



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC CASE NO. 232 OF 2015

REPUBLIC.....APPLICANT

-VERSUS-

- 1. PROVINCIAL ADMINISTRATION**
- 2. MINISTRY OF DEFENCE**
- 3. NATIONAL LAND COMMISSION**
- 4. COUNTY GOVERNMENT OF KILIFI.....RESPONDENTS**

RULING

1. The notice of motion dated 27.9.2014 is filed pursuant to the provisions of section 1A, B, 3, 3A, 63 (e) and 80 of the Civil Procedure Act and order 40 rule 1 and 2 and Order 45 rule 1 and 2 of the Civil Procedure Rules. It seeks the following orders ;

a. Spent

b. That, the National Lands Commission and County Government of Kilifi be joined as Respondents in this matter.

c. That, the Honourable Court do grant any relief (s) it deems necessary and expedient to grant in the interest of justice.

d. That, costs of the Application be provided for.

2. The application is based on the grounds on the face of the application and on the affidavit deposed to by Mr Edward Gichana advocate appearing for the applicants. On 19th April 2016, the application was allowed partially. The orders seeking to join the National Land Commission was granted on 19th April 2016 as they had not filed any document to oppose the motion.

3. The motion is opposed by the County Government of Kilifi to be joined as a 4th Respondent. By a replying affidavit sworn by Owen Yaa Baya, the County Secretary, it deposed that this application is an abuse of the Court process as enjoining the County government will not aid the applicants at all. Mr Owen deposed that the County government of Kilifi was never involved in the compensation as the exercise had been undertaken by the ministry of defence.

4. Mr Owen deposed further that the replying affidavit of Ambassador Nancy Kirui to the substantive motion had clearly set out how the acquisition was done which was in total exclusion of the defunct County Council of Kilifi. He avers that enjoining them only amounts to a waste of time.

5. The advocates for the applicant and intended 4th Respondent each filed written submissions. In submission, the applicant referred to the provisions of Order 1 rule 10. Mr Gichana submitted that the unitary government under the Lancaster House Constitution had retained to itself all the powers, privileges and resources. He also referred to the provisions of article 62 (2) which vests public land in the county government to be administered by the National Land Commission.

6. Ms Jadi advocate for the County Government of Kilifi submitted that the reliefs sought by the applicants is compensation which cannot be resolved by their client. They argue further that the applicant ought to have sued the defunct Town Council of Mariakani where this land falls. Be that as it may, the intended respondent submits that the replying affidavit of the 1st and 2nd Respondents have explained what transpired and therefore it would waste time if they are joined. They have cited case law **of Said Bin Mbarak Bin Tahir –vs- Ali Mwinyi & others ELC 128 of 2014** and **Marigat Group Ranch vs Wasley Chepkemboi, Eldoret ELC 272 of 2012**. They urged the Court to find that the application lacks merit and dismiss it with costs.

7. To begin with, the applicant quoted the wrong rules under which the application was brought as Order 40 and 45 does not deal with issues of joinder of parties. In the body of the application, the applicant has not specified any claim they have against intended 4th Respondent or any reliefs that may require the participation of the County Government. Further, the applicant's own documents show the land in question is no longer held by the County Government of Kilifi but instead it is owned by Mariakani Barracks which indeed falls under the ministry of defence.

8. The proceedings were initially taken against the provincial administration and the Ministry of Defence. The National Land Commission has also since been joined. The applicant has rightly quoted that all public land is to be administered by the National Land Commission. If there is anything the applicants feel is being covered that the joining of the County Government would unearth then they approached this Court in the wrong format through judicial review proceedings.

9. In any event the provisions of the Civil Procedure Rules does not apply to judicial review proceedings so no amendment can be done to what is pending. There is nothing demonstrated by the applicants that the enjoining of the County Government of Kilifi would add to their case or aid the Court in reaching a just determination of this matter. I am therefore not satisfied that the orders sought to enjoin the County Government of Kilifi has any merit. Consequently I decline to grant the same and dismiss the claim as against them with costs.

Ruling dated and delivered at Mombasa this 16th day of September 2016.

A. OMOLLO

JUDGE