



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 350 of 2018

DOROTHY SEYANOI MOSCHIONPLAINTIFF/APPLICANT

VERSUS

CHARLES KIMERIA MWANGI.....PLAINTIFF/RESPONDENT

RULING

1. Vide a ruling delivered by this court on 10.12.2020, the matters ELC 350 of 2018, 305 of 2018, 338 of 2018, 348 of 2018, 349 of 2018, 367 of 2018, 368 of 2018, 374 of 2018 and 915 of 2012 were consolidated. The file number 352 of 2018 was to be mentioned alongside the consolidated files as Defendant therein had passed on.
2. The current application is dated 12.3.2021 filed by the Plaintiff who is seeking a stay and a review of the said order of 10.12.2020.
3. The Applicant contends that the consolidated suits arise out of different transactions involving different properties and parties, the subject transactions were undertaken separately and differently and the suits pursue different causes of action. It is further averred that the suits are at different stages of the trial where in pre-trial directions have been taken in some cases, in others there are contempt proceedings, and that in File No. 352 of 2018, the Defendant who has passed on is a Defendant in 915 of 2012.
4. It is averred that the Plaintiff is unable to progress the suits, and she is now unjustly prejudiced and her right to a fair trial has been affected. It is averred that it is impractical to designate a lead file since the suits involve different parties, claims, facts, transactions, causes of actions and remedies.
5. To this end, the Applicant/Plaintiff prays for a review of the order of 10.12.2020.
6. The 7th Defendant in **ELC. 368 of 2018** opposed the application via grounds of opposition dated 1.4.2021. It is averred that the application is basically challenging the correctness of the ruling of Hon. Judge Eboso of 10.12.2020 and that no sufficient reasons have been advanced to warrant issuance of the orders. It was also pointed out that the Applicant had initiated the appeal process.
7. The 1st Defendant in **ELC. 350 of 2018** also opposed to application vide his replying affidavit, dated 5.6.2021. He avers that the orders sought are not available as the Applicant had filed a Notice of Appeal and that the Applicant is merely seeking a second bite of the cherry. It is further averred that the Applicant is seeking the court to sit on appeal against the ruling of 10.12.2020, that there are no errors on the face of the record and no new issues have been discovered. This party contends that he is indeed not a party in the other suits but he has no problem with consolidation. He aligns himself with the averments set out in the grounds of opposition of the 7th Defendant in the 368 of 2018.
8. The Defendants in ELC. 305, 338, 348 AND 349 OF 2018 have likewise opposed the application vide the grounds of opposition dated 6.10.2021. They contend that the Applicant has already preferred an appeal against the ruling of 10.12.2020, that the application doesn't meet the criteria set out under order 45 of the **Civil Procedure Rules** and **Section 80** of the **Civil Procedure Act** and ought to be dismissed.
9. I have considered the submissions filed herein. The provisions of **Order 45** of the **Civil Procedure Rules** stipulate that:

“Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for

any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.”

10. A quick glance at the ruling delivered on 10.12.2020 reveals that the issues being raised by the Applicant were the same ones raised in the opposition to the application for consolidation dated (3.2.2020) which culminated in the ruling of 10.12.2020. Point 10, 11 and 13 of the said ruling is a summary of the Plaintiff’s arguments in the earlier application for consolidation. Thus I am in agreement that the plaintiff is seeking a second bite of the cherry.

11. This court cannot cloth itself with appellate attires in respect of the ruling delivered by My brother Hon. Judge Eboso dated 10.12.2020. Recourse lies in an appeal.

12. I will however desist from making any reference to the appeal allegedly filed by Plaintiff at this stage as I do not have the full particulars of this appeal matter.

13. Nevertheless, I do find that the application is not merited. The same is hereby dismissed.

14. In order to expedite the trial and keeping in mind that the focus ought to be on the substantive issues in dispute, the court directs each party to bear their own costs of the application.

15. This ruling is to be placed on all the other 9 files.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Mutuku for the Plaintiff

Wilfred Nderitu for the 7th Defendant in Elc. No. 368 of 2018

and holding brief for Litoi for Defendant in Elc. No. 350 of 2018

and 2nd, 3rd and 4th Defendants in Elc. No. 368 of 2018.

Jan Mohamed for the Defendant in Elc. No. 350 of 2018,

Elc. No. 305 of 2018 and Elc. No. 349 of 2018

Shah for the 3rd Defendant in Elc. No. 915 of 2012

Mungai for the Interested Parties in Elc. No. 338 of 2018

Court Assistant: Eddel Barasa