



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MERU

Civil Case 25 of 2009

TABITHA CIOMBOROKI PLAINTIFF/RESPONDENT

VERSUS

TWAMWARI MUMIIRA DEFENDANT/APPLICANT

RULING

The defendant/applicant in this application dated 18th June 2009 brought under Order XI Rules 1 (a) and (b) of the Civil Procedure Rules, Section 3A and 63 (e) of the Civil Procedure Act seeks the following orders:-

- 1. That this honourable court be pleased to make an order that this suit (HCC No. 25 of 2009 – OS) be consolidated with Meru HCCC No. 16 of 2009 (Samson M’Itwamwari Mumiira vs. Joseph Bundi M’Turwane & 2 others) which is presently pending before this Hon. Court and the same to proceed for hearing under HCCC No. 16 of 2009.***
- 2. That costs of this application be costs in the cause.***

The application is based on the following grounds:-

- a) The issues for determination by the court in the two suits raised similar questions of law and fact and it will be fair that the same be addressed under one and the same proceedings.***
- b) A decision on either of the issues raised in either of the two suits, will have determined the entire dispute between the parties herein so it will be fair that the two suits be consolidated to save some precious time for the court and for the parties.***
- c) The evidence to be tendered by the parties before court in the two suits, will be fair, convenient and just that the two suits be consolidated and evidence taken only once on all the issues for determination.***

d) This application is brought to court without undue delay and is made in utmost good faith and the prayers sought for, if granted, will not in any way prejudice the plaintiff/respondent's case.

The application is supported by affidavits of defendant/applicant. The application is opposed by the plaintiff in her affidavit dated 22nd July 2009.

The applicant in his affidavit has stated that the plaintiff/respondent sued him claiming a portion of 2 acres of land which the respondent's claim to have acquired through adverse possession. The parcel of land in dispute as per respondent's (O.S) is *Nyaki/Kithoka/926*. That the applicant stated that before the respondent filed the instant case the applicant had filed before this court HCCC No. 16 of 2009 in which the respondent is the 3rd defendant. The applicant in Meru HCCC 16 of 2009 is seeking orders of eviction to be issued against the three (3) defendants and for an order of permanent injunction. The land in dispute in Meru HCCC 16 of 2009 is *Nyaki/Kithoka/926*. The land is registered in the name of the applicant.

The applicant stated that the defendants in HCCC 16 of 2009 have filed a joint statement of defence and the issues raised in the defence are similar to the ones raised in this suit. The applicant has further stated that from the pleadings by both parties in HCCC No. 16 of 2009 and in suit No. HCCC 25 of 2009 (O.S.) it is evident that the issues for determination raise similar question of law and of fact and it is clear that the facts and evidence that will be tendered in the two suits will be one and the same. The applicant has further stated that it is evidently clear that a decision on either of the issues raised in the two suits will have effectively determined that issues in dispute between the two parties and it would be fair and just that the two suits be consolidated so that all the issues can be determined under the same proceedings.

The applicant stated that the application has been brought without undue delay and is made in good faith.

The respondent in the replying affidavit dated 22nd July 2009 has opposed consolidation of the two suits. She stated the issues for determination in her case are completely different from those raised in the applicant's suit No. HCCC No. 16 of 2009. That the parties involved in her claim are also different from those in the applicant's suit. That parties who are not parties in the suit would be prejudiced. She stated that the suits are based on different, separate and distinct causes of action. The respondent further submitted the nature of and procedure for determination of the two suits cannot favour consolidation. That the mixing the two suits will compound and obfuscate/confuse the issues the court has to determine in either suit.

I have gone through the pleadings in both suits, that is to say, HCCC No. 25 of 2009 and HCCC No. 16 of 2009. In HCCC 25 of 2009, the respondent is claiming that she is entitled to 2 acres of L.R. *Nyaki/Kithoka/926* from the respondent through adverse possession. The respondent is seeking to be registered as proprietor of 2 acres of parcel of land known as *Nyaki/Kithoka/976* which land the respondent claims to have occupied for a period of over 12 years. The parcel of land known as *Nyaki/Kithoka/926* is registered in the name of the applicant.

In HCCC 16 of 2009 the applicant is the plaintiff and the respondent herein is the 3rd defendant. The issue in this suit is ownership of land known as *Nyaki/Kithoka/926* and whether the applicant allowed the defendants to occupy the disputed land and whether the defendants can be evicted. The 1st and 2nd defendants are brothers and children of 3rd defendant. The two suits are between the same parties or between parties under whom they claim or litigating under the same title. Consolidation would not confuse the issues in both cases or prolong resolution of the matters in dispute.

In view of the foregoing, I find that the applicant have made out a case for consolidation. HCCC 25 of 2009 and HCCC 16 of 2009 are ordered consolidated and lead case file shall be HCCC 16 of 2009.

I therefore allow the application and order that costs of this application be in the cause.

Dated at Meru this 9th day of May 2012.

J.A. MAKAU

JUDGE

-
-

Delivered in open court in the presence of:-

1..... for applicant

2..... for respondent

J.A. MAKAU

JUDGE