



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KOOME, MUSINGA & SICHALE. JJA)

CIVIL APPLICATION NO. NAI. UR.113 OF 2010

BETWEEN

JOSEPH MBURU GITAU.....1ST APPLICANT
FELSISTA WARIARA NDUKU.....2ND APPLICANT
ISAAC MBURU NJUGUNA.....3RD APPLICANT
KEZIAH WANJA NJUGUNA.....4TH APPLICANT
CECELIAH WANJIRU GICHURU.....5TH APPLICANT
GEOFFREY MINHANJI AJAIMBO.....6TH APPLICANT
FLACIA NJOKI MUIRURI.....7TH APPLICANT
CHRISTIAN MUNJANJI AJAIMBO.....8TH APPLICANT
MARY WAMBUI KAIRAI.....9TH APPLICANT
FRIDAH KHAVERE AMBANI.....10TH APPLICANT
JOSEPH GIATAU & 626 OTHERS.....APPLICANTS

AND

THE COMMISSIONER OF POLICE.....1ST RESPONDENT
THE COMMISSIONER OF LANDS.....2ND RESPONDENT
THE ATTORNEY GENERAL.....3RD RESPONDENT

(Being an application for an injunction and restraining orders pending delivery of judgment pending in Civil Appeal No 179 of 2019 on 10th July, 2020 (Koome, Okwengu & J. Mohammed JJA) from the judgment/decree of the High Court of Kenya at Nairobi (Nyamu, J.) dated 2nd May 2008

in

NRB. JUD. REV. DIV. MISC. APPL. NO. 673 OF 2015)

RULING OF THE COURT

Before us is a Notice of Motion filed by the applicants under certificate of urgency on 8th May, 2020. It is seeking an injunction and restraining orders against the respondents, from leasing, selling, transferring, or in any way alienating subject property known as **LR No. 209/14582** (Original LR No 209/106110) to **China Bridge Corporation Ltd**, or any other party during the pendency of the appeal which is scheduled for the 10th July, 2010. The application is supported by the affidavit of **Ceciliah Wanjiru Gichuru** and **Fridah Khavere Ambani**. Both deponents make several allegations but key among them is that the respondents are in the process of, or have already leased, or transferred the said land to **China Bridge Corporation Ltd** so as to defeat the cause of justice as the matter is pending determination by this Court on 10th July, 2010 in **Civil Appeal No 179 of 2019**.

The application is opposed by the 1st to the 3rd respondents vide a replying affidavit sworn by **Chief Inspector Geoffrey Waruru Kinyua** who has also made serious allegations against the applicants accusing them of forgeries and impugns the process the applicants purported to have used to acquire the said title which he states does not even exist. Key of those allegations is that, apart from the pending judgement in this Court, there is also another suit pending before the **Environment and Land Court** being **ELC No 2028 of 2009** between **Benta Kalara Achieng** and **Wilson Mutumba Women Group Vs Attorney General**. Which is over the same parcel of land or based on the same facts.

As can be seen from the order sought, it is against **China Bridge Corporation Ltd**, who were served with the application but were not parties to the Civil Appeal that is pending. Nonetheless, they too have strenuously opposed this application on the grounds that they were not parties to the suit, and the applicants ought to have joined them in the matter. Secondly, the order by Nyamu, J. (as he then was) that gave rise to the appeal, was as a result of judicial review proceedings where there was no order of injunction sought and therefore it cannot be granted a matter that has been finalized and waiting judgement.

Upon considering this application, we recognize that this Court is seized of the appeal which is pending determination of the various issues some of which may have been repeated in the instant application. All the allegations made by the applicants are denied by the respondents who in turn make serious allegations against the applicants. To complicate matters further, the order is to be directed to **China Bridge Corporation Ltd** who were not parties to the pending appeal. One matter that is not disputed is that the 1st respondent is in possession of the suit land, but it is not clear to us whether the land has been sold or leased out or alienated in any manner.

In our considered view that, in the face of the conflicting positions taken by each side, the order that commends itself at the moment is one to maintain the *status quo* obtaining as at the date of delivery of this ruling to be maintained by the respondents until the delivery of the pending judgment.

Dated and delivered at Nairobi this day 10th day of July, 2020

M. K. KOOME

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JUDGE OF APPEAL

D. K. MUSINGA

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR