



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.317 OF 2015

KENYA ANTI-CORRUPTION COMMISSION.....1ST PLAINTIFF

THE RIFT VALLEY DEVELOPMENT TRUST

REGISTERED TRUSTEE T/A TECHNOLOGY FARM....2ND PLAINTIFF

VERSUS

FRANCIS ZAASITA KIPTOO MENJO & 37 OTHERS.....DEFENDANT

NATIONAL LAND COMMISSION..PROPOSED, INTERESTED PARTY

RULING

(Application seeking orders to enjoin a party as defendant and another as interested party to proceedings; application also seeking orders to stop payment of compensation arising out of a compulsory acquisition of land in dispute; proposed defendant being a registered proprietor of one of the land parcels in dispute; interested party being the National Land Commission; necessary to add the proposed defendant as it is a registered owner; presence of National Land Commission may assist in resolution of dispute; application allowed).

1. This is now a fairly old case that was commenced by the then Kenya Anti-Corruption Commission (now the Ethics and Anti-Corruption Commission) in the year 2006. It was pleaded in the original plaint (for there have been amendments) that Rift Valley Development Trust Registered Trustees, was registered as proprietor of five land parcels being :-

- (a) LR No. 3380/2 measuring approximately 351 Ha;
- (b) LR No. 5636/1 measuring approximately 421 Ha;
- (c) LR No. 7385/5 measuring approximately 612 Ha;
- (d) LR No. 7018 measuring approximately 25 acres;
- (e) LR No. 37388 measuring approximately 903 acres.

2. The object of the trust was said to be of establishing institutions and schemes for the advancement of education and development for the people of Rift Valley and the public at large and that it established the

Rift Valley Institute of Science and Technology (RVIST) sometimes in the year 1978, which is jointly run with the Ministry of Education. It was pleaded that in February 1997, the 1st defendant, one Francis Zaasita Kiptoo Menjo, together with another person (now deceased) without any colour of right, caused to be consolidated 3 of the Trust's parcels of land, namely LR NO. 7385/5; 3380/2; and 5636/1 thereby creating the land parcel LR No. 22771. He then caused this land to be subdivided into six parcels namely LR Nos. 22771/1 to 22771/6. He thereafter transferred the parcel No. 22771/5 to the 2nd defendant, Francklem Enterprises Limited; the parcel No. 22771/6 to the 3rd defendant, Little Meadows Limited; LR No. 22771/4 to the 4th defendant, Romly Agencies Limited; and LR No. 22771/2 to the 5th defendant, Betsy Chelangat Irongi. The 5th defendant later sold LR No. 22771/5 to the 6th defendant, Apricot Apples Promotions Systems Limited; and in turn, the 6th defendant subdivided this parcel into 8 portions and transferred two of them, LR No. 22771/10 to the 7th, 8th and 9th defendants; and LR No. 22771/11 to the 10th, 11th and 12th defendants, all of whom are individuals. The 7th to 12th defendants then caused these titles to be converted into the regime of the Registered Land Act and they became identified as Njoro Ngata Block 1/3409 and 3410. These two parcels were subsequently subdivided into 48 plots being Njoro/Ngata Block 1/3495 to 3542 and were conveyed to the 13th to 37th defendants. It is claimed that all the above transactions were done fraudulently, inter alia the land parcels were held in trust. In the suit, the Kenya Anti-corruption Commission has principally sought a declaration that the said transactions were fraudulent and for cancellation of all the said entries.

3. The defendants entered appearance and filed defences through various firms of advocates. On 17 December 2015, Rift Valley Development Trust Registered Trustees applied to be enjoined as 2nd plaintiff in the suit. That application was allowed and the plaint amended accordingly to accommodate the 2nd plaintiff. The prayers however remained the same.

4. Through an application dated 7 October 2016, the 2nd plaintiff now seeks orders to enjoin the Board of Management Rift Valley Institute of Science and Technology (RVIST) as 38th defendant and the National Land Commission as Interested Party. It further seeks orders to stop the National Land Commission from paying the sum of Kshs. 22,951,700/= to the proposed 38th defendant being an award in respect of part of LR No. 22771/3 acquired by way of compulsory acquisition from the proposed 38th defendant, until this suit is heard and determined. Alternatively, the 2nd plaintiff has sought that the said sum of Kshs. 22,951,700/= be deposited in court until this suit is heard and determined.

5. The supporting affidavit is sworn by Mr. Julius Sunkuli, the Secretary of the Board of Trustees of the 2nd plaintiff. He has inter alia deposed that the proposed 38th defendant is the registered owner of the land parcel LR No. 22771/3 claimed by the 2nd plaintiff and a copy of the certificate of title is annexed. He has also deposed that the National Land Commission made awards to the proposed 38th defendant and the 3rd defendant, over compulsory acquisition of the land parcels LR No. 22771/3 and LR No. 22771/6.

6. The 7th, 8th, 10th, 22nd, 29th, and 33rd defendants filed Grounds of Opposition to oppose the motion. They have averred that the proposed 38th defendant is an institution of the 2nd plaintiff and it is absurd to enjoin it in the suit as defendant. It is argued that this is not the forum to determine who between the 2nd plaintiff and 38th defendant should receive compensation from the National Land Commission.

7. The 1st plaintiff, the Kenya Anti-Corruption Commission opposed the application through the filing of Grounds of Opposition and a Replying affidavit sworn by Mr. Dedan Okwama. Inter alia, it is averred that the interests of the proposed 38th defendant are already taken care of by the 1st plaintiff and therefore it cannot be presented as a defendant in the same suit. It is averred that an escrow account in the name of the 1st and 2nd plaintiff should instead be opened and the award of Kshs. 22,951,700/= deposited into the said account pending the determination of this suit. The 1st plaintiff does not however oppose any conservatory orders restraining the National Land Commission from paying any award to the 3rd defendant until the case is heard and determined and is also not opposed to the National Land Commission being compelled to disclose what award it proposed to give to the 3rd defendant in respect of compulsory acquisition of LR No. 22771/6.

8. The applicant filed a supplementary affidavit to respond to the issues raised by the 1st plaintiff. Inter alia, it is stated that the proposed 38th defendant (RVIST) is a necessary party as it owns land which is the

subject of these proceedings. It is further deposed that the 1st defendant transferred the land parcel LR No. 22771/3 to RVIST and the other defendants with the aim of justifying his illegality.

9. The other defendants did not file anything to oppose the application. RVIST on its part did not also oppose the application, Mr. Kipkoech, its learned counsel, stating that it will serve the ends of justice if the application is allowed. Nothing was filed on behalf of the National Land Commission the proposed interested party.

10. I have considered the application and the submissions made by counsel.

11. The application has two limbs. The first is the joinder of two parties that is RVIST as 38th defendant and the National Land Commission as interested party. The second limb is to stop payment of any award for compulsory acquisition to the 3rd defendant and RVIST as registered owners of the land parcels LR Nos. 22771/3 and 22771/6.

12. On the first limb, that of joinder, Order 1 Rule 10 applies, and the same provides as follows :-

Order 1, rule 10

(1) Where a suit has been instituted in the name of the wrong persons as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute to do so, order any other person to be substituted or added as plaintiff upon such terms as the court thinks fit.

(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent in writing thereto.

(4) Where a defendant is added or substituted, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendants.

13. It will be seen from the above, especially sub-rule (2) that the court has discretion to add a person, whether as plaintiff or defendant, whose presence before the court may be necessary to enable the court effectually and completely to adjudicate the matter.

14. In this application, the 2nd plaintiff wishes to add RVIST as defendant. I take it that RVIST is a body corporate with capacity to sue and to be sued. RVIST is the registered proprietor of the land parcel LR No. 22771/3 which the 2nd plaintiff claims was fraudulently transferred to it. It may be that the 2nd plaintiff and RVIST are closely connected, but that does not mean that they must agree on everything, including who ought to be registered as proprietor of the land in issue. If the case of the 2nd plaintiff, and indeed the 1st plaintiff as well, is that the land from where the parcel LR No. 22771/3 was carved out was originally owned by the 2nd plaintiff, and through a series of transactions, the land parcel No. 22771/3 was fraudulently created and transferred to the name of RVIST, I think that RVIST is a necessary party to the suit, for the reason that it owns this parcel of land, and the plaintiffs wish to have revoked the entry which made it be registered as proprietor.

15. It will actually be necessary to hear the position of RVIST as registered proprietor, on whether or not, their entry as proprietor needs to be cancelled or not. The relationship between RVIST and the 2nd

plaintiff is therefore not material, for RVIST may very well wish to protect the registration of that particular parcel of land in their name.

16. I am therefore persuaded that it is necessary to make RVIST a party to this proceedings and I allow them to be enjoined as 38th defendant in this suit. I further direct the 2nd plaintiff to make the necessary amendment to the plaint to include RVIST as a party and to make such claims as it may wish against RVIST.

17. On the joinder of the National Land Commission as interested party, I also do not see any reason to decline this prayer. As a public entity, whose mandate is to be in charge of public land, they may have important information which they may wish to share in order to shed light on the nature of transactions herein which must have been done through the office of the Commissioner of Lands, part of whose functions the National Land Commission have taken over. They are also due to pay money by dint of compulsory acquisition of some of the land parcels herein and I find that their involvement in this suit is important. I therefore allow the joinder of the National Land Commission as interested party in this suit.

18. The 2nd plaintiff has 14 days from today to effect the amendments to the plaint to reflect the joinder of these parties.

19. The second limb of this application is to stop payments to RVIST and the 3rd defendant, which payments are due to be made by the National Land Commission as compensation for a compulsory acquisition of the land parcels LR No. 22771/3 and 22771/6. This suit will determine who is supposed to be the proper registered owner of the properties in issue, which include these two land parcels. I am therefore of the view that any payments arising from compulsory acquisition of any, or any portion, of the parcels of land in issue in this case, ought not to be made to any party until this case is finalized and the rights of the parties determined.

20. There are two parcels of land which are due for compensation for compulsory acquisition, that is LR No. 22771/3 and 22771/6. Since there is dispute as to who is to receive this money, I direct that the money payable for their compulsory acquisition be deposited in court. I further direct the National Land Commission not to make any payments for compulsory acquisition or make any payments for any other purpose for any parcel of land which is in issue in this suit. If any such matters arise, I direct the National Land Commission to apply to this court for direction on whom and where to pay such monies.

21. I believe that I have dealt with all issues save for costs. In my discretion, I make no orders as to costs.

22. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21ST day of September 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Maina Present for 1st plaintiff and holding brief for Mrs. Rotich for 2nd plaintiff.

No appearance on part of M/s Leina Morintat & Co. for 1st and 2nd defendants.

Mr. Ouma present for 3rd and 4th defendants.

M/s Kinyanjui Njau & Co. for 5th defendant :absent

M/s O.P Ngoge & Co. for 6th defendant :absent

Ms. Ogange present holding brief for Mr. Konosi for 7th, 8th, 10th, 22nd, 29th & 33rd defendants

Ms. Wangari holding brief for Mr. Waiganjo for 9th, 12th, 13th, 14th, 15th, 16th, 17th, 18th, 20th, 21st, 24th, 26th, 28th, 31st, 32nd, 34th, 36th, 37th, defendants.

M/s Karanja Mbugua for 11th, 19th, 25th, 27th, 30th, & 35th defendants: Absent

Mr. Kipkoech B.N present for proposed 38th defendant

Court Assistant: Toroitich

MUNYAO SILA

JUDGE

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