



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

ENVIRONMENT AND LAND COURT

ELC NO. 141 OF 2016

CHARLES OUMA WANDERA.....PLAINTIFF

= VERSUS =

GRACE ANNE JALANG'O.....DEFENDANT

R U L I N G

1. The application before me for determination is notice of motion dated 3.11.2017 and filed on 6.11.2017. It is expressed to be brought under Section 3A and 63(e) of Civil Procedure Act (Cap 21) and Order 11 rules 1, 2, and 3 of the Civil Procedure Rules. It was brought by the defendant – **GRACE ANNE JALANG'O** - and the following orders are sought.

- (i) The plaint in Busia ELC No. 141 of 2016 be deemed plaint in the consolidated cause and the plaintiff be deemed the plaintiff.
- (ii) The defence in Busia ELC No. 141 of 2016 be treated as the defence in the consolidated cause and the defendant be deemed the defendant.
- (iii) The originating summons plus affidavit in support thereof in ELC No. 155 of 2017 be treated as the counter-claim.
- (iv) The replying affidavit in Busia ELC No. 155 of 2017 be treated as the defence to counter-claim.
- (v) The case do (sic) proceed to hearing by parties calling viva voce evidence.

2. According to the defendant, she filed ELC No. 155 of 2017 against the plaintiff – **CHARLES OUMA WANDERA** – concerning occupation of land parcel No. **BUKHAYO/MUNDIKA/7157** (“Suit Land” hereinafter), which is the same land in the matter. To the defendant, it is in the interest of justice to have the two cases consolidated for purposes of expeditious disposal.

3. The supporting affidavit accompanying the application makes things clearer. The plaintiff sued the defendant in this matter seeking permanent injunctive relief against, inter alia, interference with the suit land by the defendant. The defendant responded by filing a defence in which he pleaded, inter alia, that he owns land parcel No. **BUKHAYO/MUNDIKA/1408** which he occupies and has extensively developed. The plaintiff then amended his claim and it became manifest that the plaintiff’s premises are on both the suit land and land parcel No. 1408. Subsequently the defendant filed her own dispute- ELC No. 155/2017- claiming the suit land by way of adverse possession. She says it is convenient, just and expedient that the two matters be heard together.

4. The plaintiff responded to the application vide grounds of opposition dated 12.2.2018 and filed on 13.2.2018. According to the plaintiff, the two matters are not related as they are focused on different and distinct causes of action.

5. The application was canvassed by way of written submissions. The defendant submissions were filed on 28.6.2018. According to the defendant, consolidation should be allowed where matters pending in the same court raise similar questions of law and fact. The court may further consider whether the rights or reliefs claimed arise out of the same transaction or series of transactions or even whether any party will be prejudiced or disadvantaged if consolidation is ordered.

6. The plaintiffs submission were filed on 16.7.2018. It was reiterated that the two suits are not related as they are focused on distinct and different causes of action. To the plaintiff, the application is brought in bad faith.

7. I have considered the application, the response made, rival submissions, and the information availed about the two suits intended to be

consolidated The subject matter in the two suits is the suit land, which the plaintiff claims to own by dint of registration, but which the defendant also claim to own as an adverse possessor. At the end of it all, the court will be required to decide, inter alia, whether the plaintiff is entitled to permanent injunctive relief or whether the defendant is an adverse possessor and therefore not deserving to be injuncted.

8. The defendant generally pointed out correctly the law relating to consolidation. It is necessary to appreciate that consolidation aims at combining or unifying two or more suits into one for purposes of easily and expeditiously conducting one trial. In deciding whether or not to consolidate, the following factors come into play:

- i) Whether common questions or issues of law or facts arise.
- ii) Whether the claimed right to relief arise out of the same or similar transactions or series of transactions.
- iii) Whether the interest of justice favour consolidation
- iv) Whether the suit can be considered as cross-actions between the same parties arising out of the same subject matter.
- v) Whether consolidation will save time and expense.

9. Counsel for the defendant cited the cases of *NGUMBAO Vs MWATATE & 2 OTHERS [1998] KLR 549* and *LAW SOCIETY OF KENYA Vs THE CENTER FOR HUMAN RIGHTS and DEMOCRACY; SCK PETITON NO. 14 OF 2013*, which dealt with the issue of consolidation. The cases made reference to the factors I have already highlighted herein. I am in agreement with the finding of the court in the two cases. .

10. In this particular matter, the parties are disputing over the same land. They are the same parties in the two cases. Handling the two matters together will save time and expense and the trial will be more effective if conducted as one It is incorrect to allege, as the plaintiff did, that the two matters raise different and distinct causes of action. It is in the interest of justice to handle the two matters together in one trial. Consolidation is beneficial to both sides. The plaintiff suffers no prejudice at all. Infact the two suits are cross-actions between the same parties and relating to the same land

11. I therefore find the application herein meritorious and hereby allow it.

Dated, signed and delivered at Busia this 19th day of December, 2018.

A. K. KANIARU

JUDGE

In the Presence of:

Plaintiff/Respondent

Defendant/Applicant

Counsel of Plaintiff

Counsel of Defendant