



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC NO. 925 OF 2015**

**LALY FURNISHING HOUSE LIMITED.....PLAINTIFF**

**=VERSUS=**

**KENYA NATIONAL HIGHWAYS AUTHORITY.....1<sup>ST</sup> DEFENDANT**

**CHINA ROAD AND BRIDGE CORPORATION.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. The Plaintiff had filed a suit against the defendants seeking among other prayers compensation for its property which was taken for construction of the inter-change of the Nairobi Southern by-pass. This suit was filed on 28<sup>th</sup> September 2015. Subsequent to the filing of this suit, the title to the suit property was recommended for revocation pursuant to the constitutional mandate of the National Land Commission (NLC) on review of grants.

2. The defendants filed a notice of Motion dated 14<sup>th</sup> August 2017 in which they seek striking out of the plaintiff's suit on the ground that as the title to the suit property has since been revoked, the substratum of the suit has been taken away hence there is nothing to be heard.

3. The plaintiff opposed the defendants' application based on replying affidavit sworn on 17<sup>th</sup> November 2017 and a preliminary objection dated 17<sup>th</sup> November 2017 and filed in court on the same day. The plaintiff contends that the defendants' application is an abuse of the process of court. The plaintiff further contends the action of the NLC has not ousted the jurisdiction of this court in view of the prayers sought in the plaint and that this case had been certified ready for hearing and finally that the action by NLC was to rubber stamp their illegal action.

4. I have considered the defendants application as well as the opposition to the same by the plaintiff. The only issue for determination is whether the plaintiff's suit against the defendants should be struck out. The law is clear that a pleading can only be struck out if it is so hopeless that not even an amendment can breath life into it. See **D.T Dobie & Company (Kenya) Limited Vs Joseph Mbaria Muchina & Another (1980) eKLR** where Madan JA as he then was held as follows:-

***“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak as to be beyond redemption and incurable by amendment”.***

I have looked at the documents filed by the plaintiff and notice that it was part of the suit property which was encroaching on to the southern by pass. The ministry of lands and the roads engineers had asked the plaintiff to resurvey the suit property to remove the section which had encroached on to the suit property.

5. The defendants have not annexed any documents to show on what basis the NLC later reached a decision to recommend revocation of the entire suit property. It is clear therefore that the plaintiff's suit raises some triable issues and the same cannot be struck out. I therefore proceed to dismiss the defendants' application with costs to the plaintiff.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **19<sup>th</sup>** day of **July 2018**.

**E.O.OBAGA**

**JUDGE**

In the Presence of:-

Mr Mola for Plaintiff : Present

M/s Olendo for Mr Orego for defendant

Court Assistant: Hilda

**E.O.OBAGA**

**JUDGE**