



Land and Environmental Law Division

2. Subject of Main Suit: - Land

LR No. 609 Watamu Land ownership

Land

a) New titles issued

Kilifi/Jimba 1160

Kilifi/Jimba 1161

Kilifi/Jimba 1162

Kilifi/Jimba 1411

b) Claim 1st defendant leased new title and issued to 2,3,4,5 & 6 defendants.

c) Irregular registration and overlap of land.

3. Civil Practice and procedure

a) Application to consolidate suits

b) Suits concern similar points of law and facts.

c) One property registered under two different systems of law

4. Application - opposed by all respondents.

5. Held. Consolidation granted

6. Case Law.

a) Sammy Mwangi & 9 others vs Commissioner of Lands & 9 Others

Hccc298 of 2003, Ransely, J.

b) Muturi Investments Limited vs National Bank of Kenya

Hccc 199 of 2005

Thongori instructed by Judy Thongori & Co. Advocates for the plaintiff/applicant

Dr. Khaminwa instructed by Khamiwna & Co. Advocates for the 6th defendant and holding brief for F. Kilonzo & Co. Advocates for the 2nd, 3rd, 4th and 5th defendants – present

A. Sitima for 7th, 8th and 9th defendants for the Attorney-General

J.K. Ritho interested party in person - present

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
CIVIL SUIT 1623 OF 2007

SHEVA HOTELS LIMITED.....PLAINTIFF

VERSUS

SHAIBU SOSHI FAMAU.....1ST DEFENDANT

ELGA MACHOTTI.....2ND DEFENDANT

GLOVANNI OSS.....3RD DEFENDANT

BARBARA BIACHI.....4TH DEFENDANT

HANS-DIETTER KURT WALTER LOYALL....5TH DEFENDANT

PIERE LAPORTE LTD..... 6TH DEFENDANT

LAND REGISTRAR KILIFI.....7TH DEFENDANT

COMMISSIONER OF LANDS.....8TH DEFENDANT

HON. ATTORNEY GENERAL 9TH DEFENDANT

RULING

CONSOLIDATION OF SUITS

ORDER XI R 1 AND 2 CIVIL PROCEDURE RULES

SECTION 3A CIVIL PROCEDURE ACT

DATED 8 NOVEMBER 2007

I: Background

1. There is a position of land situated in Watamu within the Kilifi District originally Chembe/Kibabamushe, Jumba and Mandetaini area registration section.
2. There appears to be one piece of land property that had been subjected to two different land registration systems.

The plaintiff herein M/s Sheva Hotel Limited claim to have been allocated land parcel LR 609 Watamu by the Government of Kenya. Other persons who include the defendant herein are duly registered under the same parcel of land duly such divided as:-

(i) Kilifi/Jimba 1160

(ii) Kilifi/Jimba 1161

(iii) Kilifi/Jimba 1162

(iv) Kilifi/Jimba 411

And title issued under the Registered Land Act Cap 300.

3. The applicant / plaintiff sought the cancellation of titles issued under the Registered Land act and further restrain the said defendant from encroaching onto their land.

4. On realizing there were two section of land and several suits in connection with the matters in question; the plaintiff applicant prayed for the consolidation of suit.

II. Application 8.11.07

The suit to be consolidated are:-

Hccc 955/95

Hccc2387/81

Hccc2577/96

And to be so consolidated with this suit Hccc1083/05

5. The said suit seeks to ask the court to cancel the applicants plaintiff title and or declare the other parties title as being defective. The case law submitted of:-

Muturi Investments Limited

V

National Bank of Kenya Limited

Civil Suit No.199 of 2005

6. The other parties in the suit oppose the application for consolidated and stated that it would serve no useful purpose.

III. Findings

7. It is true that there are various suits filed concerning the land parcels in question herein. There are two or more systems of registrations that has been applied. This questions arises as to which is the correct system of registration.

8. I did indeed call all parties concerned on this matter and dealt with the issue of consolidation. Some advocates opposed to consolidate the matter others agreed.

9. A hearing date for the suit has already been taken.

10. I would in the interest of justice allow the application to consolidate the suit herein with those that are before this court as prayed.

11. I recognize the applicant plaintiff was sued with one Raymond Njenga (a former Commissioner of Lands) who had differences with S.K. Ritho on this parcel of land as employees of the Government in the Lands Department.

12. The application be and is hereby allowed. There be consolidation of the suits.

13. That the costs be in the case.

DATED THIS 30TH DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

J. Thongori instructed by Judy Thongori & Co. Advocates for the plaintiff/applicant

Dr. Khaminwa instructed by Khamiwna & Co. Advocates for the 6th defendant and holding brief for F. Kilonzo & Co. Advocates for the 2nd, 3rd, 4th and 5th defendants – present

Sitima instructed by sitima & Co. Adovcates for the defendant – present

J.K. Ritho interested party in person - present