



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 937 OF 2017

(FORMERLY MACHAKOS ELC NO. 108 OF 2014)

ALFRED KARASHA SANKALE.....1ST PLAINTIFF

MARY KARASHA (WIFE OF WILLIAM M. KARASHA – DECEASED

S/O SIMEON J. OLE KARASHA).....2ND PLAINTIFF

VERSUS

SIMEON JOSEPH OLE KARASHA.....1ST DEFENDANT

LAND REGISTRAR, KAJIADO NORTH SUB COUNTY.....2ND DEFENDANT

DISTRICT LAND SURVEYOR, KAJIADO.....3RD DEFENDANT

HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

What is before Court for determination is the 1st Defendant's Notice of Motion application dated the 28th April, 2020 brought pursuant to Article 57 & 260 of the Constitution, Section 63 A of the Evidence Act, Sections 1A, 1B & 3A of the Civil Procedure Act and Order 51 Rule 1 of the Civil Procedure Rules. The Applicant seeks the following orders:

1. Spent
2. That this Honourable Court be pleased to certify this matter as ready for Hearing.
3. That this Honourable Court be pleased to give an early Hearing date for the matter.
4. That this Honourable Court be pleased to give directions on the mode of hearing including taking evidence by video conference or through any other means that the Honourable Court may deem fit.
5. That costs of this Application be in the cause.

The application is premised on the grounds on the face of it and the supporting affidavit of SIMEON JOSEPH OLE KARASHA who explains that he is 88 years old and a senior citizen as ascribed within the meaning of Article 260 of the Constitution. He claims to have been ailing for some time and his health is deteriorating hence the need to take his testimony as soon as possible. He avers that it is close to 10 years since this matter was filed and it is pertinent to take his evidence at the earliest opportune moment while his memory is intact. He is willing to give his evidence by video conference or through other means that the Honourable Court may order in light of the uncertainty in resumption to normalcy by the novel coronavirus (Covid 19) disease. He reiterates that no prejudice will be occasioned to the other parties if this application is allowed.

The 1st Plaintiff ALFRED SANKALE KARASHA opposed the application by filing a replying affidavit where he deposes that the 1st Defendant is yet to file his Defence to this suit. He explains that the 1st Defendant filed an application dated the 8th July, 2019 seeking leave to file a Defence out of time which application is still pending. He states that there is a pending application dated the 31st January, 2020 by proposed interested parties. Further, in the instant application, the 1st Defendant has not involved the Interested Party already enjoined. He explains that there exists another suit Kajiado ELC 78 of 2018 between the 1st Plaintiff and the 1st Defendant involving a portion of the

subject matter in this suit. He insists the said suits should be heard together as a determination in either of them will directly impact on the other. He reiterates that it is untenable to have the matter certified ready for hearing and the Court directs that it be heard through video link. Further, the prudent direction to take is for the parties to comply with Order 11 expeditiously to have the matter certified ready for hearing.

The 1st Defendant filed a further affidavit where he confirms that he filed his Statement of Defence and Counterclaim dated the 8th April, 2020 together with his list of witnesses, witness statement, List of Issues as well as List of Documents and served the same upon the Respondents on 29th April, 2020. He insists he has fully complied with Order 11 of the Civil Procedure Rules and is desirous of having the suit set down for hearing.

Both the 1st Defendant and the 1st Plaintiff filed their respective submissions which I have considered.

Analysis and Determination

Upon consideration of the Notice of Motion dated the 28th April, 2020 including the respective affidavits and submissions, the only issue for determination is whether the suit should be certified ready for hearing and the 1st Defendant's evidence taken via video link.

The 1st Defendant seeks for the matter to be set down expeditiously for hearing and his evidence taken via video link, which request is opposed by the 1st Plaintiff. On perusal of the Court record, I note the 1st Defendant only filed his Statement of Defence including List and Bundle of Documents plus Witness Statement on 8th April, 2020. He has not filed an affidavit of service to confirm that he has indeed served the rest of the parties herein on the 30th April, 2020 with the said documents as claimed. Be that as it may, it is pertinent to grant the Plaintiffs' leave to file a Reply to the Defence and Defence to Counterclaim if need be. This in essence means that pleadings are yet to be closed as provided for under Order 2 Rule 13 of the Civil Procedure Rules which states that: **'The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.'**

Further, Order 11, rule 3 (1) of the Civil Procedure Rules provide that: **'With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference'**

In relying on the provisions of Order 2, rule 13 and Order 11 Rule 3 (1) of the Civil Procedure Rules, I direct that the Plaintiffs do file a Reply to Defence and Defence to Counterclaim within fourteen (14) days from the date hereof after which the parties are directed to schedule a Case Conference within seven (7) days from the said date before this matter can be fixed for hearing.

It is against the foregoing that I find the Notice of Motion application dated the 28th April, 2020 premature and will disallow it.

Costs will be in the cause

Dated Signed and Delivered via email this 10th Day of June, 2020

CHRISTINE OCHIENG

JUDGE