



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI

ELC CASE NO. 1195 OF 2015

ISAAK GIBSON KAMANDE NJUGUNA.....1ST PLAINTIFF/APPLICANT

MICHAEL KARIUKI MUTURI.....2ND PLAINTIFF/APPLICANT

STEPHEN MWANGI GITHAIGA T/A

MIMI NA WEWE.....3RD PLAINTIFF/APPLICANT

VERSUS

JOHN KIMANI CHUCHU.....1ST DEFENDANT/RESPONDENT

SAMUEL MWANGI CHUCHU.....2ND DEFENDANT/RESPONDENT

JOSEPH GITAU CHUCHU.....3RD DEFENDANT/RESPONDENT

PETER NJUGUNA CHUCHU.....4TH DEFENDANT/RESPONDENT

RULING

1. This is the Notice of Motion dated 15th August 2019 brought under section 3A, 3, 1B of the Civil Procedure Act, and all other enabling procedures of the law.

2. It seeks orders:-

1. Spent.

2. That this honourable court be pleased to order the case file No. ELC 1195 OF 2015 be consolidated with the case file No. ELC No. 598 of 2012 (O.S).

3. That further proceedings in these suits be stayed until any further orders are issued.

5. That leave be granted to amend the plaint in the case file ELC No 1195 of 2015.

6. That costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs (1) to (9).

4. The application is supported by the affidavit of Isaak Gibson Kamande Njuguna the 1st plaintiff in ELC 1195 of 2015, sworn on the 15th August 2019.

5. The application is opposed. There are grounds of opposition filed by the plaintiffs in ELC 598/12 (OS) dated 9th December 2020. The defendants in ELC 1195/15 did not file any response to this application.

6. It is the plaintiffs'/applicants' case that the subject matter in litigation in the two suits is LR No 9363/84 (IR NO. 72019). That the

defendants in ELC 1195/15 are the administrators of the Estate of Chuchu Murungaru (Deceased) and that the plaintiffs in ELC 598/12 (O.S) are the beneficiaries of the Estate of Chuchu Murungaru (deceased). Mr. Kibera for the plaintiff in ELC 598/12 (OS) opposed the application on the grounds that the parties and the cause of action in the two suits were different. Mr. Nderitu for the defendants in ELC 1195/15, also opposed the application on the grounds that the parties in the two suits are different. Further that the cause of action is different.

7. I have considered the notice of motion and the affidavit in support. I have considered the grounds of opposition and the oral submissions. The issue for determination is whether this application is merited.

8. I have gone through the pleadings in the two suits. The subject matter is the same. It is LR NO. 9363/84 (IR NO.72019). I also note that the plaintiffs in ELC 1195/15 are the defendants in ELC 598/12 (O.S). The defendants in ELC 1195/15 are the administrators of the Estate of Chuchu Murungaru (Deceased) and are brothers to the plaintiffs in ELC 598/12 (OS).

9. It would be proper use of resources and judicial time if these two suits are heard together.

10. I find merit in this application and the same is allowed in the following terms:-

(a) That ELC 1195/15 is hereby consolidated with ELC 598/12 (OS) and ELC 1195/15 be the lead file.

(b) That leave is hereby granted to the plaintiffs in ELC 1195/15 to amend the plaint and to file and serve the Amended Plaint within twenty one (21) days form the date of this ruling.

(c) That the defendants in ELC 1195/15 and the plaintiffs in ELC 598/12 (OS) do have corresponding leave to amend their pleadings if need be.

(d) That the matter be mentioned before the Deputy Registrar to confirm compliance on 15th April 2021.

(e) That costs of this application do abide the outcome of the two suits.

It is so ordered.

Dated, signed and delivered in Nairobi on this 11th day of March 2021

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Wayihia for Kimamo for plaintiffs in ELC No 1195 of 2015

No appearance for Defendants

Phyllis - Court Assistant