



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 180 OF 2017

KENYA BROADCASTING CORPORATION.....PLAINTIFF

VERSUS

KOMAROCK RANCHING AND FARMING

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

KOMAROCK RANCHING COMPANY LIMITED.....2ND DEFENDANT

AND

HON. JOHNSON MUTHAMA.....INTERESTED PARTY/APPLICANT

RULING

1. This Ruling is in respect to the Application dated 7th September, 2017 and filed by the Intended Interested Party (*the Applicant*). In the Application, the Applicant is seeking for the following orders:

- a. That upon hearing this Application interpartes, the Honourable Court be pleased to enjoin Hon. Johnson Muthama as an Interested Party.***
- b. That upon hearing this Application interpartes, the Honourable Court be pleased to grant leave to the Applicant/Interested Party to file any papers within reasonable time.***
- c. That the Honourable Court be pleased to make further/other orders as it may deem fit in the circumstances.***

2. The Application is supported by the Affidavit of the Applicant who has deponed that although the suit land is registered as public land, the same is community land; that as a Member of Parliament in the 10th Parliament and a Senator of Machakos County in the 11th Parliament, he has at all material times defended and represented the interests of the local residents as far as the subject land is concerned and that he was not aware of the existence of this suit all along.

3. The Applicant deponed that the suit land has since been invaded by agents, cronies and or members of the 2nd and 3rd Respondents who are currently in the process of illegally sub-dividing and dishing out the land and that the suit land is not available for allocation to the 2nd and 3rd Respondents who are private entities.

4. In his response, the Chairman of Komarock Housing and Co-operative Society deponed that the Applicant is a member of the Society; that it beats logic how he can claim that he was not aware of the suit; that he has not told the court why he wants to oppose the Society's claim and that the Applicant has not informed the court who the amorphous group calling themselves the residents of Matungulu are.

5. The deponent deponed that the Society was registered on 12th February, 1963; that the members of the Society bought the suit land from William Crowford Nicol and Maurice Ercole; that fraudsters registered the 2nd Defendant and procured an allotment letter in its name and that the Application has not been made in good faith.

6. In his Further Affidavit, the Applicant deponed that he has no personal interest in the suit land; that the 1st Respondent is the rightful owner of the suit land which is held in trust for the community and that as a member of the 2nd Respondent, he would wish to shade light on all issues before the court.

7. According to the Applicant, the deponent of the Replying Affidavit is not a party to this suit; that the said deponent lacks the locus standi to respond to the instant Application and that the suit land has been invaded by the members of the deponent's Society and not the members of the 2nd Respondent and that the 2nd Respondent is a dormant Society.

8. In his submissions, the Plaintiff's advocate submitted that Komarock Housing Co-operative Society is not a party to this suit; that the deponent of the Replying Affidavit does not have the requisite *locus standi* to oppose the current Application and that the Applicant is a member of the 1st Respondent.

9. On his part, the 2nd Respondent's advocate deponed that the Applicant is a member of the 2nd Respondent which changed its name to Komarock Housing Co-operative Society and that the Application should be dismissed.

10. In the Plaintiff dated 21st June, 2013, the Plaintiff averred that it is the beneficial owner of land parcel number Donyo Sabuk/Komarock Block 1/9218 measuring 503.44Ha; that the land is registered in the name of the Permanent Secretary, Treasury, as a trustee of the Ministry of Information and Communication and that on diverse days, the Defendants invaded the suit land with the intention of sub-dividing it amongst its members.

11. The 1st Defendant filed a Defence and Counter-claim in which it averred that it purchased the suit land in 1963 which was then known as L.R No. 8825 and that the said land was unlawfully acquired by the Plaintiff. The 1st Defendant wants the title document that was issued in favour of the Plaintiff cancelled and the same to be registered in its name, save for the 70 acres that it donated to the Plaintiff for its transmission station.

12. It is not clear to this court the relationship between the 1st Defendant, the 2nd Defendant and Komarock Housing Co-operative Society Limited. However, according to the Chairman of Komarock Housing and Co-operative Society Limited, the 1st Defendant changed its name from Komarock Ranching and Farming Co-operative Society Limited to Komarock Housing Co-operative Society Limited. The Certificate of Registration produced by the Applicant shows that the two entities were registered on the same day, that is on 12th February, 1963.

13. In his Affidavit, the Applicant deponed that he is a member of the 2nd Respondent and that the 1st Respondent is holding the suit land in trust for the community; that Komarock Housing and Co-operative Society Limited is not a party to the suit and that he should be allowed on board to clarify to this court the issue of ownership of the suit land.

14. It would appear from the pleadings before me that before delving into the issue of ownership of the suit land, the court will have to unravel the identity crisis involving the 1st Defendant, the 2nd Defendant and Komarock Housing Co-operative Society, which, according to the Applicant, is a separate legal entity from the 1st and 2nd Defendants. The court will therefore need to be furnished with all the information to be tendered by people who have been in leadership positions of those Societies, including the Applicant, who was a Member of Parliament and Senator in whose jurisdiction the suit land falls.

15. Indeed, it is not clear if the person who deponed the Replying Affidavit had the legal capacity to do so considering that Komarock Housing Co-Operative Society Limited is not a party to this suit. Consequently, and for the court to effectually and completely adjudicate on the issues arising in this matter, I shall, which I hereby do, allow the Application dated 7th September, 2017 in the following terms:

a. The Applicant, Hon. Johnson Muthama, be and is hereby enjoined in this suit as an Interested Party.

b. The Applicant to file his pleadings within fourteen (14) days of the date of this Ruling.

c. Each party to pay his/its own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2018.

O.A. ANGOTE

JUDGE