



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Civil Case 1408 of 1998

WANGUI KARANJA 1ST PLAINTIFF

SALOME NJERI KARANJA 2ND PLAINTIFF

VERSUS

JOSEPH NJERNGA NG'ANGA 1ST DEFENDANT

NJANE KAMAU 2ND DEFENDANT

FRANCIS NDEGWA 3RD DEFENDANT

RULING NO.1

I: CIVIL PRACTICE AND PROCEDURE

1. By an application dated 7 April 2006, the 1st and 2nd plaintiffs Wangui Karanja and Salome Njeri respectively seek this court's orders to consolidate their present suit Hcc1408/98 with another suit filed being Hccc208/00 that was there after filed against them and others.

2. The issue in question is that of land ownership and as a result the courts may come up with two different decisions if heard separately.

II: BACKGROUND OF APPLICATION OF 7 APRIL 2006

3. The two plaintiffs are in possession of land parcel LR 11595 grant number IR208 95 issued on 30.9.1965 to the late James Karanja Kisu being 11.5 acres. The two plaintiffs acquired possession through a succession cause.

4. On this very small land of 11.5 acres the two plaintiffs ran a dairy farm. They were invaded by the three defendants and a group of 60 people who cut the fence and wanted the land.

5. The plaintiffs sued the two in trespass. They had continued their acts of trespass and the plaintiff prayed that a permanent injunction do issue restraining the said defendants from trespassing onto their land.

6. Through M/s S.K. Ritho and Co. Advocates a group of 32 plaintiffs filed suit on 9 January 2000 by a plaint dated 8 January 2000 against the Kenya Government namely the Commissioner of Lands, Director of Surveys and the Kenya Railways Corporation.

7. The 32 persons claimed that during the colonial period their land was acquired and they were not compensated. A railway line was built and they were pushed out of the land at least 200 yards or more from the railway lines.

8. They sought orders that the title LR 11595 grants number IR20895 be cancelled and instead the 11.5 acres be allocated to themselves.

9. The plaintiff filed this present application of 4 April 2006 seeking consolidation of the suit.

II: APPLICATION 4 APRIL 2006

10. I have not had sight of the suit Hccc208/00 but there is annexed the said extracts of the same. I am not able to know if the suit was filed as a representative suit or not.

11. The concerns the plaintiff/applicant have is that the same suit may be decided by different judges and come up with contradictory finding. This indeed should not occur. It is therefore necessary to consolidate the said suit. There would be several facts and law that may arise in the two causes. The subject matter are the same but the relief sort by the defendants are the same to the relief sought in Hccc208/00. They further argued that going back to the colonial laws on the motion of land law the defendants call "common law and native title" claim is highly inconsistent with the principles of extension of "native title" laid down in Isaac Warua wa Githiora & Another v Muritu (1922-23) a KLR 102 and

Obiero v Opiyo (1972) EA 388 whereby it recognize such rights would bring chaos in the countrys' land law.

12. All this, of course, will be the issues to be argued and discussed in the main suit.

13. This application has been brought up under Order XI r 1 and 2 Civil Procedure Rules that the suits be consolidated.

14. Should these two suits be consolidated?

III: FINDINGS

15. The section 6 of Civil Procedure Act states that where there is a trial and suit filed thereafter is brought another suit, then the suit should be stayed.

In the case of :-

Landeco Ltd v Gregory Pragassa

Hccc900/06, Anga'wa,J. unreported

This court stayed a suit under section 6 of the Civil Procedures Act.

16. The defendant in this suit were aware of the suit against them. They should have completed this suit first before instituting a subsequent suit.

17. I hereby find that the suit Hccc208/00 be stayed under section 6 of the Civil Procedure Act pending the determination of this present suit. I award costs to the applicant.

Dated this 13th day of June 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

P.Nganga for Kamau Kuria & Kiraitu Advocates for the defendant

S.K. Ritho for S.K. Ritho & Co. Advocates for the defendant