



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Civil Suit 133 of 2006

COUNTY COUNCIL OF NAKURU PLAINTIFF

VERSUS

SIMON OLE KIMINTA 1ST DEFENDANT

SHADRACK OLE KAMMAMIA 2ND DEFENDANT

SOLOMON OLE MAATANY 3RD DEFENDANT

NAIBOR AJIJK GROUP RANCH 4TH DEFENDANT

RULING

The plaintiffs/Applicants the *County Council of Narok* instituted this suit on 27th June, 2006 against the four defendants in which they are seeking for the following orders:

- (a) A declaration that the plaintiff is the legitimate proprietor of Title Number CIS-Mara/Naibor/Ajjjik/61.
- (b) A permanent injunction restraining the defendants from interfering, alienating, encroaching upon, sub-dividing, allocation or in any other manner dealing with the Title Number CIS-Mara/Naibor/Ajjjik/61 save for purposes of transferring the title to the plaintiff.
- (c) An order that the title in respect of Title Number CIS-Mara/Naibor/Ajjjik/61 be rectified by deleting the name of the 4th defendant as proprietor and instead thereof inserting the plaintiff's name.
- (d) Costs of this suit.

On 20th July, 2006 the defendant filed a defence in which they have denied the plaintiff's claim. By an application dated 22nd June, 2006 which is expressed to be brought under the provisions of **Order 11 of the Civil Procedure Rules**, the plaintiff sought for an order that this suit be consolidated and heard together with **Nakuru High Civil Case No.6 of 2006**. This application is based on the grounds that there are similar points of law raised in this suit and also in **HCCC No.6 of 2006**.

The affidavit of **Wilson Muita Marao** sworn in support of this application gives the details of the ownership of a property known as **Plot Number 61** which is the subject matter of this suit. It is alleged that a group ranch known as **Naibor/Ajjjik Group** was to give the plaintiff 50 acres for purposes of developing a trading centre. In 1989 the plaintiff took possession of the 50 acres and started the process

of developing a trading centre. In the year 2004 the **Naibor/Ajjik Group Ranch** prepared a schedule of members to be allocated land which was submitted to the Narok District Land Adjudication Officer for purposes of preparing titles. Over this same parcel of land which was surrendered to Narok County Council. The plaintiff realized that the group ranch officials were trying to subdivide and sell Plot Number 61 which is now registered as Title Number **CIS-Mara/Naibor/Ajjik 61** which attempts the plaintiffs tried to stop by registering a complaint with the Provincial Administration. The plaintiff also filed this suit in which they seek to cancel the name of the group Ranch which they contend was fraudulently registered. In the meantime another suit being **HCCC No.6 of 2006** in which orders were given prohibiting any dealings with common issues regarding the ownership of **Plot Number 61** was filed. Interim orders were issued which have been registered against this same title. Counsel for the applicants argued that it will be in the interest of justice to determine these two suits together which raise similar questions of law and facts between the parties.

This application was opposed by the learned counsel for the defendants. He relied on the replying affidavits by **Simon Ole Kimita** which was sworn on 4th July, 2006. According to the defendants, the consolidation of this suit, with **HCCC No. 6 of 2006** would prolong the litigation. The plaintiffs in this suit have no *locus standi* and there is no privity of contract between the plaintiffs in **HCCC No.6 of 2006** as regards the suit premises being **Plot Number 61**. There is also the issue of the parties who are sued in **HCCC No.6 of 2006** which is by different plaintiffs who claim to have been members of **Naibor/Ajjik Group Ranch**. In the present suit the plaintiff has never been a member of the group Ranch and this is a contradiction which cannot be resolved unless the two suits are determined separately.

Furthermore, the plaintiff in the present suit is seeking to enforce certain resolutions made by a group Ranch in which the plaintiff was not a member. In **HCCC No.6 of 2006** there is no mention of the plaintiff at all. There is also a sharp contrast of the issues raised in both cases regarding the issue of various plots and the registration of the title in the name of **Naibor/Ajjik Group Ranch** whereas the issue in **HCCC No.6 of 2006** there is an additional issue of the legality over a group called **Ainabor/Ajjik Community Organization**.

I have taken into consideration the rival arguments by both counsels of the applicants and for the respondents. Under the Provisions of **Order 11(1)** where two or more suits are pending in the same court, in which the same or similar questions of law or fact are involved the court may at its own discretion under upon terms order a consolidation of such suits.

In the present suit the dispute involves the ownership of **Plot Number 61 Cis- Mara Naibor/Ajjik** as between the County Council of Narok and the plaintiff. In **HCCC NO.6 of 2006** there are ten (10) individual plaintiffs who have sued the 1st, 2nd and 3rd defendants seeking for a declaration over several parcels of land namely: **Cis-Mara Naibor/Ajjik Numbers 60, 61, 172, 198, 328 and 304**. It is not clear how the interest of the ten (10) plaintiffs in **HCCC No.6 of 2006** converge with those of the plaintiff in the present suit. In this present suit the plaintiff claims that the land was given for public utility. Moreover, the plaintiff's claims in **HCCC NO.6 of 2006** include other parcels of land and another body known as **Naibor/Ajjik Community Conservation and Development Company** which is challenged. If the two suits are consolidated, it is obvious that it is not convenient for the determination of issues as one suit challenges the ownership of the property while the other suit challenges the exercise of the power of the transfer. The suits are not also between the same parties and consolidation would confuse the issues and prolong the resolution of the matters in dispute.

In the circumstances I decline to order the consolidation of the suits and direct that both suits be heard separately. This application is dismissed with costs to the respondents.

It is so ordered.

Judgment delivered and dated 23rd March, 2007.

MARTHA KOOME

JUDGE