



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL AND LAND DIVISION
ELC CIVIL SUIT NO. 917 OF 2005

PATRICIA WAIRIMU KUNGU..... PLAINTIFF

VERSUS

KENYA COMMERCIAL BANK LIMITED..... 1ST DEFENDANT

FATUMA MOHAMMED ALI 2ND DEFENDANT

RULING ON DIRECTIONS

The parties counsel have appeared before me on various dates since 18/12/2012 when counsel have sought various directions but which they could not agree upon and this has prevented the matter from moving forward. It appears there are 3 intertwined matters involving the same subject matter more or less. I sent out hereunder the 3 pending matters involving the same subject matter:-

- i. **HCCC NO.4886 of 1988 Patricia Wairimu Kungu – vs- Wolfgang Roesch.** The Plaintiff in this suit seeks vacant possession of house on L.R.NO.37/260/29 Nairobi West and payment of rent arrears in addition to damages for trespass and/or mesne profits.
- ii. **HCCC NO. 5245 of 1988 Benny Roesch –vs- Mrs. Kungu.** The Plaintiff seeks an order of specific performance of an alleged agreement of sale and transfer by the Defendant to the plaintiff of L.R.NO.37/260/29 Nairobi.
- iii. **HCCC NO.917 of 2005 Patricia Wairimu Kungu –vs- Kenya Commercial Bank Ltd & Fatuma Mohammed Ali.** The Plaintiff in the suit seeks a declaration that the sale contract between the plaintiff and 2nd Defendant was null and void and a declaration that the transfer and charge of the suit property L.R. NO.37/260/29 to the 2nd Defendant Nairobi was irregular and unlawful for lack of consideration. The plaintiff further seeks an order of restitution of the suit property.

I have carefully reviewed the 3 case files and it is clear that the subject matter in the 3 cases revolves around L.R.NO.37/260/29 as the plaintiffs in each of the cases claim some form of interest in the property. In the latest of the cases **HCCC NO.917 of 2005** the plaintiff in the initial suit **HCCC NO.4886 of 1988** is challenging the sale and transfer of the suit property to the 2nd Defendant. There are 2 pending interlocutory applications, one in **HCCC NO.917 of 2005** by the plaintiff in **HCCC NO.5245/88** seeking to be enjoined as an interested party in the 2005 suit. Secondly there is an application by **Fatuma Mohammed Ali** the 2nd Defendant in **HCCC NO.917 of 2005** made in **HCCC NO.5245 of 1988** where she seeks to have an order enjoining her as a 3rd Defendant in the suit to be set aside and her name expunged from the proceedings. I have considered these two pending applications and I am of the view that these applications cannot in any manner advance the

resolution of the issues in the 3 matters. The suits irrespective of any determination of the interlocutory applications remain intact and unresolved.

The central issue in the 3 suits is the determination of the ownership of the suit property and once that determination is made the 3 suits will be determined and/or resolved. This notwithstanding no party has sought an order for consolidation of the suits. I am of the firm view that the interest of justice demands that the 3 suits be consolidated and be heard together. The overriding objective of the court is to adjudicate civil disputes in a just and expeditious manner and at affordable cost to the litigants.

In the present matters it is rather unfortunate that what seemingly are straight forward matters have been pending in court since 1988 for really no apparent good reason. Sections 1A and 1B of the Civil Procedure Act cap 21 Laws of Kenya enjoin the courts to foster the overriding objective of the Act to facilitate the just, expeditious, proportionate and affordable resolution of the Civil disputes governed by the Act.

Section 1B(1) provides-

For the purposes of furthering the overriding objective specified in section 1A, the presented before it for purposes of attaining the following aims:-

- a. **The just determination of the proceedings,**
- b. **The efficient disposal of the business of the court**
- c. **The efficient use of the available judicial and administrative resources.**
- d. **The timely disposal of the proceedings and all other proceedings in the court at a cost affordable by the respective parties, and**
- e. **The use of suitable technology.**

Applying the overriding objective principle as envisaged under sections 1A and 1B of the Act I am satisfied that the ends of justice will be met by having the 3 suits consolidated and by having the pending interlocutory applications dispensed with so that the matter proceeds to hearing on a priority basis.

In the premises I hereby give the following directions.

- i. That the 3 suits referred to earlier be and are hereby ordered to be consolidated.
- ii. That all the pending interlocutory applications be and are hereby dispensed with.
- iii. That the plaintiff in **HCCC NO.4886 of 1988** shall have the right to begin the presentation of her case and the other parties shall respond appropriately.
- iv. The parties are directed to comply with order 11 of the Civil Procedure Rules within 30 days from the date of this ruling.
- v. Parties to attend court for a pretrial conference on 28th July 2014.

Ruling dated signed and delivered at Nairobi this **30TH** day of **MAY** 2014.

J. M. MUTUNGI

JUDGE

In presence of:

..... For the Plaintiff

..... For the Defendants