



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
CHUKA ELC CASE NO. 07 OF 2017
FORMERLY MERU ELC. 35 OF 2015 (OS)

SUSY CIAMWARI EUSTACE.....PLAINTIFF

VERSUS

KITHINJI NJOKA.....1ST DEFENDANT

MURITHI NJOKA.....2ND DEFENDANT

MUTEMBEI NJOKA.....3RD DEFENDANT

RULING

1. This application, brought to court by way of a Notice of Motion, is dated 9th October, 2017. It is stated that the application is brought to court under Order 51 Rule 1 of the Civil Procedure Rules and sections 3, 3A and 63(e) of the Civil Procedure Act. It seeks the following orders:

1. That this application be certified urgent owing to its urgent nature and the same be heard without delay.
2. That the honourable court be pleased to make an order for consolidation of this suit (OS) with Chuka ELC Case No. 15 of 2017 (OS) for hearing and determination.
3. That costs of this application be in the cause.

2. The application has the following grounds:

1. The plaintiff herein is enjoined as an interested party in Chuka ELC Case No.15 of 2017 while the 1st, 2nd and 3rd defendants in this case are also the 1st, 2nd and 3rd defendants in Chuka ELC Case No. 15 of 2017.
2. The subject matter in this case and in Chuka ELC No. 15 of 2017 is land parcel No. Magumoni/Thuita/494.
3. Both Chuka ELC No. 15 of 2017 and this suit are originating summons.
4. The plaintiffs in Chuka ELC Case No. 15 of 2017 are relatives of the plaintiff in this case.
5. In Chuka ELC No.15 of 2007 the plaintiffs therein are praying to be declared as owners of 1 ½

acres of land parcel No. Magumoni/Thuita/494 whereas in this case, the plaintiff is seeking to be declared as the owner of 1 acre of the same land which the plaintiffs in ELC No. 15 of 2017 are claiming.

6. If the said two cases are consolidated, the honourable court will once and for all determine the issues raised by the parties in the two cases which are similar in nature particularly:-

i. Whether it is the plaintiff in this case who should be declared the owner to one (1) acre of land parcel No. Magumoni/Thuita/494 or the plaintiffs in Chuka ELC No.15 of 2017 who are seeking to be declared as owners of the same parcel of land which they claim measures 1 ½ acres and not one (1) acre.

ii. Whether the disputed portion of land No. Magumoni/Thuita/494 measures one (1) acre or 1 ½ acres.

iii. Who between the plaintiff in this case and the plaintiffs in Chuka ELC Case No. 15 of 2017 is entitled to the prayers of adverse possession and what acreage.

7. No prejudice will be occasioned to the parties in Chuka ELC No. 15 of 2017 in this case if the two files are consolidated.

8. It is only just and fair that this application be allowed.

3. I have carefully considered the pleadings filed by the parties in support of their diametrically opposed assertions. I have also considered the one authority proffered by the applicant in support of her propositions.

4. Justice demands that litigation must come to an end at some point. It is also desirable that disputes be heard and determined justly, expeditiously and definitively. One may hear a dispute justly and expeditiously but not necessarily definitively. Where there is an intimation that there exists a parallel suit which touches partially or totally on the issues being canvassed in one case, its determination cannot be veritably definitive, if another case touching on some or all of the issues in dispute will have to be heard and determined at a later date. Hence, the need for consolidation of such suits.

5. I find that consolidation of the apposite suits has merit. All pertinent issues can be adequately canvassed in the consolidated suit.

6. In the circumstances, this application is allowed.

7. Costs shall be in the cause.

8. It is so ordered.

Delivered in open Court at Chuka this **24th day of January, 2018** in the presence of:

CA: Ndegwa

Susy Ciamwari – plaintiff

Kithinji Njoka – 1st defendant

Murithi Njoka – 2nd defendant

Mutembei Njoka – 3rd defendant

P.M. NJORGE

JUDGE