



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 823 OF 2013

TIBERIUS MBETI KITHENYA PLAINTIFF/APPLICANT

VERSUS

DAVID MUGO SUBI1ST DEFENDANT/RESPONDENT

ONESMUS KIMOTHO MVUNGU2ND DEFENDANT/RESPONDENT

FRANCIS MUGO NJAGI3RD DEFENDANT/RESPONDENT

JOHN GITONGA MUGO4TH DEFENDANT/RESPONDENT

BONIFACE MUCHANGI MUGO5TH DEFENDANT/RESPONDENT

THE DISTRICT LAND REGISTRAR, EMBU....6TH DEFENDANT/RESPONDENT

THE COMMISSIONER OF LANDS7TH DEFENDANT/RESPONDENT

THE HON.ATTORNEY GENERAL..... 8TH DEFENDANT/RESPONDENT

RULING

This is in relation to the plaintiff/applicant's Notice of Motion dated 25th June, 2014 seeking the following substantive prayer i.e. an order transferring Embu C.M.C.C No. 206 of 2013 to this Court and consolidating it with this suit.

The application was canvassed orally by Mr. Wambugu advocate for the plaintiff/applicant while Mr. Muyodi and Ms Fatuma appeared for the 2nd and 3^d respondents respectively.

I have considered the submissions by counsels as well as the pleadings both in this suit and in Embu C.M.C.C No. 206 of 2013 which was initially KERUGOYA ELC NO. 251 of 2013. The plaintiff in Embu C.M.C.C No. 206 of 2013 is FRANCIS MUGO NJAGI who is the 3rd defendant in this case while the plaintiff in this case is TIBERIUS MBETI KITHENYA who is the 2nd defendant in Embu C.M.C.C No. 206 of 2013. DAVID MUGO SUBI who is the 1st plaintiff in this case is also the 1st defendant in Embu C.M.C.C No. 206 of 2013. Therefore, all the parties in Embu C.M.C.C No. 206 of 2013 are parties in this suit save that there are other parties in this suit who are not parties in the Embu suit. The common factor in both suits is the parcel of land known as L.R NGANDORI/KANGARU/T.192. In this suit, the plaintiff's claim is that he bought the said land from the 1st defendant in June, 2012 but later

learnt that the 1st defendant had subsequently purportedly to sell the same to the 2nd and 3rd defendants. The 4th and 5th defendants who are sons of the 1st defendant have on their part placed cautions on the same land claiming as beneficiaries. The 6th defendant has refused to remove the said cautions.

In Embu C.M.C.C No. 206 of 2013 which was originally KERUGOYA ELC NO. 251 of 2013, the suit claims a refund of the purchase price of Ksh. 1,131,000/= being part payment of the purchase price in respect of the land parcel No. NGANDORI/KANGARU/T.192 or alternatively, the transfer of the same as well as a claim for liquidated damages.

It is clear from the above that similar questions of facts and law are involved in both this suit and Embu C.M.C.C No. 206 of 2013 and it would be prudent to have the two suits consolidated not only to save the parties involved costs and time but also to save judicial time. This will also promote the overriding objectives of the Civil Procedure Act which are to facilitate the just, expeditious proportionate and affordable resolution of civil disputes. In any case, it has not been demonstrated that any of the parties will be prejudiced by the consolidation of the two suits.

That being my view of the matter, I allow the Notice of Motion dated 25th June 2014 and make the following orders:-

- 1. This suit be consolidated with Embu C.M.C.C No. 206 of 2013**
- 2. Since there is now an Environment and Land Court at Embu, this suit is hereby transferred to that Court where it will be mentioned on 13th October, 2014 for further orders.**
- 3. Costs shall be in the cause.**

B.N. OLAO

JUDGE

3RD OCTOBER, 2014

3/10/2014

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Gichimu for Applicant – absent

Mr. Muyodi for 2nd Respondent – absent

Mr. Chomba for Fatuma for 3rd Respondent – present

Attorney General for 6th, 7th & 8th Respondent – absent

COURT: Ruling delivered in open Court this 3rd day of October, 2014.

B.N. OLAO

JUDGE

3RD OCTOBER, 2014