



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. APPLICATION NO. 43 OF 2012

ANDREW KOBIA ITHURU.....PLAINTIFF

VS

JOSHUA THIANE THIKANYI.....1ST DEFENDANT

ANDREW KIUGU THIKANYI.....2ND DEFENDANT

RULING

BACKGROUND

The Applicant's application is the N/M dated 26th May, 2012 brought under S. 1A, 1B, 3A(6) 63 C& E, S.18, order 51 Rule 1 CPR Cap 21 and all enabling provisions of the law.

The Applicant is seeking the following orders:-

- 1. Spent**
- 2. That court do order stay of the proceedings in Tigania CC. No. 74/2011 pending inter-parties or until further orders of the court.**
- 3. That during inter-parties hearing court do order that Tigania CC 74/2011 cannot proceed into hearing as far as Meru CC 224/2010 is pending and proceeding in Meru Chief Magistrate courts and therefore ought to be stayed as provided by S. 6 of Cap. 21.**
- 4. That in the alternative, court do order transfer and consolidation of Tigania CC 74 OF 2011 with Meru CMCC 224 of 2010.**
- 5. That costs be provided for.**

The application is supported by an affidavit of the applicant sworn the same date in which he deposed to the effect that when he filed case no. CMCC 224/10 (Meru) he served the summons and all suit documents upon the defendant. The Applicant also stated that he filed a chamber summons together with a supporting affidavit simultaneously with the said suit seeking temporary injunction orders which were granted pending hearing of the suit.

The Applicant also deposed that after service of summons, the plaint and verifying affidavit the Respondent failed to enter appearance and file defense within the stipulated period. He then filed a request for interlocutory judgement which was allowed and he proceeded with formal proof exparte. He even filed submissions and the matter was pending judgement when the trial magistrate was transferred leaving the matter before another judicial officer. The applicant deposed further that upon realizing there was an order he had obtained in CMCC No. 224/10, he (respondent) rushed to Tigania Law Courts and filed Case No. 74/2011 on the same subject matter where he obtained injunction orders.

The Applicant further contends that the Respondent has proceeded with contempt proceedings against him in case No. 74/2011 in Tigania while there is another case in Meru being CMCC No. 224/10. When the Applicant appeared before the duty court, it was ordered a stay of proceedings in Tigania Case No. 74/2011 pending inter-parties hearing or further orders by this Honorable court.

On 8/6/2012, the Respondents filed a replying affidavit in which they admitted having filed a case in Tigania PMCC No. 74/2011 which they obtained temporary injunction orders and which they served upon the Applicant but refused to obey the same. The Respondent also stated

that they then filed contempt proceedings against the applicant herein copies of which he attached to the replying affidavit. The Respondent further denied any knowledge of the Meru Case No. CMCC 224/2010 or any orders issued thereunder.

The Respondents also contend that the two suits being CMCC No. 224/10 (Meru) and SPMCC No. 74/2011(Tigania) relate to two different subject matters. The two parcels of land are 4735 and 7670. It is also contended by the Respondents that the parties in the two parcels of land are not the same. The Respondents also averred that the orders obtained in the two courts relate to two different parcels of land and that they have nothing in common.

In a further supporting affidavit sworn on 12/6/2012, the Applicant at paragraph 10 stated that parcel No. 232 in which the injunction orders were obtained in CMCC No. 224/2010 (Meru) related to the same parties with addition of the District Land Adjudication officer Tigania East/West who was accused of unlawfully issuing confirmation letters to the Defendant which related to parcels No. 4735 and 7660 which fell squarely on the land parcel No. 232. The Applicant also stated that the Respondent in blatant disobedience of the court order issued on 8/6/2010 went ahead and subdivided his land parcel No. 4735 into two parcels No. 4735 and 7670.

I have carefully considered the arguments by the applicant contained in the supporting affidavits and the rival arguments by the Respondents. I have also looked at the documents attached in support of the applicant's position and the Respondent's position. The applicant who is the plaintiff in CMCC No. 224/2010 (Meru) has sued the Respondent over Land parcel No. Athinja/Athanja/Adj. Section No. 232. The Respondent on the other had sued the Applicant in SPMCC No. 74 of 2011 (Tigania) over land parcel No. 4735 and 7670 Athinga/Athanja Adj. Section. In his reply the Applicant herein deponed that land parcel No. 4735 and 7670 were subdivided from parcel no. 232. Since the Respondents have not denied those averments by the Applicant that the three plots No. 232, 4735 and 7670 are related, I find the application dated 26/05/2012 merited. The same is allowed in the following terms:-

- 1) THAT there be a stay of proceedings in the two cases being PMCC No. 74/2011 (TIGANIA) and CMCC No. 224/2010 (Meru).**
- 2) THAT the two cases referred in (1) above be and are hereby transferred to this Hon. Court for consolidation hearing and determination.**
- 3) THAT the parties to observe the status quo pending hearing and determination.**
- 4) Costs shall be in the cause.**

READ, DELIVERED and SIGNED in the open court this 6th day of July 2018.

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MR. E. C. CHERONO

ELC JUDGE

In the presence of:-

1. M/s Mbijiwe holding brief for M/s Kiome for plaintiff.
2. Defendant/Advocate - Absent
3. C/A: Galgalo/Janet - Present