



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

CONSTITUTIONAL PETITION NO. 171 OF 2016

**IN THE MATTER OF: ARTICLES 10, 11, 23, 162 93) AND 258 OF THE CONSTITUTIONAL OF
KENYA, 2010**

AND

IN THE MATTER OF: SECTION 13 OF THE ENVIRONMENT AND LAND COURT ACT, 2011

AND

**IN THE MATTER OF: ALLEGED CONTRAVENTION FO THE BILL OF RIGHTS UNDER
ARTICLES 23(1) (3), 40(3) AND 47(1) OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

AFRICAN GAS & OIL COMPANY LIMITED.....PETITIONER

-VERSUS-

THE ATTORNEY GENERAL.....1ST RESPONDENT

KENYA RAILWAY CORPORATION.....2ND RESPONDENT

NATIONAL LAND COMMISSION.....3RD RESPONDENT

CHINA ROAD & BRIDGE CORPORATION (K) LTD.....4TH RESPONDENT

AND

MONICA WAMBUI KAMAU

ZACHARIA NJENGA

JANE NJERI

**JOSEPH NYING (Suing as the administrators of the
Estate of the late JAMES KAMAU THIONGO alias**

RULING

1. The intended interested party hereinafter referred to as the “*applicant*” moved this Court under the provisions of Order 12 Rule 7 of the Civil Procedure Rules seeking to have the administrators of the estate of the Late James Kamau Thiong’o alias Kamau Thiong’o enjoined as an interested party in this petition. The application is supported by the 3 grounds on the face of it and the affidavit of Joseph Nyingi Kamau. Briefly, the applicant deposed that the deceased is the registered owner of land parcel known as MN/VI/755 measuring 48 acres as per copy of the search annexed.
2. Mr Nyingi deposed that unknown to the deceased or his estate, the land was encroached on and a portion thereof was hived off and or curved out under fraudulent circumstances to form part of land No MN/VI/4737 and the deed plan of this land was overlapped or superimposed over deed plan for parcel No 755. When they discovered this, the applicant filed ELC Case No 161 of 2013. Mr Nyingi continued that they learnt of this petition through the Daily Nation newspaper and they were surprised to learn that the petitioner failed to disclose to the Court the existence of the dispute over the suit parcels of land.
3. Mr Nyingi deposes further that the interested party stands greatly affected by the outcome of this petition and it is only just and fair that they be enjoined so that they can ventilate their case and assist the Court to determine some of the issues in dispute.
4. The application is not opposed by the Respondents. However the petitioner opposed the application and it filed a replying affidavit and further affidavit deposed to by Mr Joseph Mwella who describes himself as the legal officer of the petitioner. In summary, the petitioner aver that the suit parcel of land No 755/VI/MN was compulsorily acquired by the government in 1976 long before the petitioner’s acquisition of the suit property 4737. Mr Mwella annexed a copy of the gazette notice No 737 dated 12.3.1976 to support this position.
5. The petitioner deposes that the applicant’s discernible claim if any would lie against the government for compensation if the said land was not paid for. Mr Mwella deposes that there is no benefit in joining the applicant to this petition as the subject matter of their claim being parcel No MN/VI/755 by virtue of the acquisition is non-existent. He urged the Court to dismiss the application with costs.
6. The parties filed detailed written submissions. The applicant filed his on 13th October 2016 while the petitioner filed theirs on 24.10.2016. Alongside their submissions they also filed list of authorities to support the submissions. When they appeared before this Court on 28.10.16, both the applicant and the petitioner/respondent chose to rely on the submissions as filed. A ruling date was set for 20.12.16. However due to pressure of work this Court was not able to deliver the ruling on the scheduled time. The parties’ advocates were duly notified in open Court by myself that the ruling would be delivered on notice since the High Court was also taking its Christmas vocation as contained in the law.
7. Before the notice could be served, the applicant’s advocate wrote a letter of complaint dated 21.12.2016 complaining of the delay in delivering the ruling and which letter was received in our registry on 13.1.2017. In response, I directed the deputy registrar of this Court to serve them with notice of delivery of the ruling vide the letter dated 24th January 2017 that the ruling would be delivered on 16.2.17. Again before the 16.2.17, the applicant filed petition cause No 1 of 2017 against the same parties herein which is pending.
8. With the filing of the petition No 1 of 2017, the applicant has brought his claim against this petitioner and the named Respondents. His claim as contained in the petition cannot by all means be wished away as it is a suit on its own right. It is my considered view that in the circumstances he has clearly expressed his intention to challenge the claim by the petitioner/respondent putting forth their claim over the award the subject of this petition. Consequently even without making references to the submissions filed and

case law cited by the parties, I am satisfied that the applicant has demonstrated that he is a necessary party to these proceedings. Whether the suit land No MN/VI/755 is existing or not is a question to be determined by adducing evidence during the hearing of this petition and or petition No 1 of 2017. For this reason I find no reason to refuse to grant the application dated 4.7.2016. Consequently the same is allowed the applicant is hereby joined as an interested party to this petition. Costs are ordered in the cause.

Dated and delivered in Mombasa this 16th February 2017.

A. OMOLLO

JUDGE