



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 43 OF 2019**

***(Formerly Nairobi ELC. No. 1190 of 2015)***

**SYOKIMAU BRIGHT HOMES LIMITED** *(Suing On Its Behalf*

*And On Behalf Of Over 5000 Members Of The*

**ATHI RIVER LOCAL COMMUNITY).....PLAINTIFF/APPLICANT**

**VERSUS**

**EAST AFRICA PORTLAND CEMENT CO. LTD.....DEFENDANT/RESPONDENT**

**RULING**

1. In the Application dated 29<sup>th</sup> March, 2019, the Plaintiffs have sought for the following orders:

***a. That the court file Environment and Land Cause No. 1190 of 2015 be reconstructed.***

***b. That the pleadings and documents annexed to the Affidavit herein be accepted as copies of the originals filed in court.***

***c. That upon reconstruction, the file be kept in the Court Registry's strong room for safe custody.***

***d. That costs of this Application be provided for.***

2. The Application is supported by the Affidavit of the Plaintiffs' advocate who deponed that the Plaintiff/Applicant filed the suit herein against the Defendant/Respondent on 19<sup>th</sup> November, 2015, which included the Complaint, Witness Statement of Wilson Mbithi Munguti, the Plaintiffs' List of witnesses and the Plaintiffs' list and bundle of documents.

3. It was deponed that the Defendant/Respondent through their Advocates filed and served on them a Notice of Appointment on 12<sup>th</sup> January, 2016; that since then they have not been served with any other documents by the Defendant/Respondent herein and that they prepared a request for Judgment dated 18<sup>th</sup> February, 2016 but have been unable to file the same as the court file in respect hereof cannot be traced despite numerous visits to the Court's Registry.

4. In response, the Defendant's advocate deponed that the suit property in ELC No. 1190 of 2015 (*Syokimau Bright Homes vs. EAPCC*) sought to be reconstructed is all that parcel known as L.R. No. 8784/4 wherein the Plaintiff/Applicant is seeking orders that they be granted first priority to purchase 1000 acres constituting L.R. No. 8784/4.

5. The Defendant's counsel deponed that on or about 28<sup>th</sup> October, 2016 the court directed that all matters relating to ownership of L.R. No. 10424 and I.R. No. 17951, L.R. No. 10425 and I.R. 17839, L.R. No. 8784/4 and I.R. No. 75467 and L.R. No. 7815/1 be

consolidated and determined as one under Machakos ELC Case No. 155 of 2016 formerly (*High Court Nairobi ELC. No. 1108 of 2015*) as the lead file. It was deponed that the matters which were consolidated include;

i. *Pet. No. 40/ 2016; Naftary Kariuki & Others vs. EAPCC & Another*

ii. *JR. No. 90/2016; Patrick Maingi Nguku & Others vs. EAPCC*

iii. *ELC. No. 1190/2015; Syokimau Bright Homes & Others vs. EAPCC*

iv. *Misc. Appl No. 428 of 2015; Francis Kirima M'ikunyua & Others vs. EAPCC*

v. *ELC No. 1108 of 2015; EAPCC vs. Sammy Kathilu & 49 Others*

vi. *JR. Appl No. 04 of 2016; Patrick Maingi Nguku & Others vs. EAPCC*

6. It was deponed that contrary to the assertion of the Applicant, ELC No. 1190 of 2016 (*Syokimau Bright Homes vs. EAPCC*) is not lost; that the same has been proceeding as a file consolidated with several others listed above under the lead file Machakos ELC Case No. 155 of 2016 (*Formerly Nairobi High Court ELC. No. 1108 of 2015*); and that the Application is speculative as there is no confirmation in writing from the Deputy Registrar that the file cannot be traced to necessitate reconstruction.

7. The Defendant's advocate deponed that if the Deputy Registrar did so, the Applicant did not avail any material before this court to support the assertion that he was informed that the file is lost and that this Honourable Court should not entertain the same.

8. In a rejoinder, the Plaintiffs' advocate deponed that he was not aware of the consolidation order alleged in paragraph 4 & 5 of the Defendant/Respondent's Replying Affidavit; that if there exists such direction/order, they were never involved in the arrival of the said Order and that even after Counsel on record for the Defendant/Respondent became aware of the alleged order for consolidation, he did not deem it fit to notify the Plaintiff/Applicant's counsel or the court sitting in Nairobi.

9. It was deponed by counsel that on 6<sup>th</sup> March, 2020, they did peruse the alleged lead file being *Machakos ELC Case No. 155 of 2016* to confirm whether their clients' file now *Machakos ELC No. 43 of 2019* formerly *Nairobi ELC No. 1190 of 2015* exists in the lead file and that their clients' file does not exist in the lead file. The advocates for both parties filed submissions which I have considered.

10. The Application before me is for reconstruction of this file which was transferred from Nairobi to this court. I have perused the file and noted that on 2<sup>nd</sup> April, 2019, the Registrar of this court issued a certificate confirming that the file is lost, and advised that the file be reconstructed.

11. Considering that the Plaintiffs will need to rely on their pleadings and documents, it does not matter whether this file was consolidated with others or not. What is imperative is that the Plaintiffs are entitled to the court file for the purpose of ventilating their case.

12. For those reasons, I allow the Application dated 29<sup>th</sup> March, 2019 as follows:

**a. The Court file Machakos Environment and Land Cause No. 43 of 2019 (formerly Nairobi ELC No. 1190 of 2015) be and is hereby reconstructed.**

**b. The pleadings and documents annexed to the Affidavits herein be and are hereby accepted as copies of the originals filed in court.**

**c. The costs of the Application to be in the cause.**

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2020.**

O.A. ANGOTE

JUDGE



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