

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT MILIMANI

ELC CASE NO. 1203 OF 2015

PARADISE SAFARI PARK LIMITED.....PLAINTIFF/RESPONDENT

VERSUS

THE ATTORNEY GENERAL1ST DEFENDANT/RESPONDENT

SINOHYDRO CORPORATION LIMITED.....1ST DEFENDANT/RESPONDENT

RULING.

1. The plaintiff/applicant filed a Notice of Motion dated 13th January 2015, seeking an order to compel the respondents to produce certain documents relating to the plaintiffs case. Prior to the filing of this application, the applicant had exchanged correspondence with counsel for the respondents. Certain documents were provided but some documents in possession of the second respondent were not released as the second respondent contended that those documents particularly the ones on the designs of the Thika Super Highway in the section of the area in contention belong to the Ministry of Roads and Public Works and they cannot be released without authority from that Ministry.

2. I have gone through the applicant's application as well as the response thereto by the respondents. Whereas some documents sought by the plaintiff were filed before court and others were provided following the request by the applicant, there are certain documents particularly those relating to design of the Thika Road at the Safari Park Section of the road. The second respondent states that it cannot release the same without authority from the Ministry of Roads and Public Works. The Ministry of Roads and Public Works is represented by the Attorney General who is the first respondent. In the replying affidavit on behalf of the first respondent, the deponent who is a state counsel blames the second respondent for misleading the court. The deponent appears to be arguing that it was not brought to their attention that the documents were in possession of the second respondent and that consent was required before the same could be released.

3. The first respondent also argues that they do not see the relevance of those documents to this case. The issue in this case is flooding which occurred on the night of 9th & 10th January 2010. It is alleged that there was excavation at River Kigwa which allowed the water to flow freely thus causing flooding which destroyed the applicant's property. The request by the applicant cannot therefore be said to be unreasonable.

4. According to the second respondent, they have no problem if consent is given by the Ministry of Roads and Public Works for the release of the documents. The first respondent cannot therefore claim that it was not aware of the need for consent or that it doesn't see the relevance of the documents. I find that this is a clear case where the respondents should be compelled to produce the documents sought by the applicant. I therefore allow the applicant's application in its entirety. The documents sought should be provided within 45 days of the date of service of the order upon the respondents.

It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **16th** day of **October, 2017.**

E.O.OBAGA

JUDGE

In the absence of parties who were aware of the date and time of delivery of ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE