



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO.472 OF 2017

WILFRED KONOSI.....PLAINTIFF

VERSUS

MAJID MOHAMED ADAM.....DEFENDANT

RULING ON DIRECTIONS

1. The plaintiff, Wilfred Konosi instituted the present suit on 27th December 2017. His claim in the suit was that he had been the lawful occupant of land parcel **Nakuru Municipality Block 11/66** registered in the name of Kennedy Nyabwari Bosire as the sole proprietor. The plaintiff alleged that in the year 1999 some unscrupulous speculators unlawfully caused the subdivision of the said land parcel **Nakuru Municipality Block 11/66** into land parcels **Nakuru Municipality /Block 11/678, 679 and 680** with the intention of disposing the same to third parties yet the original title for land parcels **Nakuru Municipality /Block 11/66** had not been surrendered and remained in the name of Kennedy Nyabwari Bosire. Inter alia, the plaintiff sought a declaration that he had acquired title to land parcel **Nakuru Municipality /Block 11/680** excised from land parcel **Nakuru Municipality/Block 11/66** by way of adverse possession having adversely possession having adversely posed the land for period of over 12 years.
2. The defendant in the suit Majid Mohamed Adam, denied the plaintiff would be entitled to claim the land parcel as an adverse possessor as he admitted his entry and occupation of the land was with the consent of one Kennedy Nyabwari who was the owner of the land.
3. In ELC case No.1 of 2018: Wilfred Konosi – vs- Herman Ngari Kirika, the plaintiff is the same plaintiff in ELC Case No.472 of 2017. In the suit the plaintiff averred that he had been in possession and occupation of land parcel **Nakuru Municipality Block 11/66** since June 1999. He further averred that the defendant with others used unscrupulous means to cause land parcel **Nakuru Municipality Block 11/66** to be subdivided and a portion hived therefrom being land parcel **Nakuru Municipality Block 11/679** to be transferred and registered in the defendant's name. The plaintiff contended that by reason of his having adversely possessed the whole of land parcel **Nakuru Municipality/Block 11/66** for over 12 years he had acquired title over the same and consequently therefore as at the time the purported subdivision was done he had already acquired title to the whole of land parcel **Nakuru Municipality Block 11/66** and any subdivision of the same would be of no legal effect. The plaintiff inter alia seeks a declaration that the subdivision of land parcel Block 11/66 was illegal and null and void and an order for the cancellation of the title to land parcel **Nakuru Municipality Block 11/679**.
4. The defendant in his defence faults the plaintiff's suit and averred that Kennedy Nyabwari Bosire through whom the plaintiff claims was not a party to the present suit. The defendant denies the plaintiff was an adverse possessor of land parcel **Nyahururu Municipality Block 11/66** as alleged.
5. The plaintiff in ELC case No.138 of 2019, Wilfred Konosi –vs- Saleh Hassan like in the present suit and in ELC case No. 1 of 2018 claims the defendant procured the subdivision of Land parcel **Nakuru Municipality/Block 11/66** irregularly and caused a subdivision thereof, namely, land parcel **Nakuru Municipality/Block 11/678** to be registered in his name. The plaintiff claims to have acquired title to land parcel **Nakuru Municipality /Block 11/66** by way of adverse possession and consequently any subdivision and or transfer was subject to his rights as an adverse possessor. The plaintiff inter alia seeks a declaration that the subdivision of land parcel **Nakuru Municipality Block 11/66** was illegal and null and void and sought an order for the cancellation of the title issued to the defendant in respect of land parcel **Nakuru Municipality/Block 11/678** and transfer of same to the plaintiff.
6. In yet another suit Nakuru ELC No.60 of 2019 Wilfred Konosi –vs- Kennedy Nyabwari Bosire, the plaintiff has brought a suit against the defendant who apparently was the registered owner of the land parcel **Nakuru Municipality block 11/66** out of which land parcels **Nakuru Municipality Block 11/678, 679 and 680** were created following what the plaintiff alleges was purported subdivision. In this suit the plaintiff states that he had during the month of June 2000 expressed an interest to purchase land parcel **Nakuru Municipality Block 11/66** and on that account was let into occupation of the land but the purchase fell through and the plaintiff remained in possession notwithstanding that the defendant offered the property for sale to third parties.
7. The plaintiff contends that he was adversely been in possession of the whole of land parcel **Nakuru Municipality Block 11/66** from 2000

today and therefore avers that he has acquired title to the parcel of land and seeks for an order declaring him as the owner thereof on the basis that the title of the registered owner has been extinguished by operation of the law by reason of effluxion of time.

8. Having regard to the foregoing appraisal and review of the pleadings in the four (4) suits, it is clear that the plaintiff is the same in all the suits and that even though the defendants are different, the land the subject matter is all but the same. The original parcel of land before subdivision was land parcel **Nakuru Municipality Block 11/66** which was subdivided to create land parcels **678,679** and **680**. The plaintiff alleges he has been an adverse possessor of the entire land parcel **Nakuru Municipality Block 11/66** such that the subdivision of the same could only have been done subject to his interest as an adverse possessor.

9. I have considered the pleadings in the four suits and I am of the view it would be appropriate and convenient to try the four suits together. The evidence of the plaintiff will be the same in the 4 cases and it would make no sense for him to repeat the same evidence 4 times. The defendants evidence and causes of action may be different arising from the circumstances under which they acquired their respective titles but as the primary issue in all the 4 suits is whether the plaintiffs' claims of adverse possession can be sustained, it is a common issue and the disposal of the same will determine the fate of the 4 cases.

10. In the circumstances it is my view that the 4 cases should be consolidated and heard together. I accordingly order that the following cases be consolidated:-

1. ELC CASE NO.60 OF 2019: Wilfred Konosi –vs- Kennedy Nyabwari Bosire

2. ELC CASE No.472 OF 2017: Wilfred Konosi –vs- Majid Mohamed Adam

3. ELC CASE No 1 of 2018: Wilfred Konosi – vs- Herman Ngari Kirika

4. ELC CASE NO. 138 of 2019 : Wilfred Konosi –vs- Saleh Hassan.

11. I make the following directions to facilitate the trial:-

i. That ELC Case No.60 of 2019 will be the lead file and that all pleadings will be filed in this file and the record of proceedings will be in this file.

ii. The defendants in ELC 472 of 2017; ELC 1 of 2018 and ELC 138 of 2019 will become the 2nd, 3rd and 4th defendants respectively in the consolidated suit.

iii. The parties will file a consolidated trial bundle incorporating the documents of all the parties and the plaintiff will have the responsibility of filing the composite bundle of documents within the next 45 days from the date of this ruling and upon service of the bundle upon them the defendants will be at liberty to file supplementary bundles of documents within twenty one (21) days of being served.

iv. Matter fixed for pre-trial directions on 13th July 2020.

v. Parties to file agreed issues within 60 days from the date of this ruling.

vi. Parties to maintain and observe the obtaining status quo as of today's date. There should be no felling of trees though pruning can be done

vii. Parties at liberty to apply.

Ruling dated, signed and delivered electronically at Nakuru this 30th day of April 2020.

J M MUTUNGI

JUDGE