



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 419 OF 2013

THE ATTORNEY GENERAL.....PLAINTIFF

=VERSUS=

ISAAC GATHUNGU WANJOHI.....1ST DEFENDANT

ISAIAH KIRINDI WAMBUGU MUTONYI.....2ND DEFENDANT

ROSALINE NJERI MACHARIA.....PROPOSED 3RD DEFENDANT

RULING

1. The applicant *Rosaline Njeri Macharia* made an application dated **27th September 2017**, in which she seeks to be enjoined in this suit as the third defendant. She also sought an order for consolidation of this suit with HCCC No. 450 of 1995. The plaintiff's counsel was not opposed to the two prayers being granted. The counsel for the first and second defendant conceded to the prayer for joinder of the applicant as third defendant but is opposed to consolidation of this suit with HCCC No. 450 of 1995.

2. The applicant contends that the issues in both HCCC No. 450 of 1995 and this suit can conveniently be dealt with together to avoid a situation where two conflicting decisions are given. The applicant states that if this suit succeeds, it will be okay for her but that if it does not succeed, it will affect her.

3. The first and second defendants have opposed the applicant's application through a replying affidavit sworn on 15th November 2017. The respondents contend that the applicant's application is not brought in good faith. That it is only meant to scuttle the application for contempt of court arising from the applicant's disobedience of court orders in HCCC No. 450 of 1995 which is pending ruling. They further contend that the applicant has now occupied their entire property with impunity.

4. I have considered the applicant's application as well as the opposition to the same by the respondents. I have also considered the submissions by the parties herein. The respondents herein are the registered owners of LR No.209/12052. The applicant is owner of LR No.209/11293/1. The respondents had sued the applicant in HCC No.450 of 1995 where they claimed that the applicant had trespassed on their property. In that case the defendant has raised issues regarding the propriety of the title held by the respondents. The applicant in that case was contending that the respondents' land was a buffer zone for Mombasa Road.

5. In the instant case, the plaintiff has sued the respondents and seeks an order of cancellation of title held by the respondents. It is therefore clear that the issues in HCCC No.450 of 1995 and the issues in the present case are similar and can be dealt with together. In the case of ***Tumberg & Another Vs Potgeiter (1970) EA 323***, it was held as follows:-

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered”.

6. It will be convenient to deal with the two cases at the same time. As I understand the respondent both in their replying affidavit and the submissions, they are not seriously opposed to consolidation. Their concern is on the application for contempt in HCCC No.450 of 1995. The respondents have conceded to joinder of the applicant as a defendant. There is no basis upon which they can oppose the application for consolidation because even in the petition which resulted in the filing of this suit, the respondents who were petitioners had named the applicant as one of the respondents. I therefore find that the prayer for consolidation of this case with HCCC No.450 of 1995 is well merited. The same is allowed with the result that this suit is hereby ordered consolidated with HCCC No.450 of 1995. Costs of this application shall be in the cause.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 1st day of February ,2018.

E.O.OBAGA

JUDGE

In the presence of :

Mr Ouma for Mr Ochieng Oduol for interested party

M/s Nyawira for Kamau for Plaintiff

Court Assistant : Hilda

E.O.OBAGA

JUDGE