



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**Civil Case 257 of 2002**

**JOSEPH NJOROGE KIBUNJA.....PLAINTIFF**

**VERSUS**

**MUNICIPAL COUNCIL OF THIKA.....DEFENDANT**

**RULING**

The plaintiff filed a suit at Thika Chief Magistrate's Court being CM CC NO.822 of 2003 against the 5 defendants named therein.

In that suit he averred that all material times he is the registered proprietor of plot NOS. **THIKA MUNICIPALITY/BLOCK 10/441 and THIKA MUNICIPALITY/BLOCK 10/442**. He further avers that on 27th June 2003 encroached onto his said properties and started erecting illegal structures claiming ownership of the suit land. He sought orders of declaration that the defendants had no right to the suit land, orders of eviction and injunction to restrain the defendants from encroaching on the suit land.

By plaint dated 12th February 2002 he filed this present suit being **HCCC NO.257 OF 2002** here in Nairobi and the defendant being **THE MUNICIPALITY COUNCIL OF THIKA** seeking the following orders:-

- a) A declaration that he is the legally registered owner of plot NOS. **THIKA MUNICIPALITY/BLOCK 10/441** and **THIKA MUNICIPALITY/BLOCK 10/442** and the defendant has no right over it.
- b) An injunction restraining the defendant from encroaching onto alienating, building or in any way dealing with the suit property.
- c) An order directing the defendant to approve the development plans submitted to the defendant over **PLOT NOS THIKA MUNICIPALITY/BLOCK 10/441 and THIKA MUNICIPALITY/BLOCK 10/442**.

On 10th May 2005 Mr. Kahonge counsel for the 1st defendant applied by way of Notice of Motion for orders that the Thika case CMCC 822 of 2002 be withdrawn from that court and be transferred to Nairobi and be consolidated with the present case. The application is based on the ground that the two suits raise similar issues. The applicant avers that the two suits relate to ownership and possession of **THIKA MUNICIPALITY/BLOCK 10/441 and THIKA MUNICIPALITY/BLOCK 10/442**.

The application is opposed by Mr. Njoroge counsel for the plaintiff on the ground such consolidation will prejudice the plaintiff's case as the defendants are different and the prayers sought are also different. He further submitted in this application the applicant has described the defendants in the Thika case as interested parties.

I have considered the application in light of the affidavits on record and the submissions by both counsels. The application describes the defendants in the Thika case as interested parties. The same is not reflected in the main suit. There is nothing on record to show whether there was any application to that effect. From the way the two suits are brought, consideration will not be possible and if done will prejudice the plaintiff's case.

The application is therefore dismissed with costs.

Dated at Nairobi this 19th day of May 2005.

J.L.A. OSIEMO

JUDGE