



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC 2127 OF 2007

THE REGISTERED TRUSTEES OF RUIRU SPORTS CLUB

1. RONALD GRAHAME TIMMS

2. MICHAEL ALBERT ALLEN HARRIS, AND

3. HEZRON AMBUNDO MURUNGA.....PLAINTIFFS

=VERSUS=

ISAAC KARURI NYONGO & 15 OTHERS.....DEFENDANTS

RULING

1. The third Defendant/Applicant filed a notice of Motion dated 21st February 2017 in which he sought the following orders:-

1. Spent

2. Spent

3. The Court issues summons to the Chairman of National Land Commission to appear in Court to explain the import and purport of the letter dated 19th August 2016 and Gazette Notice No.9742 of 25th November 2016 in view of the pendency of these proceedings and the court orders issued on 9th August 2009.

4. The Plaintiffs, whether by themselves, servants and/or agents be restrained from receiving any compensation or payment of any kind whatsoever from the Kenya National Highways Authority or any other government agency for the land acquired out of or comprising LR No.122/7 or LR No.122/4 as indicated in the gazette Notice No.9742 published on 25th November 2016 pending the hearing and determination of this main suit.

5. Upon 3 above, the court be pleased to issue any other order or further orders to safeguard the subject matter of this suit to allow parties canvas the dispute on its merits and for the court to make a full determination of this suit.

6. The cost of this Application be costs in the cause.

2. The applicant contends that he is the registered owner of LR No.122/7 which is about 30 acres (suit property). During the construction of the Thika Super Highway, the Government compulsorily acquired 15 acres of the suit property. A Gazette notice was published indicating that he was to be compensated for the 15 acres. The plaintiff/respondents herein commenced this suit in which they obtained orders of injunction restraining him from receiving any compensation. The respondents thereafter made a complaint to the National Land Commissions which investigated on how title to the suit property was acquired.

3. The National Land Commission found out that title to the suit property had been illegally obtained by persons who sold the suit property to the applicant. The National Land Commission advised the Kenya National Highways to revoke the Gazette notice which had earmarked the applicant as a recipient of the compensation and directed that the compensation should instead go to the respondent as owners of LR No.122/4 where the suit property is said to have been excised from. The National Land Commission also recommended revocation of title to the suit property.

4. The applicant therefore contends that the parallel proceedings by the National Land Commission were illegal null and void and that as a

result of the action by the National Land Commission , the applicant is likely to lose compensation due to him which will be paid to the respondents . It is on this basis that the applicant seeks the orders listed in paragraph 1 hereinabove.

5. The respondents have opposed the applicant's application through grounds of opposition filed on 9th May 2017 and a replying affidavit sworn on 11th May 2017. The respondents deny that the applicant is the owner of the suit property. The title to the suit property was found to have been illegally obtained and the same was revoked. The applicant had stated in his supporting affidavit that he learnt recently that title to the suit property had been revoked. In answer to this, the respondents contend that the applicant was represented by an advocate during the proceedings leading to the revocation of the title. The respondents' contention is supported by a replying affidavit sworn by the advocate who represented the applicant in those proceedings.

6. I have gone through the applicant's application as well as the opposition thereto by the respondents. I have also gone through the submissions by the respondents. The applicants did not file any submissions and if they filed any, then the same are not in the court file. One of the reliefs the applicant is seeking is an injunction restraining Kenya National Highways Authority or any Government Agency from compensating the respondents.

7. The principles for grant of an injunction are clear. Firstly an applicant has to demonstrate that he has a prima facie case with probability of success. Secondly an injunction will not normally be granted unless otherwise the applicant will suffer injury which will not be compensated in damages. Thirdly, if the court is in doubt it will decide the application on a balance of convenience. See **Giella Vs Cassman Brown & Co.Ltd (1973) EA 358.**

8. In the instant case, the circumstances on how the applicant acquired the suit property is clear. He bought it from some two individuals who had taken the respondents to the lower court in Thika claiming that the respondents held 30 acres in trust for them. They lost that case. They went to Nyeri High Court where they filed an appeal against the decision of the lower court. They again lost that appeal.

9. The two individuals somehow managed to obtain title to the 30 acres which they then sold to the applicant during the time they were battling with the respondents in court. Considering all the material placed before me, I do not find that the applicant has demonstrated that he has a prima facie case. The issue in this matter is on who is to be compensated because the Government has already acquired 15 acres and the Thika Super Highway is already complete. If it turns out that the compensation was lawfully due to the applicant, he can always be compensated.

10. The applicant is seeking an order from the court summoning the chairman of the National Land Commission to explain a letter he wrote and some Gazette notice. I do not think that such orders can be issued in this case. If the applicant feels that what the Chairman of the National Land Commission did was in excess of his jurisdiction, he can always seek to have that decision quashed but not calling him to come and explain what he did . I do not find any merit in the applicant's application which is hereby dismissed with costs to the plaintiffs/ respondents.

It is so ordered

Dated, Signed and delivered at Nairobi on this 31st day of May 2018.

E.O.OBAGA

JUDGE

In the presence of:-

Mrs Makau for Mr Manduku for 3rd defendant

Court Assistant: Hilda