



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISC. APP. NO. 2 OF 2019

GEORGE KIPLAGAT MOROGO.....APPLICANT

VERSUS

JOSEPH KIPKAPTO KORIR.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF NAKURU.....2ND RESPONDENT

RULING

(Application to stay a suit pending conclusion of another suit; the two suits related thus potential of a conflict of decisions; application allowed).

1. In this application, the applicant seeks orders to stay the proceedings in the case Eldama Ravine Chief Magistrate's Court, Environment and Land Civil Case No. 20 of 2018, pending the hearing and determination of Nakuru ELC Case NO. 488 of 2013. It is the position of the applicant that the two suits relate to the same subject matter and therefore there is a potential to have two conflicting decisions. To the supporting affidavit, the applicant has annexed the two complaints in the two mentioned cases. The application is opposed by the 1st respondent but is supported by the 2nd respondent.

2. The starting point has to be a look at the pleadings in the two cases. The one that was filed first in time is the case filed at the Nakuru ELC, which was filed in the year 2013. There are five plaintiffs in that case, being Kiprono Cheruiyot, Stanley Keton, Samson Kipkiai Chumo, Luka Korir Kipkurui, George S. Lagat. The defendants are eight, being George Morogo, Shadrack Kittony, Samson Chemase, John Lagat, Samwel Chesire, Abednego Siabei, Renson Korir, and David Biwot. In that suit, the plaintiffs claim that they are former directors of Kipsyenan Farm Limited, a land buying company, that purchased the land parcel LR No. Kampi Ya Moto/Kampi Ya Moto Block 6/288. It is averred that the land was subdivided into 212 plots and land distributed to members including to the plaintiffs. It is pleaded that between the years 2009 and 2013, the defendants, purporting to act as officials of the company, in the misconception that the land parcel Kampi Ya Moto/Kampi Ya Moto Block 6/288 was still in existence, started the process of re-demarcating the land thus affecting the plaintiffs' titles comprised in the plots described as Kipsyenan Trading Centre B/185, 56, 31, 110 and 50. In the suit, the plaintiffs asked for a permanent injunction against the defendant from effecting the redemarcation or affecting their plots.

3. The suit in Eldama Ravine, was initially filed in the Nakuru ELC as Nakuru ELC Case No. 99 of 2018 but was later transferred to the Eldama Ravine Magistrate's Court and registered as No. 20 of 2018 in the said court. The plaintiff in this case is Joseph Kipkapt Korir and the defendants are George Kiplagat Morogo and The County Government of Nakuru. The plaintiff claims that he was the beneficial owner of the Plot Kipsyenan Trading Centre B/184 which he contends to have been occupying since the year 1997. It is pleaded that sometimes in April 2017, the 1st defendant trespassed into the said plot and started carrying out construction without the authority of the plaintiff. It is further alleged that the 2nd defendant (the County Government of Nakuru) illegally issued to the plaintiff, permission to construct the said plot. In the suit, he wishes to have a declaration that he is the rightful owner of the land Kipsyenan Trading Centre B/184.

4. In this application, Mr. Morogo avers that the property of Mr. Korir is a result of the redemarcation of the land parcel Kampi Ya Moto/Kampi Ya Moto Block 6/188 which is challenged in the suit Nakuru ELC No. 488 of 2013. He avers that he himself lays claim to the land parcels Kampi Ya Moto/Kampi Ya Moto Block 6/455 and 457.

5. In replying to the application, Mr. Korir has averred that his plot has no relationship whatsoever with what the applicant claims in Nakuru ELC No. 488 of 2013.

6. The way I understand it, in the suit Nakuru ELC No. 488 of 2013, the applicant herein and others (as defendants) were sued so as to stop a re-demarcation of the land parcel Kampi Ya Moto/Kampi Ya Moto/288. The plaintiffs in that case say that if the said land is to be re-demarcated, their plots Kipsyenan Trading Center B/185, 56, 31, 110 and 50 will be affected. The applicant claims to own the plots Nos. 455

and 457, re-demarcated out of the larger land parcel Kampi Ya Moto/Kampi Ya Moto/288, but I am not sure whether the ground is the same as the Plot No. 184 claimed by Mr. Korir in the original demarcation.

7. The applicant may have a point that if the plaintiffs fail in the suit Nakuru ELC No. 488 of 2013, then there is possibility that the land may be re-demarcated afresh. If it is held in the Eldama Ravine case that Mr. Korir is the rightful owner of the plot No. 184, there may be a potential conflict with a decision in ELC No. 488 of 2013, which may end up embarrassing the administration of justice.

8. I am thus persuaded to stay the suit Eldama Ravine Land Case No. 20 of 2018. However, the applicant (Mr. Morogo) ought not to continue with any developments in the said plot or occupation of it, which must stay with Mr. Korir, as he was the original owner in the first demarcation, until the case Nakuru ELC No. 488 of 2013 is determined.

9. I make no orders as to costs.

Dated, signed and delivered in open court at Nakuru 10th day of July 2019.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :-

Mr. Nanda present for the applicant

Mr.Githui holding brief for Ms. Litunda for 2nd respondent.

No appearance on part of M/s Geoffrey Otieno & Co for 1st respondent.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU