



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 206 OF 2016

TITUS KITONGA.....PLAINTIFF

VERSUS

HOUSING FINANCE COMPANY OF KENYA (HFCK).....DEFENDANT

AND

HOTEL CONNECTIONS LTD.....APPLICANT/PROPOSED INTERESTED PARTY

RULING

1. What is before me is the Application by the Interested Party dated 17th February, 2017. In the Application, the Interested Party (*Applicant*) is seeking for the following orders:

a. That the Respondent ought not be granted any orders that would prejudice, delay or frustrate in any manner the Applicant's enjoyment of its rights and interests in the said land Title Number Athi River/Athi River Block 1/87.

b. That the court do such other/further orders as it may deem fit to grant to serve the ends of justice in the circumstances of the suit herein.

2. According to the Applicant's Director's Affidavit, the Applicant participated in a public auction in respect of parcel of land known as Athi River/Athi River Block 1/87 on 12th October, 2016; that the Applicant emerged the highest bidder at the sum of Kshs. 35,000,000 and that the Applicant thereafter made a down payment of the requisite 25% of the bid sum.

3. The Applicant's Director has deponed that after borrowing money, the Applicant paid the entire purchase price and was issued with a Certificate of Sale and was given the original Title Deed for the suit land.

4. It is the Applicant's case that it has acquired both legal and beneficial rights in the suit land and that the Respondent should not be granted any orders that are prejudicial to its interests.

5. The Applicant's Director filed a Further Affidavit on 3rd April, 2017 in which he deponed that the Applicant has since been registered as the proprietor of the suit land.

6. In a response filed on 4th August, 2017, the Plaintiff's Director deponed that the prayer being sought cannot be granted at this stage; that there is a pending Notice of Motion dated 25th November, 2016; that the auction conducted by the Defendant was in breach of the Land Act and in particular Section 97 of the

Act that the Interested Party should respond to the Notice of Motion dated 25th November, 2016.

7. By the time the Plaintiff was filing the Replying Affidavit on 4th August, 2017, the court had already given directions on the filing of submissions in respect to the Application.

8. Indeed, in its submissions, the Applicant's advocate submitted that the Application was not opposed because the Plaintiff/Respondent had never filed a Replying Affidavit.

9. Considering that the Replying Affidavit sworn on 3rd August, 2017 was filed after the court had given directions on the filing of submissions, and without the leave of the court, the said Replying Affidavit is expunged from the record of this court.

10. The evidence before me shows that the Applicant purchased the suit land after the land was advertised for sale by way of public auction in the Daily Nation Newspaper of 3rd October, 2016.

11. The Applicant has exhibited on its Affidavit evidence to show that it was the highest bidder at the public auction that was conducted on 12th October, 2016 as per the advertisement, whereafter it paid the entire amount that it had bid for the land. The suit property was subsequently transferred to the Applicant pursuant to the said auction.

12. Although the current suit was filed by the Plaintiff on 25th November, 2016, the court declined to issue to the Plaintiff any interim orders because the impugned auction had already taken place. Indeed, the court, declined to certify the Application dated 25th November, 2016 seeking for injunctive orders as urgent.

13. The suit land has since been transferred to the Applicant, meaning that the Application dated 25th November, 2016 has been overtaken by events. That being the case, the Plaintiff will have to amend his pleadings so as to enable the court adjudicate the claim effectually. For now, the Applicant should be allowed to deal with the suit land.

14. In the circumstances, I allow the Applicant's Application dated 17th February, 2017 in terms of prayer number 3.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23RD DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE