



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 92 OF 2016

RAEL KEMUNTO.....PLAINTIFF

VERSUS

WYCLIFFE ADEKO.....DEFENDANT

RULING

1. This is a ruling arising to address the issue of consolidation of this suit with **Kitale ELC 83 of 2018 - Isaac Chebii Ngochoch Vs Agricultural Finance Corporation And 159 Others**.
2. Whereas counsel for the plaintiff in this case is of the view that the two cases are not so connected as to require consolidation the counsel for the defendant thinks that the two are fit for consolidation.
3. The plaintiff's argument is that the instant suit is between two parties only and that an innocent purchaser is not affected by the agreement between the chargor and chargee and that a person prejudiced by the exercise of a power of sale shall have a remedy in damages against the exerciser of that power as per **Section 99** of the **Land Act**. He asserts that the plaintiff is such a purchaser. However he acknowledges that the plaintiff in the instant suit is the 15th defendant in **Kitale ELC 83 of 2018**.
4. The defendant's counsel on the other hand submits that **Kitale ELC 83 of 2018** is between the owner of **Plot No. 11** which upon subdivision bore **Plot No. 28**. He further posits that in that suit the original owner of **Plot No. 11** has sued for cancellation of titles allegedly issued to subdivisions of his land during the subsistence of orders restraining the subdivision thereof.
5. I have noted that the main issue in **Kitale ELC 83 of 2018** is the plaintiff's equity of redemption. The plaintiff in that suit admits default in loan repayment and that the defendants trespassed on the land and offered to pay the loan sum outstanding inclusive of interest to enable the plaintiff redeem the charged property and settle them on parts thereof. However they managed to pay just a fraction of the outstanding sum. The plaintiff complains that some of the defendants in the case are erecting permanent structures on the land whereas he is desirous of redeeming the entire parcel. However in that suit the 1st defendant (A.F.C.) filed a defence and confirmed the plaintiff's default on the loan and interest and averred that the squatters he has sued alongside the 1st defendant have been servicing the loan with the plaintiff's blessings. The 1st defendant denies that it caused the subdivision of the plaintiff's land. the 1st defendant reveals that the land is subject matter of other suits including **Nairobi HCCC 142 of 2008 - Charles Ngwengwe Khisa Vs AFC And Kitale HCCC No. 46 of 2008 - Charles Ngwengwe Khisa Vs Isaac Ngochochi and AFC**.
6. After considering the fact that the main issue in **Kitale ELC 83 of 2018** is the plaintiff's equity of redemption, and also after considering decision in **Mombasa Civil Appeal No. 83 of 2016 Between Co-Operative Bank of Kenya Limited and Patrick Kangethe Njuguna, Edward Njuguna Kangethe, George James Kangethe, Nguru Auctioneers, Leakey Auctioneers, And Joserick Merchants Auctioneers**, I find that can not grant orders of consolidation of the two matters herein.
7. I order that **Kitale ELC No. 83 of 2018** be transferred to the High Court, which has jurisdiction, for hearing and disposal in view of the decision in the **Cooperative Bank Case** cited above.
8. I also order that there shall be a stay of proceedings in this suit until the **Kitale ELC No. 83 of 2018** is heard and determined by the court it has been transferred to. This ruling shall be also filed in **Kitale ELC No. 83 of 2018** for purpose of execution of the transfer order.

Dated, signed and delivered at Kitale on this 31st day of January, 2019.

MWANGI NJOROGE

JUDGE

31/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kaosa for the defendants

Mr. Karani holding brief for Kraido for Applicants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

31/01/2019