

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC. CASE NO. 428 OF 2012

LILIAN MUTHONI NJOROGE1ST APPLICANT

ELIZABETH WANGARI NJOROGE.....2ND APPLICANT

-VERSUS-

NELSON MATHU NJOROGE.....1ST DEFENDANT

ELVIS MUIRURI NJOROGE.....2ND DEFENDANT

RULING

The application before me for determination is to consolidate this matter with ELC. No. 202 of 2012 on the ground that the subject matter in both cases is the same and the parties in both cases are members of the same family.

In the present case, the two Plaintiffs, who are also sisters have sued the two defendants who are their brothers claiming their portion of the parcel of land known as MUGUGA/MUGUGA/1647 which belongs to the estate of their late father Lawrence Njoroge Nganga. This suit came later in time in relation to ELC. No. 202 of 2012 in which the Plaintiff therein Nelson Mathu Njoroge has sued his former wife and his mother for entering into the parcel of land known as MUGUGA/MUGUGA/1647 and seeks eviction orders against them.

Clearly, the subject matter of both suits is the same parcel of land known as MUGUGA/MUGUGA/1647. Both suits reveal the competing claims of all the parties involved in respect of the same parcel of land.

The applicable law is Section 6 of the Civil Procedure Act which provides as follows:-

“No court shall proceed with the trial of any Suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties or between parties under whom they or any of them claim, litigating under the same title where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

Clearly, this provision of the law requires the court to stay the later suit when an earlier suit exists that satisfies the conditions enumerated therein. I wish to distinguish the two suits under consideration on the ground that though the subject matter in both suits is the same parcel of land being MUGUGA/MUGUGA/1647, (hereinafter referred to as the “Suit Property”), the parties of the two suits differ to a great extent as do the reliefs sought under both suits. In ELC. No. 202 of 2012 the Plaintiff is Nelson Mathu Njoroge who is seeking eviction orders against his former wife and his mother from the Suit Property. In ELC. No. 428 of 2012, the Plaintiffs are the sisters of the two defendants and they seek their rightful share of the Suit Property through the law of succession. The parties differ except for one. The reliefs sought differ significantly. Clearly, this is not the kind of case that is envisaged by the cited Section 6 of the Civil Procedure Act cited above.

As to whether the two cases should or should not be consolidated, I wish to focus on the commonalities between the two cases. Both these cases are centered on the competing claims over the Suit Property by members of the same family. Whatever decision will be arrived at by this court in ELC. 202 of 2012 will affect the parties to ELC. 428 of 2012 who are also claiming the same Suit Property.

Adjudicating these two suits separately could result in disparate decisions leading to confusion as to which judgment prevails over the other. It is important that all claims over the Suit Property be presented to and be dealt with by one court simultaneously and one judgment be delivered in respect thereto. Accordingly, I find that this is a classic case for consolidation of ELC. No. 202 of 2012 and ELC. No. 428 of 2012.

I therefore order that the two suits be consolidated.

SIGNED AND DELIVERED AT NAIROBI ON THE 21ST

DAY OF JUNE 2013.

MARY M. GITUMBI

JUDGE