



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC PETITION NO. 381 OF 2013

ELIZABETH ONYANGO ADHIAMBO.....1ST PETITIONER

SYMON KOLUOCH ASUNA.....2ND PETITIONER

VERSUS

THE KENYA NATIONAL HOUSING CORPORATION.....1ST RESPONDENT

THE PRINCIPAL SECRETARY MINISTRY OF

TRANSPORT & INFRASTRUCTURE.....2ND RESPONDENT

THE NATIONAL HIGHWAYS AUTHORITY3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

The petitioners brought this petition on 24th July 2013 seeking an order to quash the decision of the 2nd and 3rd Respondents to demolish part of the perimeter wall adjoining the compound of House No. 175B in Jonathan Ngeno Estate which is erected on LR No. Nairobi Area/Block 106/986 within Langata area, Nairobi (hereinafter referred to as “the suit property”). The Petitioner also sought several declaratory reliefs against the Respondents.

In their petition the petitioners averred that they purchased the suit property at a cost of Kshs.3,450,000/= from the 1st respondent in the year 1999 while it was at the construction stage and that the same was handed over to them in the year 2002. The petitioners averred that the suit property stands on its own compound within Jonathan Ngeno Estate and that the estate has a perimeter wall which was constructed by the 1st respondent when it put up the estate. The petitioners averred that the said perimeter wall which was constructed by the 1st respondent around the whole estate serves the suit property’s rear wall. The petitioners averred that sometimes in the year 2004, they learnt that the 2nd respondent had planned to demolish the portion of the said perimeter wall at the rear of the suit property together with the house which they had constructed next to the said wall as an extension of the main house with approval from the City Council of Nairobi.

The petitioners averred that on receipt of this information, they had a meeting with the officers of the 1st respondent on the matter and were informed that the perimeter wall which the 2nd respondent had marked for demolition was not standing on land that was reserved for the construction of Nairobi Southern By-

pass. The petitioners averred that the 1st respondent assured them that the marking that had been put on the said wall to the effect that it was slated for demolition was put by mistake and that the issue would be discussed with the 3rd respondent who was responsible for the construction of the said Southern By-pass.

The petitioners averred that in the month of July 2013 fresh markings were made on the said perimeter wall indicating that the same was lined up for demolition. The petitioners averred that following the new markings, tractors descended on properties in Langata area which were claimed to be standing on the land reserved for the Southern By-pass and started demolishing the same. The petitioners averred that it was only a matter of time before the wall surrounding the suit property and the house extension they had put up was brought down by the respondents. The petitioners averred that if the said wall and building was demolished, they would have been dispossessed of their property without following the due process an act which would have infringed on their right to property, human dignity and privacy.

Together with the petition, the petitioners brought an application for conservatory orders to restrain the respondents from demolishing the said perimeter wall and building pending the hearing of this petition. The petitioners' application was heard *ex parte* in the first instance before Majanja J. who granted the orders sought on a temporary basis. The interim orders were extended from time to time until 17th June, 2014 when the court directed the parties to dispense with the application, maintain the status quo and proceed with the hearing of the main petition. The petition is now scheduled for hearing on 27th October 2016. The 3rd respondent has responded to the petition. The 3rd respondent has contended that the suit property is situated on a road reserve that was designated for the construction of the Southern By-pass. The 3rd respondent has contended that it is in the public interest that the construction of the Southern By-pass should continue so as to cease congestion of several adjacent roads in Nairobi and to ensure that transit vehicles are rerouted from the city Centre. The 1st respondent supported the petition contending that the suit property is not standing on a road reserve.

What is now before me is a Notice of Motion application by NHC Langata Court Residents Association (hereinafter referred to only as "the interested party") seeking an order that the interested party be granted leave to join this petition as interested party. The application which was filed on 9th February 2016 was brought on among others grounds that the hearing of this petition has taken too long and that the interim orders which were granted by the court have affected the members of the interested party. The interested party has contended that the conservatory orders which were issued by the court herein stopped the demolition of the suit property which was necessary for the continued construction of the Southern By-pass. The interested party has contended that as a result of the said order, the construction of a service road number 4 which was part of the Southern By-pass project of which the members of the interested party were to be the primary users had stopped. The members of the interested party are residents of NHC Estate within Langata, Nairobi. The interested party has contended that the Southern By-pass project included the construction of the said service road which was to be between Jonathan Ngeno Estate where the suit property is situated and NHC Estate. The interested party has contended that the said service road was to enable the residents of NHC Estate access the Southern By-pass and Langata road. The interested party has contended that the construction of the said service road has stalled as a result of the order that was issued by this court which order stopped the demolition of the suit property which was to give way for the construction of the said road. The interested party has contended that they have been affected directly by the said order and as such it is necessary that they be heard in the petition. The interested party has contended that their presence before the court would enable the court to effectually and completely adjudicate and settle all questions involved in this petition.

The interested party's application was opposed by the petitioner through a replying affidavit sworn by the 1st petitioner. The petitioners termed the application as misconceived and baseless. The Petitioners contended that the interested party's members are not affected in any way by the conservatory order that was issued herein. The petitioners contended that the joinder of the interested party to the petition herein will not add any value.

When the interested party's application came up for hearing on 6th October 2016, Mr. Tiego and Ms. Apale who appeared for the Petitioner and the interested party respectively informed the court that they

wished to rely on their respective affidavits in support of and in opposition to the application and left the matter for the court's decision.

I have considered the interested party's application together with the affidavit filed in support thereof. I have also considered the affidavit in reply that was filed in opposition to the application by the petitioners. Rule 7(1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 provides that;

“A person with leave of the court may make an oral or written application to be joined as interested party.”

Under Rule 2 of the said Rules, **“an interested party”** is defined as;

“a person or entity that has an identifiable stake or legal interest or duty in the proceedings but is not a party to the proceedings or may not be directly involved in the litigation.”

I am satisfied from the affidavit sworn by Miriam Nyawira Miringu on 8th February 2016 that the interested party has made out a case warranting its joinder in these proceedings. There is no dispute that Jonathan Ngeno Estate where the suit property is situated and NHC Estate where the members of interested party are residing are in the same neighbourhood. It is also not in dispute that the Southern By-pass project included the construction of a road between the two estates which was to enable the area residents access the Southern By-pass and Langata Road. It is not disputed that the members of interested party were to benefit from the said road. It is also not disputed that the construction of the said service road has stalled as a result of orders which were given in these proceedings. The construction of the said road was dependent upon the demolition of the suit property which has been stopped by an order issued herein. I am satisfied from the foregoing that the members of the interested party are affected by the orders which have been issued in this matter and will also be affected by the orders which the court would issue at the hearing of the petition. The interested party has demonstrated that it has a stake in these proceedings. It would only be fair and just in the circumstances that it be given an opportunity to be heard in the matter.

For the foregoing reasons, I would allow the interested parties' application dated 8th February 2016 on the following terms;

1. NHC Langata Court Residents Association is granted leave to join this Petition as an Interested Party.
2. The interested party shall file and serve a replying affidavit in response to the petition within three (3) days from the date hereof.
3. The petitioner and the Respondents shall be at liberty to file further affidavits within three (3) days from the date of service of the interested party's affidavit
4. The costs of the application to be in the cause.

Dated and Delivered at Nairobi this 14th day of October, 2016

S. OKONG'O

JUDGE

In the presence of

Mr. Mwenesi holding brief for Tiego

for the Petitioners

Mr. Jelle holding brief for Khakulia

for the Respondents

Kajuju

Court Assistant