



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 20 OF 2017

[FORMERLY HIGH COURT CIVIL SUIT NUMBER 463 OF 2008]

COMMERCIAL AND ADMIRALTY]

WESTWARD PROPERTIES LIMITED.....PLAINTIFF

=VERSUS=

CHEZER INVESTMENTS LIMITED.....DEFENDANT

RULING

1. The Plaintiff/Respondent is the registered owner of LR No.209/12231. The defendant /applicant is the registered owner of LR No.209/2574. The two properties are adjacent to each other. The Plaintiff/ Respondent filed a suit against the defendant/ applicant in which the respondent contended that the applicant had encroached on to its property. The respondent is seeking a survey to be carried out to ascertain the extent of the encroachment.

2. The applicant filed a defence and raised a counter-claim in which it seeks a portion of the respondent's property on the ground that it has acquired the said portion by way of adverse possession. The applicant operates a hotel known as Boulevard Hotel on its property. The portion which it seeks by way of adverse possession has been used as the hotel's parking lot since the 70's.

3. The applicant filed a notice of motion dated 17th day of April 2018 in which it seeks stay of proceedings in this case. The applicant also seeks to amend its defence and counter-claim. The applicant contends that the title held by the respondent is under investigations by the National Land Commission (NLC) based on a complaint from the Kenya National Highways Authority (KENHA). The applicant contends that the title held by the respondent was created from land which is a road reserve and that therefore it is important that the proceedings herein be stayed pending the outcome of the investigations by NLC. It is the applicant's contention that if the court were to proceed to hear the case and the title to the respondent's property is revoked, it would amount to a waste of judicial resources which ought to be used efficiently.

4. The respondent has opposed the applicant's application based on a replying affidavit sworn on 20th April 2018. The respondent contends that this case is an old case and staying it will be against the overriding objective of expeditious, proportionate, and affordable disposal of disputes; that the NLC has neither approached the court nor the applicant for any assistance and that the application is only meant to scuttle the hearing of this suit.

5. I have considered the applicant's applications as well as the opposition to the same by the respondent. During the hearing of this application, Mr Ongoya for the respondent indicated that he was not opposed to the prayer for amendment of the defence and counter-claim. What therefore remains for determination is whether the proceeding herein should be stayed.

6. The applicant is seeking to stay the proceedings of this court on the ground that NLC is investigating the propriety of the title held by the respondent. The court is being moved under its inherent power under Section 3A of the Civil Procedure Act as well as the overriding objective under Sections 1A and 1B of the same Act. As was clearly set out in the case of **SYMON NYAMU MUTHIGANI VS CHARITY WANGUI MUNENE IN KERUGOYA ELC NO.375 OF 2013**, the court will no doubt take into account the need to determine cases expeditiously, the status and history of the proceedings sought to be stayed, what prejudice will be occasioned to the other party and most importantly the interest of justice.

7. It is clear that the applicant had sought to have the property held by the respondent allocated to it without success. When this suit was filed a decade ago, the applicant filed a counter-claim in which it sought to be declared as having obtained a portion they are occupying by way of adverse possession. It is ironical for the applicant to turn around and claim that the same land is now on a road reserve. It is common knowledge that the mandate of NLC in as far review of grants is concerned has expired. Parliament is yet to extend their mandate. This case

was filed before the NLC came into operation. It would be unfair to stay the proceedings herein when it is not known when NLC will ever be given the mandate to deal with issues of review of grants. I therefore decline to stay these proceedings. I will only allow the prayer for amendment of the defence and counter-claim to be filed within 14 days for the date hereof. Costs of this application shall be costs in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 28th day of June 2018.

E.O.OBAGA

JUDGE

In the presence of :-

Mr Otieno Mudanyi for Mr Ongoya for Plaintiff

Court Clerk: Hilda

E.O.OBAGA

JUDGE