



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT NO. 383 OF 2009 (OS)

KABU MUMBA

SHEHI MURISA KUMBI

LUKA TIMONA OLULEMBE

GABRIEL ODANGA WANDERA

DOBINSON DZOMBO TAKA

FIDELIS MUTA NDEGWA

MWANZALA NYAE KIDUNGA

SAMUEL TUVA KAVINGO

MATANO KOMBE CHIFULO

JOYCE JEWA

PHILIP THOYA

COSMUS K. JAMBO.....PLAINTIFFS

(Suing On Their Own Behalf And On Behalf Of The Squatter/Residents Of Vikwatani

Estate Residing Upon The Suit Property/Plot No. 830/Ii/Mn (Original Plot No. 155/66)

-VERSUS-

PWANI JESOZHUM COMPANY LIMITED.....1ST DEFENDANT/RESPONDENT

OBED ELIPHAS NJIRU.....2ND NECESSARY PARTY/RESPONDENT

ABDALLA ASHUR ABEID.....3RD NECESSARY PARTY/RESPONDENT

RAMADHAN A. HASSAN.....4TH NECESSARY PARTY/RESPONDENT

AHMED R. AHMED.....5TH NECESSARY PARTY/RESPONDENT

KHALID R. AHMED.....6TH NECESSARY PARTY/RESPONDENT

GEORGE MUITO KINGORI.....7TH NECESSARY PARTY/RESPONDENT

KALUME SAFARI.....8TH NECESSARY PARTY/RESPONDENT

JOSEPH G. MUKOMAH.....9TH RESPONDENT

RULING

1. The notice of motion for determination is dated 7th November 2017 seeking the following orders:

1. That this suit be consolidated with MSA CMCC NO. 2256 OF 2014, JOSEPH GATHITU MUKOMAH VERSUS KABU MUMBA MUDACHI AND 3 OTHERS and thereafter, be carried on as one action.

2. That this Honourable Court do give all necessary and proper directions as shall be necessary for the conduct of the said consolidated action.

3. That the costs of this application be costs in the said consolidated action.

2. The application is not opposed by the defendant or the necessary parties. The application is opposed by Joseph Mukomah named as the 9th Respondent vide the replying affidavit dated 30th January 2018.

3. The suit sought to be consolidated with the present one was filed in Mombasa Chief Magistrate's Court i.e. MSA CMCC No 2256 of 2014. This suit was subsequently transferred to the ELC and was given our registry number as ELC No. 41 of 2018. The plaintiffs aver that the subject matter in both suits is L. R No 830/II/MN. That the parties in both cases are members of Concordia Development Group and that both suits are ripe for hearing.

4. The 9th Respondent on his part submits that the cause of action in their suit (ELC 41 of 2018) arose out of a contract for sale (between the 2nd & 4th Plaintiffs/Applicants and (him) (the 9th Respondent) while the cause of action in HCC No 383 of 2009 (OS) is premised on a claim of adverse possession. Therefore the causes of action are separate and distinct and thus they do not fit the legal parameters for consolidation. The 9th Respondent prays for dismissal of the application with costs.

5. The applicants did not annex the plaint in CMCC No 2256 of 2014 (now ELC 41 of 2018) to their application. It is not in dispute that the present suit is for a claim for adverse possession. The applicants submit that both parties are members of Concordia Development Group. From the heading in the pleadings herein, the plaintiffs' suit is brought for and on behalf of all squatters and or residents of Vikwatani estate. The 9th Respondent submit that he is a squatter as he claims to have purchased his share from the 2ⁿ & 4th plaintiffs in this suit. This means that the 9th Respondent's right accrue from the 2nd & 4th plaintiffs and another person called as Julius Okumu sued as the 3rd defendant. The 9th Respondent also denied being a member of this development group which submissions I agree with as the applicants did not annex anything to show that the 9th Respondent is a member of the said group.

6. Having considered the two plaints I do not think that the two suits can be consolidated as the cause of action appears distinct and separate. The order that the applicant ought to have prayed for in my view is a stay of proceedings of the latter suit. I say so because from the plaint in ELC 41 of 2018 (having called the file from the registry), at paragraph 5 & 6, the 9th Respondent pleads that he bought 5.4 acres of the suit land from the 2nd & 4th plaintiffs in ELC 383 of 2009 (now sued as 1st & 2nd defendants) and a Mr Julius Okumu. On the other hand, the plaintiffs in 383 of 2009 have to prove their case against the defendant sued as the owner of the land L. R No 830/II/MN without the assistance of the 9th Respondent herein. The dispute in No 41 of 2018 is purely between the 9th Respondent and the named defendants and has no relation to the person sued as a defendant in the current suit.

7. Accordingly, I do find the cases cited in support of the application as distinguishable from the facts in these two files. In conclusion I find no merit in prayer (1) of the motion. Going forward and as asked in prayer (2) for directions, I do issue an order of stay of proceedings in ELC 41 of 2018 (formerly CMCC 2256 of 2014) pending hearing and determination of this suit (ELC 383 of 2009). Each party to bear their respective costs of the application.

Dated, signed & delivered at Mombasa this 12th July 2018

A. OMOLLO

JUDGE