merely a petition with strict regard to public law rights. It straddles both public law rights and private law rights as this court is bound to make pronouncements on the propriety of the acts of public bodies and their impact on the rights of the petitioner to real property. This is the real property a portion of which has been purportedly bought by the interested party. The interested party has demonstrated that they may have real and valuable consideration over part of the property and it would be unfair to deny them a hearing in this matter. In any event I do not see in what manner the 4th defendant would be prejudiced if the instant application was granted. No other party, but the 4th respondent rose in opposition to the application.

6. I find it appropriate to grant the application dated 15/1/2018. I hereby granted prayer **No. 2** thereof. The interested party shall file and serve documents in support of or in opposition to the petition within 21 days of this order.

Dated, signed and delivered at Kitale on this **23rd** day of **April 2018**.

MWANGI NJOROGE

JUDGE

23/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bisonga holding brief for Khisa for Petitioner

N/A for Respondent

N/A for Applicant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

23/4/2018