



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO 308 OF 2015

GICHEMI NJUGUNA.....PLAINTIFF

VERSUS

BRENDAN KIMANI KAMANU.....1ST DEFENDANT

MWATHI NDIBARU.....2ND DEFENDANT

RULING

(Application for consolidation of two suits; one suit being for eviction and the other suit being for adverse possession; apparent that the two suits are related and need to be consolidated; application allowed).

1. The application before me is that dated 25 May 2018 filed by the plaintiff, and seeking consolidation of this suit and the suit Nakuru CMCC No. 46 of 2014. It is said that the two suits relate to the same cause of action and should therefore be heard together before this court.

2. I have gone through the pleadings herein and the pleadings in the suit Nakuru CMCC No. 46 of 2014. The suit before this court was commenced by way of an Originating Summons which was filed on 4 October 2012 by Gichemi Njuguna against Brendan Kimani Kamanu and Mwathi Ndibaru. In the suit, the applicant claimed that he is entitled, by way of adverse possession, to the land parcels Bahati/Kabatine Block 1/742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, and 753, which were previously comprised in the land parcel Bahati/Kabatine Block 1/2577 which measured 0.65 Ha. In his suit, he claimed that he was entitled to ownership of the land parcel No. 2577 by virtue of holding a share in Ndeffo Limited and that he settled part of his family on this land. He has claimed that in the year 1989, the 2nd defendant, illegally acquired title to this land parcel No. 2577 but that his possession of the land has been uninterrupted for over 38 years.

3. The other suit, Nakuru CMCC No. 46 of 2014, was filed on 23 January 2014. The plaintiff in the said case is Brendan Kimani Kamanu and he has sued Gichemi Njuguna, Elizabeth Wanjiru Gichemi and Paul Mwangi Gichemi. In this suit, he has averred that he is the owner of the land parcel No. 2577 having purchased it from its previous owner. He then subdivided the land into twelve portions, now bearing the numbers 11742- 11753. He averred that the defendants have taken over possession of the land and in the suit he has inter alia sought orders of eviction.

4. It is apparent to me (despite the probably wrong description of the several subdivided parcels of land in the Originating Summons), that the subject matter in the two suits is the same. In one case, one party is

claiming ownership of the suit properties through adverse possession, and in the other suit, that same party has been sued for eviction. To avoid a conflict of decisions, it is best that the two cases be heard together in the same court.

5. I therefore order that the case Nakuru CMCC No. 46 of 2014, be withdrawn from the Chief Magistrate's Court at Nakuru, and be transferred to the Environment and Land Court at Nakuru for consolidation with this suit and the two cases be heard together.

6. I make no orders as to costs.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of October 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Kibet for the applicant.

Mr. Kamau Chomba holding brief for Ms. Njeri Njagua for the respondents.

Court Assistant: Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU