



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

MISC APPL. 23 OF 2014

JENNIFFER KABURO MWONGERA.1ST APPLICANT

JAPHET GATOBU2ND APPLICANT

VERSUS

M'MBIJIWE M'ITONGA.....1ST RESPONDENT

FRANCIS MUGAMBI2ND RESPONDENT

R U L I N G

This application is dated 24/04/2014. The applicant has stated that the application is predicated upon S.18, S.5 S.6 of the Civil Procedure Act, Order 11 and Order 1(1) and 2 and 10 of the Civil Procedure Rules, S. 13 of the Environment and Land Act and Section 101 of Land Registration Act and S. 150 of Lands Act.

The application seeks orders:-

1. *That this Court do deem it fit and proper to order stay of proceedings of CMCC. No. 152 of 1996 until the hearing and determination of the HCCC No. 24 of 1987 has been completed.*
2. *That alternatively that suits No. HCCC No. 24 of 1987 and CMCC No. 152 of 1996 be consolidated so as to be heard together.*
3. *That the Court to order suit No. 152 of 1996 be heard de novo together with the older case No 24 of 1987.*

The application has the following grounds:-

1. *That the subject matter of CMCC No 152 of 1996 which is Land Parcels No. 1033 and 1034 are all sub-divisions of Land Parcel No. 97 which is subject matter of suit No. 24 of 1987.*
2. *That these sub-divisions were done fraudulently and illegally despite the existence of the older suit.*
3. *That the respondents herein took advantage of that corrupt dealing to purchase these portions sub-divided from the share of one Simion Mwititi who had been fraudulently registered as a proprietor in common with the Plaintiff herein.*
4. *That the restrictions registered upon the land were equally corruptly removed by the Land Registrar illegally and unlawfully.*

The applicant has explained the history of CMCC NO. 152 of 1996 which he wants stayed until hearing and determination of HCCC NO. 24 of 1987 has been completed. Alternatively, he wants the two cases consolidated and heard together. His primary assertion is that the subject matter in CMCC NO 152 of 1996 which is land Parcel Nos. 1033 and 1034 are all subdivisions of Land Parcel No 97 which is the subject matter of suit No. 24 of 1987. The applicants submit that the subdivisions were done fraudulently and illegally despite the existence of an older suit. The applicants also seek to have suit Nos. 152 of 1996 and 24 of 1987 be heard de novo.

The respondents oppose the application. They say that with respect to Meru CMCC No. 152 of 2006, the plaintiffs were substantively heard and closed their case in 2011. They submit that only the defence case is pending.

The respondents rhetorically pose the question: What purpose will it serve to either consolidate this suit or order the two suits to begin de novo? They opine that the applicants have not shown why this should be done.

The respondents term the application as not only scandalous but also misconceived, without merit and an abuse of the Court process. They pray that the application be dismissed with costs.

I have carefully considered the pleadings and the submissions proffered by the parties. I note that suit No. Meru CMCC 152 of 2006 is 9 years old. It was filed 19 years after Meru HCCC 24 of 1987 was filed. Meru HCCC 24 of 1987 is 28 years old.

I opine that consolidating CMCC 152 of 2006 with HCCC No. 24 of 1987 would have the effect of having the cases heard afresh. 28 years after HCCC NO. 24 of 1987 was filed in Court. Staying proceedings in CMCC No. 152 of 2006 would have the effect of hearing and determination of the suit 9 years after it was filed in Court. Having the 2 suits heard de novo would have the effect of the hearing and determination delayed inordinately. With respect to suit No. 152 of 1996 9 years would have been wasted. In the case of HCCC No. 24 of 1987, 28 years would have been wasted.

I find that the issues being raised by the applicants can be satisfactorily canvassed separately in CMCC 152 of 1996 and in HCCC No. 152 of 2006. I, therefore, find that this application is not meritorious.

I issue the following orders:-

1. ***This application is dismissed in all respects and prayers 1, 2, and 3 are denied.***
2. ***Costs are awarded to the respondents.***

It is so ordered.

Delivered in Open Court at Meru this 20th Day of April, 2016 in the presence of:-

CC:

Daniel/Lilian

Ungu h/b Kioga for the Applicant

Miss Wanjohi h/b Mokuu for the Respondent

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P. M. NJOROGE

JUDGE