



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL CASE 298 OF 2003**

SAMMY MWANGANI)
MUSYOKA ILIMA)
NZULA MUEMA)
MULI MWANGO)
MATHEKA MALEI)
MAUNDU MUTHOKA)
MUTHUSI MUEMA)
KISILU MUNYWOKI)
JANE MUIKIA)

NZULE MUSYOKAPLAINTIFFS

VERSUS

THE COMMISSIONER OF LANDS.....1ST DEFENDANT
THE ATTORNEY GENERAL 2ND DEFENDANT
THABITI FINANCE CO. LTD3RD DEFENDANT
NATIONAL BANK OF KENYA 4TH DEFENDANT
JAMES GAMAU WAINAINA5TH DEFENDANT
LUCY NYAWIRA6TH DEFENDANT
SERA WANJIKU7TH DEFENDANT
SIMON MUTURI WANGUO8TH DEFENDANT
RAPHAEL MUIGAI MWANGI 9TH DEFENDANT
PAUL KAHUTI KONDIAH 10TH DEFENDANT

RULING

By their application of the 15.5.2004 the Applicants seek an order that this suit be consolidated with HCCC No. 394 of 2004.

This suit HCC No. 298 of 2004 was struck out against the 4,8,9 and 10th Defendants. A counterclaim filed by the 8th, 9th and 10th Defendants is still alive.

The suit filed in HCCC No.394 of 2004 has the same Plaintiff but omits the 2nd and 3rd 4th and 6th Defendants who were parties in the earlier suit.

Consolidation is usually ordered where similar issues arise between parties and it is convenient to hear the suits as one.

The reason for the second suit was to put right a procedural defect in the earlier suit which the 8th, 9th and 10th Defendants had raised, namely a breach of provision of Order 1 rule 12.

It alleged fraud against the 2nd, 3rd, 4th and 5th Defendants in the new suit who were previously defendants in the first suit.

The facts on which the two suits are based are substantially the same.

Mr. Messa for the first Defendant in both suits opposed the application on the grounds that the provision of the Government Proceedings Act had not been complied with in the second suit as no Statutory Notice had been given before filing the suit and that if Consolidation takes place they will be deprived of that Defence.

Mr. Maina for the 8th and 9th and 10th Defendant in the first suit and 3rd, 4th and 5th Defendant in the new suit objected that as his clients had a counterclaim it was not correct that there are be two parallel suits.

In both suits the allegations against the 1st Defendant are similar as well as the particulars of fraud.

I therefore discontinue the suit against the 1st Defendant in HCCC No.394 of 2004 as it is a duplication of the matters raised against it in the first suit.

I am of the view however, that the two suits should be heard together as the same issues substantially arise in both.

I therefore order the consolidation of the two suits but having discontinued the suit against the 1st Defendant in the second suit HCCC No.394 of 2004, I give the 1st Defendant its costs against the Plaintiff in that suit up to-day. The counterclaim in the first suit is to be heard at the same time as the hearing of the matters raised in the consolidated suits. Costs will be in the cause.

Dated and delivered at Nairobi this 18th day of July 2005

P.J. RANSLEY

JUDGE