

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 18 OF 2008

ELDORET EXPRESS LTD.....PLAINTIFF

VERSUS

TAWAI LIMITED.....DEFENDANT

RULING

1. The applicant National Land Commission (NLC) filed a chamber summons dated 11/8/2014 in which it seeks to be enjoined to this suit as an interested party. The applicant contends that it is now the custodian of all documents relating to leasehold interests. That in its Constitutional mandate and as custodian of all records relating to leaseholds, it investigated what used to be LR NO 5707 of which the suit land is part of it. The applicant therefore contends that it came across serious anomalies relating to registration of LR NO 5707/R in the name of Kaitet Tea Estates Limited.
2. The applicant contends that in the course of its investigations, it found out that LR NO 5707/R which was part of the main title LR 5707 had been registered in the name of Kaitet Tea Estates Ltd while the entire Parcel had been charged to Kenya Capital National Corporation. The applicant contends that it could not have been possible for a charged property to be transferred without the same being discharged. The applicant further contends that entry No. 20 on the register has initials R/R on its side which means that the transfer documents were rejected and it is therefore not clear how the entry was made.
3. The application is opposed through the replying affidavit of Simon Mbugua Thungu one of the directors of the plaintiff company sworn on 26/8/2014. The respondent contends that the applicant has no proprietary interest in the land and should therefore not be enjoined in the suit. The respondent contends that it is a purchaser for value and that enjoinder of the applicant will serve no purpose but only delay this case which is a part-heard. The respondent further contends that the issues being raised by the applicant are the same issues which have been raised by the defendant in its defence and counter-claim.
4. The respondent also contends that the role of the applicant is only investigatorial and that it will not suffer any prejudice. The respondent contends that the applicant is complaining on behalf of Kenya Capital National Corporation who are not parties to this suit and that the applicant has no Locus Standi.
5. I have considered the applicant's application as well as the opposition to the same by the respondent. I must now decide on whether the applicant should be enjoined in this suit as an interested party. Order 1 Rule 10(2) of the Civil Procedure Rules gives the court power at any stage of the proceedings on its own motion or on application to allow any party whose presence before it will enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit.
6. In the instant suit, there is a dispute as to the existence of LR NO 5707/6 and how the same came to be registered in the name of Kaitet Tea Estates Ltd who finally sold the suit land to the plaintiff herein. There have been numerous correspondence touching on the history of LR 5707 which was later sub-divided into five portions and how a sixth portion came to exist. These correspondences were from the Commissioner of Lands who are the predecessors of the applicant.

The applicant is now in charge of what used to be done by the now defunct office of the Commissioner of Lands. The applicant has demonstrated that it has identified a number of anomalies which if brought to the attention of the court, they will assist the court to effectually and completely adjudicate upon the dispute herein.

7. A look at the issues in this case reveal that the defendant has been contending that the land which is now registered in the plaintiff's name was unprocedurally given to Kaitet Tea Estates Ltd. If this be the case, then the applicant is a necessary party which will enable the court to decide on this issue. The mandate of the applicant under Article 67 (1) (e) is to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices and to recommend appropriate redress. In this regard, the applicant has investigated and has noted some anomalies which will enable this court to decide on the dispute. I therefore find that the applicant has demonstrated that it is a necessary party who should be allowed in this suit. I allow the application by the applicant with costs. The applicant is allowed into this suit as an interested party. It should file its pleadings within 21 days from the date of this ruling and serve the same on all parties.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of October, 2014.

E. OBAGA

JUDGE

In the presence of Mr Onyancha for Plaintiff and Mr Ingosi for defendant. Court Clerk – Kassachoon.

E. OBAGA

JUDGE

30/10/2014