



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ENVIRONMENTAL & LANDS DIVISION

ELC CASE NO. 225 OF 2011

UBORA HOUSING CO-OPERATIVE

SOCIETY LIMITED.....PLAINTIFF

VERSUS

TRIPLE –TWO PROPERTIES LTD1ST DEFENDANT

GEOFFREY MAKANA ASANYO2ND DEFENDANT

COMMISSIONER OF LANDS3RD DEFENDANT

ZABLON MABEA.....4TH DEFENDANT

ATTORNEY GENERAL5TH DEFENDANT

ANCUT MUUMBI MUNYAO.....INTERESTED PARTY

RULING

By a Notice of motion dated 27th July, 2012 the 1st and and Defendants herein have asked the court to consolidate Machakos High Court civil Case No. 225/2011 and Machakos High Court, Civil Case No.277/2010.

They also sought for court order directing that no party should enter, develop, sell, charge, lease or purport to do anything on the said suit premises pending the hearing of the suit and the orders be enforced by the Officer Commanding Station Athi River Police Station. Applicants also prayed that costs of the application be in the cause.

The application was supported by the grounds on the face of the application and by the supporting affidavit of Paul Omasire the Director of Tripple Two Properties Ltd

Among the grounds for the Application are that the dispute herein in both cases is over a parcel of Land LR No.337/1631. That the 1st Defendant Tripple Two Properties Ltd got registered as the proprietor of IR 130163/ LR 337/1631 on 1st June, 2011 after payment of the requisite charges . However there are two other Title Deeds in respect of the same parcel of Land. That is

- a. LR 72197/LR 337/1631 in the names of Misori Construction Company Ltd
- b. LR 74968/LR 33/1631 in the names of Jena agencies Ltd and later transferred to the Plaintiff herein Ubora Housing cooperative Society Ltd

That Ubora Housing Cooperative Society sued the 1st and 2nd Defendants herein plus others in Machakos High Court Civil Suit No. 225/2011. However there is another Machakos High court Civil Case No. 227/2010 between Misori Construction Co Ltd and Ubora Housing Cooperative Society Ltd over the same subject matter LR 130163/LR No.337/1631.

That it is important to consolidate the two suits so that they can be heard together to avoid duplicity of issues, wasting of precious judicial time and issuance of conflicting orders by the court over the same subject matter and same parties.

The application was supported by the 3rd and 4th Defendants who are represented by the Attorney General. However the Application was opposed by the Defendant in HCC 277/2010 and Plaintiff in 225/2011.

The parties herein canvassed this Notice of Motion by way of written submissions which I have considered. I have also considered the pleadings generally and it is evident that the disputes herein involves the same parcel of land LR No. 337/1631. From the pleadings filed by the parties herein, the suit land in question LR No. 337/1631 has multiple Title Deeds and Multiple claimants over the same. I have considered the various authorities cited by the parties herein. In the case of **DUTTO MARIA LUCIA V MAURIZIO RICOTTA (2006) eKLR**, the court sets out the considerations to be satisfied for consolidation of suits to succeed;

- i. The two/or more suits should be pending
- ii. They raise the same similar questions of law.

The two cases herein raises similar question of law and fact as they related to the same parcel of land.

I will be guided by the case of **EAN KENYA V JOHN SAWERS & 4 OTHERS (2007) eKLR** where Justice H.P. G Waweru stated that the test to be applied to is not whether the parties are the same suit whether the same or similar questions of law or fact are involved in the suits.

As I have indicated earlier the suits are over LR No. 337/1631 which has several claimants. The suits therefore involve similar facts and similar issues of law .

Similarly in **MUTURI INVESTMENT LTD V NATIONAL BANK OF KENYA LTD (2006) EKLr** Justice Kasango held that

“Having examined the pleadings I am of the view that the two actions have a common question of law and of fact that they relate to the same lending and hence the documents which shall be relied upon shall also require similar interpretation from the court. It is clear to that to order the suit to be heard separately will mean that the evidence submitted by the parties will be duplicated in both cases. There is therefore, the danger and every likelihood that the different courts could reach different decisions in the two caseI find that there is sufficient common question of law and fact in both suits to render it desirable that the suits be disposed at the same time.”

The two suits are over the ownership of LR No. 337/1631 in Machakos. If the two are not heard and determined together there is every likelihood that conflicting judgments may be entered in the two suits and that would create confusion and even breakdown of law and order.

The court is mandated by the Civil Procedure Act to observe the overriding objective of the Act which is to facilitate just, expeditious, proportionate and affordable resolution of Civil disputes. Governed by the Act. The court finds that it is prudent to hear the two suits together to determine the real ownership of IR

130163 LR No. 337/1631 in Machakos. The court will therefore further the overriding objective if it allows the consolidation of the two suits herein. The court finds that consolidation of the two suits will ensure that justice is done and there is also expeditious disposal of the suits as is provided by Section 1A and 1B of the Civil procedure Act. Further Section 3A of the same Act empowers the court to make order that will ensure ends of justice. The said Section reads as follows;

“Nothing in this Act shall limit or otherwise affect the inherent power of the court to make such orders as maybe necessary for the ends of justice on to prevent abuse of the process of the court.”

Having now carefully considered the pleadings herein, the rival submissions and the relevant laws the court finds that before the suits are determined, there is need to preserve the suit property. The suit property will only be preserved if no party herein is allowed to have any dealing with the said suit property. (Dealing means herein selling, charging. Alienating or transferring).

For the above reasons, the court do allow the applicants/1st and 2nd Defendants Notice of motion dated 27th July, 2012 in terms of prayer No 2 (on consolidation of the two suits) and prayer No. 5.

However the parties who are already residing on the plot such as the interested party herein, in HCCC No. 225/2011 (Ancut Muumbi Munyao) and any other party in possession to remain so and should continue to reside therein until the final determination of this suit.

It is so ordered.

Dated, signed and delivered at Nairobi this 2nd day of September, 2013

L. N. Gacheru

Judge

2.9.2013

Coram Hon Gacheru, J

Court clerk Lukas

Anyoka for Plaintiff/respondent in 225/2011 and holding brief for Miss Wambua for Defendant/Respondent in 277/2010

L. N. Gacheru

Judge

2.9.2013

Wanga Holding brief for Munyalo for 1st and 2nd Defendant sin 225/2011 and holding brief for Nguyo for the Attorney General

L. N. Gacheru

Judge

2.9.2013

Mutinda for Plaintiff 277/2010

L. N. Gacheru

Judge

2.9.2013

M/s Karani holding brief for Miss Ngonde for Interested party in 225/2011

L. N. Gacheru

Judge

2.9.2013

Court Ruling read in open court.

L. N. Gacheru

Judge

2.9.2013