



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO.390 OF 2014

MARY WANJIKU KIARIE.....PLAINTIFF

VERSUS

AHMED YUSUF & ANOTHER.....DEFENDANT

RULING

1. This is a ruling in respect of two separate applications. The first application is dated 12th May 2015 brought by an intended plaintiff. The second application is dated 6th July 2015 brought by the plaintiff. The applicant in the first application seeks to be enjoined in this suit as a plaintiff. The applicant in the second application seeks to restrain the intended plaintiff from interfering with LR No.7785 IR No.51666 (suit property).
2. The suit property is registered in the name of one Ahmed Yusuf. Both the plaintiff and the intended plaintiff are claiming rights to the suit property by way of adverse possession. The applicant in the first application contends that when the registered owner of the suit property purchased it, he found her and the plaintiff in possession of the suit property and that they have since been in occupation of half portion each; that their respective portions are clearly marked on the ground.
3. The applicant in the first application further states that they had agreed to file a joint suit for adverse possession but that the plaintiff moved and filed this suit alone. She therefore contends that her joinder is necessary in order to avoid filing a multiplicity of suits.
4. The plaintiff has opposed the application by the first applicant in which she states that the averments in her affidavit are contradictory; that she is the one who allowed the applicant in the first application to come to the suit property to farm a small portion of it upon the demise of the plaintiff's husband. She contends that the applicant in the first application is out to dispossess her of what she has become entitled to.
5. I have carefully considered the application by the first applicant as well as the opposition to the same by the plaintiff. I have also considered the submissions filed by the parties herein. Order 1 of the Civil Procedure Rules is clear on persons who may be joined in one suit. The intended plaintiff and the plaintiff in this suit are both seeking to be declared as having acquired the suit property by way of adverse possession. The two therefore have a common issue which can be decided on in one suit. This is therefore a clear case where the applicant in the first application ought to be enjoined in this suit.
6. The plaintiff has conceded that the applicant in the first application is on the suit property. Whether the applicant is on the suit property at the invitation of the plaintiff or not is an issue which will be determined at the hearing of the originating summons. As at the moment, no one between the applicant and the plaintiff has a superior right over the other in respect of the suit property. I therefore find that the application dated 12th May 2015 is well founded. I allow the applicant to be enjoined in the suit as a plaintiff. The originating summons shall be amended accordingly to reflect her as the second plaintiff. Costs of this application shall be paid by the Plaintiff /Respondent.
7. In respect of the second application I find the same to have been filed prematurely. The respondent in that application had not been enjoined to these proceedings. She had not been sued as a defendant either. There was therefore no basis for bringing an application seeking to restrain her from interfering with the suit property. In any case, the facts emerging are that she is in occupation of the suit property. Any grant of injunction against her would have amounted to granting a mandatory injunction which would result in her eviction at interlocutory stage. I therefore find no merit in the application dated 6th July 2015 which is hereby dismissed with costs.
8. In summary thereof, the application dated 12th May 2015 is allowed with costs whereas the one dated 6th July 2015 is dismissed with costs. It is so ordered.

Dated, Signed and delivered at **Nairobi** on this **28th** day of **June 2018**.

E.O.OBAGA

JUDGE

In the presence of;-

Mr Odawa for Plaintiff

Court Assistant: Hilda

E.O.OBAGA

JUDGE