



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MALINDI
CIVIL CASE NO. 75 OF 2007

POSTAL CORPORATION OF KENYA

STAFF PENSION SCHEME.....PLAINTIFF

=VERSUS=

SWALEH ATHMAN

ABDINASIR A. MOHAMED

A.A.NASIR.....DEFENDANTS

R U L I N G

1. This Ruling shall apply to Malindi HCCC No.101 of 2008 for the simple reason that Meoli J had consolidated the two suits on 3rd September 2012.
2. The Plaintiffs have filed an Application dated 26th November 2012 and another Application dated 17th December 2012 which has been filed in HCCC No.101 of 2008. The two Applications are the subject of this Ruling.
3. In the Application dated 26th November 2012, the Plaintiff is seeking for the joinder of parties and injunctive orders in the following terms:
 - a. **This Honourable court be pleased to join in this suit;**
 - (i) **Dr. Sera Jelangat Siele as the 6th Defendant**
 - (ii) **Remo Lenzi as the 7th Defendant**
 - (iii) **Seven Island Watamu Limited as the 8th Defendant**
 - b. **THAT pending the hearing and determination of this suit, the existing injunctive orders be amended to generally operate as orders binding all the Defendants.**
 - c. **THAT HCCC No.43 of 2005 be stayed pending the hearing and determination of this case.**
4. The application is premised on the grounds that the Plaintiff herein has discovered that the parties it intends to join in this suit are parties in HCCC No.43 of 2005.
5. That Remo Lenzi, one of the intended Defendants, claims to be the absolute owner of plot title

- number Kilifi/Jimba/1125 in HCCC No.43 of 2005 which is also the subject matter in this suit.
6. On the other hand, Dr. Sera Jelangat Siele is the registered owner of plot number 103 which she alleges was subsumed by Kilifi/Jimba/1125. The Plaintiff herein also claims that its plot number 110 was subsumed by plot number Kilifi/Jimba/1125.
 7. This court has partly heard HCCC No.43 of 2005 in which Dr. Sera Jelangat Siele, the owner of plot number 103 has sued Remo Lenzi and Seven Islands Watamu Limited, the owner of Kilifi/Jimba 1125. The matter is pending the defence hearing.
 8. The Application has been opposed by the proposed Defendants.
 9. Mr. Otieno, counsel for Dr. Jelangat Siele, the Plaintiff in HCCC No.43 of 2005 filed his Replying Affidavit on 10th April 2013 while Mr. Robert Lenzi, who is the 3rd Defendant in HCCC No.43 of 2005 and a director of Seven Island Watamu Limited, the 4th Defendant in H.C.C.C No.43 of 2005 filed his Replying Affidavit on 25th April 2013.
 10. The issues raised by the proposed Defendants, who are parties in H.C.C.C No.43 of 2005 are the same; that vide the directions given by Ojwang J, as he was then, on 8th July 2011 directed that all cases in respect to Kilifi/Jimba/1125 shall be consolidated, heard and disposed together; that the court further ordered that all interested parties in respect to the consolidated civil suits were to apply for joinder within 21 days of the date of directions and that the trial of the consolidated civil suits were to proceed on the basis of priority.
 11. It is the proposed Defendants' averments that the Applicant participated in proceedings leading to those directions and the directions affected those parties.
 12. It has further been argued by the proposed Defendants that Meoli J made further orders on 3rd October 2012 in respect to these matters, which orders have not been set aside; that plot number 103, which is the subject matter viz a viz Kilifi/Jimba/1125 is distinct from plot number 96 and 110 which are the subject suit properties in H.C.C.C No.101 of 2008 and 75 of 2008 respectively and that the orders being sought cannot be granted considering that the hearing of H.C.C.C No.43 of 2005 is at a very advanced stage with the Plaintiff's case having been closed.
 13. The Applicant and the proposed Defendants filed their written submissions which I have considered.
 14. It is true, as submitted by the Applicant that under order 1 Rule 10 of the Civil Procedure Rules, the court has unfettered discretion to order that any party who might or ought to have been joined either as a Plaintiff or a Defendant or whose presence before the court may be necessary in order to effectively and completely adjudicate upon all questions involved in a suit be joined.
 15. It is also true, as submitted by the Applicant, that from the pleadings on record, the issues raised in H.C.C.C No.43 of 2005, H.C.C.C No.101 of 2008 and this suit raise common questions of facts and laws.
 16. It was because of the issues that the Applicant has raised in his Application and submissions in respect to the common questions of facts and laws in respect of these matters that Ojwang J, as he was then, delivered a Ruling on 8th July 2011 in which, inter alia, directed as follows:

(a) All the cases in respect of Kilifi/Jimba/1125 shall be consolidated and shall be heard together before the High Court at Malindi.

(b) To facilitate the trial indicated in direction number 5 (number (a) in this case), the continued trial of Malindi High Court Civil Case NO. 43 of 2005 shall abide the trial and determination of the consolidated Civil Suits as directed under 5.

(c) Any interested party in respect of the consolidated civil suit shall apply for joinder within 21 days of the date of delivery of these directions.

17. The Applicant was aware of those directions.
18. The Applicant should have made this application or an application to consolidate this suit and H.C.C.C No.101 of 2008 with HCCC No.43 of 2005 within 21 days. It did not do so.
19. I cannot allow them to now seek for an order of the court to introduce the parties in H.C.C.C No.43 of 2005 in this suit or in HCCC NO.101 of 2008 because of the common questions of facts and law in the three suits.

20. The Plaintiff has closed her case in HCCC NO.43 OF 2005 and what is pending is the defence case which is coming up for hearing on 12th September 2013. It would be untidy, and a travesty of justice for the parties in HCCC No. 43 of 2005 to testify again in the other two suits having completed their cases, as they are about to do.
21. In any event, Meoli J, in H.C.C.C No.101 of 2008, directed that H.C.C.C number 43 of 2005 was part heard and should proceed separately and further that this suit and H.C.C.C No.101 of 2008 be consolidated.
22. In the circumstances, the three suits should proceed for hearing as directed by Justice Meoli on 3rd September 2012 without “importing” parties from one suit and joining them in other suits or staying H.C.C.C No. 43 of 2005
23. Counsel for the Applicant recorded a consent in H.C.C.C No.43 of 2005 in which the Applicant herein was enjoined as an interested party in HCCC No.43 of 2005 with a rider that it shall not file any pleadings.
24. In the circumstances, and for the reasons I have given above, I dismiss with costs the Applicants’ Applications dated 26th November 2012 and 13th December 2012 filed in Malindi H.C.C.C No.75 of 2007 and H.C.C.C No.101 of 2008 respectively.

Dated and Delivered in Malindi this **26th** day of **July**, 2013

O. A. Angote

Judge