



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.264 OF 2009

LEPIC SCHOOL LIMITED.....PLAINTIFF

VERSUS

GEORGE KIONI.....1ST DEFENDANT

BOARD OF GOVERNORS

ST. GEORGE ATHI SECONDARY SCHOOL.....2ND DEFENDANT

NATIONAL LAND COMMISSION.....INTERESTED PARTY

RULING

1. This is a ruling in respect of a notice of motion dated 8th September 2015. The application seeks joinder of the National Land Commission in this suit as the third defendant. The applicant contends that the suit property is public land which was irregularly acquired and that the applicant is in the process of investigating the title in accordance with its mandate. That the joinder of the applicant in this case will assist the court reach a fair decision in this matter.

2. The applicant's application is opposed by the Plaintiff/Respondent through grounds of opposition filed in court on 24th November 2015 in which the Plaintiff/Respondent contends that there have been no investigations regarding the title held by the Plaintiff/Respondent. That the applicant's application is a scheme by the first and second defendants to continue their acts of trespass into the suit property. That the applicant is abusing its mandate and that granting of the application will serve to delay the finalisation of this matter.

3. I have gone through the pleadings herein, the application by the applicant as well as the opposition thereto by the Plaintiff/Respondent. There are allegations which are not denied that the suit property which is registered in the Plaintiff/Respondent's name had been set aside for public use specifically for construction of a public secondary school. That the property was acquired irregularly by the Plaintiff/Applicant.

4. It is said that the applicant built a private school on the suit land but because of the hostility from members of the public, the applicant has not utilized the suit property for the intended purpose. That it is the defendants who are in possession of the suit property. There is evidence that the applicant had received a complaint from the members of the public regarding the suit property. The applicant is investigating the acquisition of the suit property by the Plaintiff/Respondent. Part of the mandate of the

applicant is to investigate complaints regarding public land which is alleged to have been irregularly acquired. It is therefore clear that the applicant is a necessary party which will ensure that the court effectually and completely adjudicates the dispute herein.

5. Before I conclude this ruling, I must point out that the advocates for the applicant have not been candid on what they wanted. At some stage after filing the application for joinder, they wrote a letter to court intimating their intention to withdraw the application. Their intention to withdraw was expressed through their letter dated 14th September 2016 and filed in court on 19th September 2016. The applicant's lawyers appear to have changed their mind and decided to pursue the application by filing submissions in support of it though on 9th February 2017, Ms. Chege who held brief for Mr. Njeru for applicant informed the court that she did not know what had been going on in the matter, a pointer that the applicant's advocates were not on top of things in as far as what they wanted was concerned. Be that as it may, I find that the applicant is a necessary party in this suit. I allow the applicant to be enjoined as a third defendant. The Plaintiff shall be amended to reflect the applicant as the third defendant. Costs of this application shall be in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 20th day of **June** 2017.

E.O. OBAGA

JUDGE

In the presence of:-

Mr. Mwangi for defendant

Mr. Ngeresa for Mr. Sahini for Plaintiff

Court Assistant - Hilda