



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. CASE NO. 25 OF 2018

CYPRIANO M'NGUTHURI.....1ST APPLICANT

KITHINJI M'MUNYORI.....2ND APPLICANT

MWILI M'MERIA.....3RD APPLICANT

VERSUS

M'ITHITUA ALIAS ITHAI THIRUA.....1ST RESPONDENT

JUSTIN MWITI M'ITHIRUA.....2ND RESPONDENT

RULING

1. Before me is a notice of motion dated 17.9.2018 where applicants seek orders that:

(i) This honourable court be pleased to order that Tigania Civil case No. 112/2014 be consolidated with Tigania SRMCC 169/2004 and Meru ELC No. 247/2017 which has since been transferred to Maua Court

(ii) The court do give directions on which file the cases will be consolidated into.

2. The grounds in support of the application are that:

(a) The issues raised in the three suits concern the same parties and the same subject matters.

(b) It will be more convenient and time saving to consolidate the suits and hear them in one suit.

(c) None of the parties will be prejudiced.

3. The 1st applicant has also sworn an affidavit where he has deponed that in Tigania case no. 112 of 2014 he had been sued by the respondent praying for land registration no. Nyambene/Old Kiare Scheme/136 to be declared his property and the applicant to be evicted. He further stated that in Tigania case no. 169/2014, he was sued by Josphat Karuti M'Ithirua who sought orders to be declared the sole owner of parcel no. Old Kiare Scheme/434 and another order to prevent the applicant from trespassing on that land.

4. The applicant deponed that he had filed Meru ELC land case no. 247/2017 which was transferred to Maua for hearing and final disposal. He contends that it would be more convenient and expedient if the three cases were consolidated and heard as one as they involve the same parcels of land and parties as the legal issues involved are the same.

5. Both respondents have opposed the application vide their respective replying affidavits. For the 1st respondent he avers that the application dated 17th September 2018 is made in bad faith to delay the hearing of the two civil suits pending at the Tigania SRMs court (case nos.112/2014 and 169/2014) which were slated for hearing on the 14th March 2019. He further states that Meru ELC no. 247/2017 has since been transferred to the Maua Chief magistrates court and it was no longer within this honourable court's jurisdiction and that applicant has not availed the file number of the Maua case.

6. The first Respondent also states that the parties in the three suits are not similar contrary to what the applicant alleges. He avers that in the suit which was formerly Meru ELC No. 247/2017, the 2nd defendant was the Hon. Attorney General while the 3rd defendant was Domiano Mbaabu who are not parties in Tigania suits no. 112/2014 and 169 of 2014. He also deponed that in the former Meru ELC no. 247/2017 one Josphat Karuti M'Ithirua was not a party to the said suit. He also stated that the issues raised in the three suits were different and were best

dealt with separately since the land parcel he is claiming was no. Nyambene/Old Kiare Scheme/136. He contends that on his part, being the plaintiff in suit no. 112/2014 at the Tigania Law Courts, he had no dispute with the plaintiff in Tigania suit no. 169 of 2014 or the Attorney General or Domiano Mbabu in the former Meru ELC 247/2017.

7. The 2nd respondent identifies himself as Josphat Karuti M'Ithirua. He is the plaintiff in Tigania S.R.M case no. 169/2014 and he opposes the orders prayed for in the application dated 17.9.2018. His averments are more or less similar to those made by 1st respondent (M'Mithai M'Ithitua). He added that, even though he is not one of the respondents herein, the orders made will affect him since he is the plaintiff in one of the Tigania court matters. He also stated that he doesn't know Justin Mwiti M'Thirua who is named in this application as a respondent.

8. I have considered all the arguments raised herein and the submissions of the parties.

9. I find that the parties in the three suits may not be absolutely similar. However, there is a common thread that runs in all the suits and this is the subject matter which is the **land parcel no. Nyambene/Old Kiare Scheme**. In the plaint Tigania SPM ELC NO. 112 of 2014, the plaintiff (M'Ithai M'Thirua) is claiming ownership to parcel Nyambene/Old Kiare Scheme/136 which land is occupied by the 1st applicant herein (going by the pleadings in both Tigania case no 112 of 2014 and the former suit no. Meru ELC No. 247/2017 now in Maua CM's Court).

10. Further, the plaint in Tigania 169/14 depicts a situation where the applicants herein could also be in occupation of parcel no. Nyambene/old Kiare scheme/434 which land is being claimed by one Joseph Karuti, the plaintiff in Tigania case no 169 of 2014.

11. As submitted by the applicant, it appears that the ownership, occupation and user of the said parcels of land are intertwined and a decision in one case is likely to have an impact on the other cases. If handled separately, this may lead to absurdity and difficulties in implementation of the decision.

12. In the light of the foregoing, it is only fair and just that all the three files be handled together. The oldest of the three files shall be the lead file that is Tigania PM ELC no. 112/14.

13. Final orders.

(1) The three files Tigania PM ELC no. 112/14, Tigania PM ELC 169/14 and the Maua ELC case which was formerly Meru ELC No. 247/17 are hereby consolidated.

(2) Tigania case PM ELC No. 112/14 to be the lead file.

(3) The DR of this court is to call for the three files from the respective subordinate courts and to avail them in this court.

(4) Each party to bear their own costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25TH DAY OF SEPTEMBER, 2019

IN THE PRESENCE OF:-

C/A: Kananu

B.G Kariuki for applicant

Atheru holding brief for Kaimenyi for respondents

1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE