



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 340 OF 2015

KENYA AIRPORTS AUTHORITY.....PLAINTIFF

VERSUS

NAKURU TEACHERS HOUSING

CO-OPERATIVE SOCIETY LTD.....1ST DEFENDANT

THUO COMMERCIAL AGENCIES LIMITED...2ND DEFENDANT

CHIEF LAND REGISTRAR.....3RD DEFENDANT

THE NATIONAL LAND COMMISSION.....4TH DEFENDANT

RULING

(Application by 1st defendant to be discharged from these proceedings; 1st defendant having bought the disputed land from a third party; 1st defendant surrendering its interest upon discovering that the land was public land and suing for a refund; applicant no longer having interest in the suit land, application allowed).

1. The application before me is that dated 29 January 2018 filed by the 1st defendant. The application is said to be brought pursuant to the provisions inter alia of Order 10 (2) and the principal order sought is that the 1st defendant/applicant, be struck out of this suit and the plaintiff be condemned to pay costs.

2. The suit itself was commenced by way of a plaint which was filed on 11 November 2015. The plaintiff has sued 4 defendants, being the applicant as 1st defendant, Thuo Commercial Agencies Limited as 2nd defendant, the Chief Land Registrar as 3rd defendant, and the National Land Commission as 4th defendant. It is pleaded that the plaintiff is the owner of the land parcels LR Nos. 4731/1, 6282/1 and 23166 (formerly LR Nos. 9363/3, 4731/2, 6282/2 and 11373) and that the said parcels of land were obtained through a compulsory acquisition for purposes of developing a civilian airstrip, with all requirements being fulfilled. It is the plaintiff's case that the parcels of land LR Nos. 9363/3, 4731/2, 6282/2 and 11373 were amalgamated to create the land parcel LR No. 23166 (IR No. 75786) and a grant issued on 1 November 1997. It is averred that the 1st and 2nd defendants have encroached into this parcel of land, are subdividing it, and purport to have acquired title to the same. In the suit, the plaintiff has sought orders inter alia to be declared the rightful owner of the above mentioned land parcels; a cancellation of all transactions and subdivisions that may have taken place after 1 November 1997; a revocation of all titles issued by the 3rd defendant to the 1st and 2nd defendants and eviction.

3. The 1st defendant entered appearance and filed defence. In the defence, it is pleaded that the 1st defendant bought the land parcels LR No. 4731/2, and LR No. 6282/2 from Kianjoya Enterprises sometimes on 30 October 1989. It is pleaded that the 1st defendant discovered that 5.2 Ha, of the land parcel LR No. 4731/2 and 1.62 Ha, of the land parcel LR No. 6282/2 formed part of the airstrip. Upon this discovery, the 1st defendant filed suit against Kianjoya Enterprises Limited for recovery of money that it had paid to this entity being the case Nakuru HCCC No. 208 of 2004.

4. The other defendants have yet to file their defences.

5. In this application, the applicant has averred that it is wrongly enjoined in this suit. It is averred that when the applicant purchased some of the suit properties from Kianjoya Enterprises Limited, they received a letter from the Commissioner of Lands stating that what they had purchased had been compulsorily acquired for the construction of an airstrip. They then filed suit against Kianjoya Enterprises to be

compensated by other equivalent land, or pay the current value of what they had purchased, and judgment was entered in their favour. It is deposed that pursuant to the judgment, the applicant has moved to sell some land owned by Kianjoya Enterprises. It is for these reasons that the applicant has contended that it is wrongly enjoined in the suit.

6. The plaintiff/respondent did not file anything to oppose this motion.

7. I have considered the matter. I believe that the position of the applicant is that upon realizing that what it had purchased from Kianjoya Enterprises was not good land, and that it had been compulsorily acquired by the Government, it abandoned interest in the same, and instead sued, the seller for compensation. In other words the applicant is saying that it no longer has any interest in the land that it bought which comprise of the suit properties herein. As I mentioned earlier, the respondent has not opposed this application and I take it that they have no problem with the applicant being discharged from these proceedings.

8. What is not clear to me is whether the applicant ever managed to procure titles in its name, and if so, whether these were surrendered to the plaintiff. If the position is that the applicant has titles in its name, then it needs to surrender these to the plaintiff. I will need a confirmation of this at a date that I will give upon delivery of this ruling.

9. I otherwise have no reason to disallow this application and I allow it. I direct that the 1st defendant be struck out of these proceedings for it does not have any interest in the subject matter of this suit. On costs, I do not know whether the plaintiff was aware of the suit between the applicant and Kianjoya Enterprises and I have no evidence that the applicant informed the plaintiff that it no longer has any interest in the parcels of land before the plaintiff sued the applicant. I will therefore make no orders as to costs.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 25th day of September 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Ms. Nancy Njoroge for the applicant.

Court Assistant: Nelima Janepher

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU