



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 37 OF 2008**

**KENYA ANTI-CORRUPTION COMMISSION..... PLAINTIFF**

**VERSUS**

**MAGUT AGENCIES LIMITED.....1<sup>ST</sup> DEFENDANT**

**SOMOG LIMITED.....2<sup>ND</sup> DEFENDANT**

**WILLIAM SAMOEI RUTO.....3<sup>RD</sup> DEFENDANT**

**WILSON GACANJA.....4<sup>TH</sup> DEFENDANT**

**RULING**

The application before court is dated 4.4.2014 brought under Order 25, Rules 51(1)(2) and Order 51, rule 1 of the Civil Procedure Rules, 2010. The applicant seeks orders that the suit herein has been compromised and or overtaken by events consequent to the revocation of title number Eldoret Municipality Block 8/574 which was excised from title number Eldoret Municipality Block 8/83 vide Gazette Notice No. 15578 of 26.11.2010. He prays that judgment be entered in terms of the plaint and each party to bear own costs.

The facts of this case are that the applicant instituted the suit herein claiming that:

***(i) A declaration that the allocation to the 1<sup>st</sup> defendant by the 4<sup>th</sup> defendant and subsequent issuance of the Lease to the 1<sup>st</sup> and 2<sup>nd</sup> defendants of Eldoret Municipality Block 8/83 and the subsequent transfer of Eldoret Municipality Block 8/574 excised therefrom to the 3<sup>rd</sup> defendant, was irregular, fraudulent and illegal and consequently null and void.***

***(ii) An order of rectification of the register by cancellation of the Certificate of Lease and all entries on the Land Register for Land Reference Number Eldoret Municipality Block 8/574.***

***(iii) An order for preservation and a permanent injunction against the 3<sup>rd</sup> defendant, his agents, servants or assigns restraining him from leasing, transferring, charging, taking possession or in any other manner howsoever from dealing with Eldoret Municipality Block 8/574, otherwise than by transfer or surrender to the Council and or the Government of Kenya.***

***(iv) Costs of and incidental to the suit.***

***(v) Any other or further relief the court may deem fit and just to grant.***

While the suit was pending, the title to Eldoret Municipality Block 8/574 was revoked vide Gazette Notice Number 15578 of 26.11.2010. The defendants filed Judicial Review No. Eldoret JR No. 44 of 2010 challenging the revocation of title numbers 8/574, 8/575, 8/577, 8/578, 8/579, 8/580 – 587 at the High Court but the same was dismissed. The respondents have never challenged the decision in the Court of Appeal.

The respondents did not file replying affidavits save Stephen Kihara Karobio, the Director, Kensten Limited who states that the Land Registrar, Uasin Gishu lacked the legal capacity or powers to revoke or cancel a title deed through a Kenya Gazette without recourse to the High Court. He states that the Gazette Notice No. 15578 dated 26.11.2010 was ultra vires, illegal unconstitutional, null and void ab-initio and was of no legal consequence to the title of the interested party.

The applicant argues that the revocation of title herein by the Registrar rendered this suit compromised and redundant and overtaken by events. The plaintiff further submits that the government acted in public interest in revoking the title Eldoret Municipality Block 8/574

through Gazette Notice as the Plot was reserved for public purposes.

The interested party supports the plaintiff in the application dated 4.4. 2014. The defendants submit that the plaintiff intends to take advantage of the revocation of title No. Eldoret Municipality Block 8/574 vide Gazette Notice Number 15578 of 26.11.2010. The defendants argue that the section of law under which the application is made does not support the motion and application. The gazette notice was wholly illegal and unlawful and did not confer the rights to the plaintiff. The defendants argue that the Gazette Notice violates Articles 40, 47, 48 and 50 of the Constitution of Kenya.

Secondly, the defendants argue that there is no basis in law for the application as the Gazette Notice relied upon is not lawful as the Minister had no powers in law to revoke title and that his actions remain unlawful.

I have considered the application, affidavits on record and rival submissions and do find that the application is premised on Order 25, Rule 5(1) of the Civil Procedure Rules. The order provides that: -

**(1) Where it is proved to the satisfaction of the court, and the court after hearing the parties directs, that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith.**

**(2) The Court, on the application of any party, may make any further order necessary for the implementation and execution of the terms of the decree.**

I have carefully discerned the provisions of this order and do find that for the court to enter judgment under Order 25, Rule 5(1) and (2), there must be an agreement which is lawful or there must be a compromise. The black's law dictionary defines an agreement as a concord of understanding and intention, between two or more parties, with respect to the effect upon their relative rights and duties, of certain past or future facts or performances. The elements required for the agreement to be a legally enforceable contract are: mutual assent, expressed by a valid offer and acceptance; adequate consideration; capacity; and legality.

A compromise means a settlement of differences by mutual concessions; an agreement reached by adjustment of conflicting or opposing claims and principles, by reciprocal modification of demands.

The Gazette Notice Number 15578 of 26.11.2010 can neither be referred to as an agreement nor a compromise as it was made unilaterally by the Minister without involving the defendants. Moreover, the act of revoking title by the Minister was done in excess of jurisdiction as the Minister for Lands had no powers to revoke title and therefore it was an illegality.

There is no evidence that the defendants have satisfied the plaintiff in respect of the whole or any part of the subject matter of the suit. The defendants have not surrendered the property in dispute to the National Land Commission and therefore, Order 25, Rule 5(1) and (2) are not applicable.

I do find this application without any basis and misconceived as there is no any lawful agreement or compromise and that the defendants have not surrendered the suit property to the government. The application is dismissed with costs.

**Dated and delivered at Eldoret this 29<sup>th</sup> day of June, 2018.**

**A. OMBWAYO**

**JUDGE**