



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 63 OF 2004

JOHN NDARA KONES1ST PLAINTIFF

STANLOUS MUTAI KONES (*Suing as the legal representative of*

JOHN NDARA KONES (Deceased).....2ND PLAINTIFF

VERSUS

BEN NICODEMUS OMAMBIA MOGAKA.....1ST DEFENDANT

AGRICULTURAL FINANCE CORPORATION.....2ND DEFENDANT

SIMPLEX KENYA LIMITED.....3RD DEFENDANT

RULING

1. By an application dated 5/12/2017, the plaintiff seeks consolidation of this suit with Kitale **ELC Cause No. 171 of 2014** and **Kitale ELC Cause No. 129 of 2014** on the grounds that the suits concern the same parcel of land that is **Trans-Nzoia/Kipsoen/11**, that the matters are pending before the same court, that all matters have not progressed far, and that the questions of Law and fact in all the cases are similar. This, the plaintiff avers, will ensure the expeditious disposal of the three suits and avoid conflicting orders from the same court with regard to the rights and interests of the parties in the suit property.

2. In the replying affidavit of Peter Kiarie Ndarwa filed on 11/1/2018, the 2nd and 3rd defendants oppose the motion on the basis that the wrong provisions of the Law are cited; that the 2nd and 3rd defendants are not parties in **ELC 171 of 2014 or ELC 129 of 2014** and the pleadings have not been availed in the application; that there is insufficient material placed before court to justify the grant of the orders sought, and that the application has been made prematurely for the reason that there is a pending application of the plaintiff dated 10/9/2014 seeking substituted service.

3. It is also averred that the plaintiff has failed to comply with this court's order made on 25/4/2013 and 18/6/2013 regarding service of summons to enter appearance upon the 2nd and 3rd defendants. The plaintiff has not responded to these deponements made in reply to his application and has failed to file any submissions as required by court regarding his application.

4. I must begin with the objection regarding the issue raised that the application dated 5/12/2017 is premature. Regarding the non service of summons, I note that the record reflects that on the 25/4/2013 this court ruled as follows:-

“I allow the application and direct that the two applicants be joined as defendants. The plaint herein shall be accordingly amended and summons as well as the amended plaint served on the new defendants only. The amendment should be done within 14 days from the date hereof”.

5. On 18/6/2013 this court ruled as follows regarding an application for extension of time dated 27/5/2013:-

“The application dated 27/5/2013 is allowed. Applicant to file and serve amended plaint within 7 days from today”.

Since there is no affidavit controverting these statements, I take them to be true.

6. Regarding the issue of the application or substituted service dated 10/9/2014, I find that it is still pending.

7. I also find that the applicants/plaintiffs have failed to comply with court orders regarding service and therefore they should not be heard on this application.

8. Besides, it is customary for the applicant in such an application as the instant one to supply the other party with the copies of documents on which he relies for the orders sought in his application. None have been supplied and indeed the affidavit in support of the application or consolidation is full of bare statements without any substantiation through reference to appropriate annexures.

9. I therefore find that the application dated 5/1/2017 is for the above reasons fatally defective and I hereby proceed to strike it out with costs to the respondents.

Dated, signed and delivered at Kitale on this **20th** day of **April, 2018.**

MWANGI NJOROGE

JUDGE

20/4/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Mufutu holding brief for Kiarie for Defendants

Mr. Barongo for the 1st Respondent

N/A for the Plaintiff

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

20/4/2018