



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 46 OF 2010

KENYA ANTI-CORRUPTION COMMISSION PLAINTIFF

VERSUS

WILSON GACANJA 1ST DEFENDANT

WILLIAM KIPSEREM BUSIENEI 2ND DEFENDANT

INDUSTRIAL & COMMERCIAL

DEVELOPMENT CORPORATION.....3RD DEFENDANT

R U L I N G

1. The applicant, The **Kenya Anti-Corruption Commission** brought a notice of motion dated **21/8/2014** in which it seeks the following reliefs.

(a) That the Honourable Court do deem it fit to order that the prayers sought in the suit herein in respect to Plot No. 2116/1144 I.R. No. 61517 has been compromised and or overtaken by events consequent to the revocation of titles to Plot L.R. No. 2116/1144 I.R. No. 61517 vide Gazette Notice No. 15582 of 26/11/2010.

(b) Subject to (a) judgment be entered against the defendants in terms of the plaint and in respect to Plot No. 2116/1144 I.R. No. 61517.

(c) Each party to the suit herein to bear the costs of the application.

2. The applicant which is now called the Ethics and Anti Corruption Commission commenced investigations against the respondents in respect of **L.R. No. 2116/1143 I.R. No. 61522** and **L.R. No. 2116/1144 I.R. No. 61517** which were part of Government land reserved for Kenya National Library Service Board which is a public body. Pursuant to the investigations, the applicant filed a suit against the respondents. It also filed an application for injunction seeking to restrain the second and third respondents from dealing in any manner with the two properties. The application was heard and injunction orders given against the second and third respondents on 27/9/2010.

3. The applicant then embarked on preparation of the suit for hearing. While it was in the process of doing so, the Registrar of Titles vide Gazette Notice No. 15582 of 26/11/2010 revoked title in respect of **L.R. No. 2116/1144 I.R. No. 61517**. The applicant now contends that the said revocation has compromised the major prayers in the plaint in respect of the revoked title save for prayer for permanent injunction. The applicant further contends that the respondents have not challenged the revocation through judicial review and that it is just and fair that the suit be

compromised and judgment be entered against the defendants in terms of the prayers in the plaint and each party to bear his/its own costs.

4. The third respondent has opposed the application through a replying affidavit sworn on 1/10/2014. The third respondent contends that the applicant's application is a non starter which is an abuse of the process of the court and it is intended to condemn it unheard. The third respondent further contends that serious allegations were made against it in the plaint to the effect that it failed to undertake due diligence to ascertain if the titles were acquired procedurally and that it connived with the second respondent to charge the suit properties. The third respondent states that it should be afforded an opportunity to be rebut these allegations.
5. The third respondent contends that it has no interest in L.R. No. 2116/1144 and has nothing to do with the Gazette revoking it. It contends that L.R. No. 2116/1143 was not revoked and the suit pertaining to it is still on.
6. I have carefully gone through the applicant's application, its submissions and the opposition to the same by way of replying affidavit to the application by the third respondent. Before I move on to decide whether this application is to be allowed or not, a look at the prayers in the plaint is necessary. The applicant had filed a suit against three respondents in which it sought the following reliefs:-

(i) A declaration that the grants made to the second defendant on or about 31st December, 1993 and registered on 19th January, 1994 in respect of L.R. No. 2116/1143 I.R. No. 61522 and L.R. No. 2116/1144 I.R. No. 61517 were made in excess of statutory powers of the 1st defendant and were thus null and void ab initio.

(ii) A declaration that the purported charge of L.R. No. 2116/1143 I.R. No. 61522 and L.R. No. 2116/1144 I.R. 61517 in favour of the 3rd defendant is for all intents and purposes null and void ab initio.

(iii) An order that the charges registered against L.R. No. 2116/1143 I.R. No. 61522 and L.R. No. 2116/1144 I.R. No. 61517 in favour of the 3rd defendant be cancelled.

(iv) An order to rectify the register by cancellation of the grants and certificates of title in respect of L.R. No. 2116/1143 I.R. No. 61522 and L.R. No. 2116/1144 I.R. No. 61517 made to the second defendant.

(v) An order for a permanent injunction against the 2nd and 3rd defendants to restrain them by themselves, their agents or assigns from trespassing upon, transferring, charging, leasing, wasting and/or dealing in any manner with L.R. No. 2116/1143 I.R. No. 61522 and L.R. No. 2116/1144 I.R. No.61517 otherwise than by way of transfer to the Government of Kenya.

(vi) Costs and incidental to this suit.

(vii) Interest on (v) and (vi) above at court rates.

(viii) Any other relief this court deems fit to grant.

7. From the prayers in the applicant's claim, it is clear that the suit was brought in respect of two properties. One of the two properties title has already been cancelled by way of revocation in the Gazette Notice. There is still one property whose title has not been revoked and the suit in respect of the same is still intact. There is an injunction which was issued against the second and third respondents herein. The applicant had claimed that the third respondent had colluded with the second respondent to have the two properties charged. The applicant also accused the third respondent of failing to carry out due diligence so as to ascertain how the properties were acquired

by the second respondent. The third respondent is entitled to be heard in respect of these serious allegations against it. The applicant cannot therefore seek to enter judgment against it without the third defendant being afforded opportunity to be heard.

8. One cannot argue that the case against the third respondent has been overtaken by events by mere fact that a title had been revoked, through a Gazette Notice. If the third respondent had not been brought in and orders against it given, then the applicant's application would have been allowed as there would have been nothing to pursue yet what the applicant had wanted has already been achieved by revocation of the title which is said to have been irregularly obtained.

9. There is already one property whose title has not been revoked. The third applicant is entitled to be heard on the same as well as the allegations made against it by the applicant. A judgment cannot be entered against it when it has not been heard. It is for this reason that I find that the applicant's application lacks merit. The application is hereby dismissed with costs to the third respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this **23rd** day of **July, 2015.**

E. OBAGA

JUDGE

23/7/2015

In the presence of M/s. Natome for Applicant's.

Court Assistant - Winnie.

E. OBAGA

JUDGE

23/7/2015