



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CONSTITUTIONAL PETITION NO 1 OF 2017

GEOFFREY CLEMENT JEFWA & 11 OTHERS.....PETITIONERS

-VERSUS-

JAMES RAYMON NJENGA & 12 OTHERS.....RESPONDENTS

AND

MUSLIM FOR HUMAN RIGHTS (MUHURI).....1ST INTERESTED PARTY

KEYSIAM AUCTIONEERS.....2ND INTERESTED PARTY

RULING

1. The petitioners herein moved the Court by an application dated 25th April 2017 under the provisions of Order 40 Rule 1, 2, 3 and 4 of the Civil procedure Rules and Section 1A, 1B, 3A and 63 (e) of the Civil Procedure Act for the grant of orders:

1. Spent

2. Spent

3. That pending the hearing and determination of this petition, the 10th Respondent, 2nd Interested Party and or any party to this suit, their servants, and/or agents or otherwise howsoever be restrained from auctioning and or performing any activities, operating, selling, mortgaging, transferring leasing, using, wasting, fencing and erecting any structure, constructing and/or carrying on any further activities on the suit property specifically on TITLE NO. MAINLAND NORTH/SECTION 11/6163 MTWAPA CREEK – MAJAONI AREA, MOMBASA (part of the suit property).

4. That this Honourable Court be pleased to make such other or further orders to preserve the suit premises and specifically TITLE NO. MAINLAND NORTH/SECTION 11/6164 MTWAPA CREEK – MAJAONI AREA, MOMBASA (part of the suit property) as it may deem it fit and just to grant;

5. That an order of prohibition be issued to the 10th, 11th and 12th Respondents from dealing in any way whatsoever with the suit property herein.

6. That the costs for this suit be in the cause.

2. The motion is supported by the grounds on the face of it and the affidavit of Geoffrey Clement Jefwa. The application is opposed by Dubai Bank Ltd (in Liquidation) sued as the 10th Respondent and the 13th Respondent through the replying affidavit of John Masega Ombasa sworn on 9th February 2018. Mr Ombasa deposed that the application and the suit offends the provisions of section 56 (2) of the Kenya Deposit Insurance Act No 10 of 2012.

3. The Petitioners/Applicants were served with this replying affidavit as they have referred to it in their submissions in the following words:

“The application has been vaguely and loosely defended by John Masega Ombasa who swore an affidavit in opposition of the application dated 25/04/2017 in the capacity of Debt Recovery Officer for the 13th Respondent herein Dubai Bank Ltd.”

4. The affidavit of John Ombasa raised a serious issue of law. This Court wondered why the petitioners took the view that this was vague and loose. The applicants herein have not moved the Court to regularise the suit as against the bank so as to comply with the provisions of section 56 (2) of Act No 10 of 2012. I have already made a finding in the motion dated 19.7.17 that the suit against the bank be struck out for non – compliance with section 56 (2) of Act No 10 of 2012. Since the 2nd Interested Party, Keysiam Auctioneers was merely acting on instructions of the disclosed principle who has already been removed from the suit, the orders cannot issue against the agent.

5. Consequently in light of the striking out order, I shall not delve into the merit or otherwise of the present application. It suffers death because it cannot be pursued against a person who is no longer a party to the suit. Accordingly the application be and is hereby struck out with an order for each party to bear their respective costs.

Dated, signed & delivered at Mombasa this 6th December 2018

A. OMOLLO

JUDGE