



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISCELLANEOUS CIVIL APPLICATION 53 OF 2012

PETER NGANGA MWAURA..... APPLICANT

V E R S U S

ALFRED MBUGUA NGUGI.....RESPONDENT

R U L I N G

1. The main order sought in the **notice of motion dated 30/1/2012** herein is that **Nairobi HCCC No. 7128 of 1999** and **Thika CM D.O. Case No. 52 of 2000** be consolidated. The other orders sought are incidental to this main order.

2. The application is stated to be brought under **sections 1A, 1B, 3A and 18** of the **Civil Procedure Act, Cap 21. Order 22, rule 25** of the **Civil Procedure Rules** (the **Rules**) is also cited.

3. The application is premised upon the grounds -

(i) That the two cases sought to be consolidated are between the same parties herein on the same subject-matter, L.R. RUIRU EAST/BLOCK 1/GITHUNGURI/1360 (the suit land).

(ii) That both cases have been concluded, each party having a judgment in his favour in one or the other case, and each being in the process of executing the judgment in their favour.

There is a supporting affidavit sworn by the Applicant.

4. The Respondent has opposed the application as set out in his replying affidavit sworn on 16th and filed on 17th February 2012. He has deponed as follows-

- (i) That he is the registered owner of the suit land, having bought it in 1996 and having obtained title to the same “subject to a caveat in favour of Barclays Bank of Kenya, the financier of the purchase (to the tune of) KShs 400,000/00”.
- (ii) That in Nairobi CMCC No 7128 of 1999 he was granted vacant possession.
- (iii) That the proceedings of Ruiru Land Tribunal were conducted without notice to him and without his knowledge.
- (iv) That the subsequent adoption of the award of the tribunal in Thika CM D.O. Case No. 52 of 2000 was also without notice to him and without his knowledge.
- (v) That the Applicant herein challenged the orders of vacant possession granted to the Respondent in Nairobi CMCC No. 7128 of 1999 by way of judicial review vide **Nairobi HC Misc. Application No. 1375 of 2005**, but that the application was dismissed.
- (vi) That the Applicant then appealed to the **Court of Appeal** against the order of dismissal in the judicial review application, vide **Civil Appeal No. 1323 of 2007**, but that the same did not succeed.
- (vii) That the Respondent applied in Thika CM D.O. Case No. 52 of 2000 to set aside the orders granted therein, and that the said application is pending disposal.
- (viii) That the consolidation of the two matters sought herein is “calculated to circumvent” that application pending in Thika CM D.O. Case No. 52 of 2000.

5. In a supplementary affidavit sworn on 10th and filed on 14th February 2012 in answer to the replying affidavit, the Applicant has deponed as to why he is the one entitled to the suit property. He has not raised any issue with regard to sequence of events relating to the two suits as narrated by the Respondent in the replying affidavit.

6. Having considered the material now before the court and the submissions made by the learned counsels appearing for the parties, it appears to me to be plain that the consolidation sought will not be in the interests of justice, and would in fact occasion injustice. Clearly, mischief is intended.

7. The two suits are already concluded, separately. The Applicant has already unsuccessfully challenged the orders in Nairobi CMCC No 7128 of 1999. On the other hand the Respondent is in the process of seeking to set aside the orders made in Thika CM D.O. Case No. 52 of 2000, which orders appear, *prima facie*, to have been intended to defeat the orders already obtained in Nairobi CMCC No. 7128 of 1999. So, what expediency or good purpose will be achieved by the consolidation sought? Only confusion can be occasioned!

8. I will in the circumstances refuse the application. It is hereby dismissed with costs to the Respondent. It is so ordered.

DATED AT NAIROBI THIS 24TH DAY OF MAY 2012

H.P.G. WAWERU

JUDGE

DELIVERED AT NAIROBI THIS 25TH DAY OF MAY 2012