



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 73 OF 2011

FRANCIS MBAE NDEREBA.....PLAINTIFF

VERSUS

STEPHEN MURITHI MBIJIWE.....1ST DEFENDANT

FRANCIS KIRIMI MBIJIWE.....2ND DEFENDANT

JULIUS KIAMBI MBIJIWE.....3RD DEFENDANT

KIMATHI MBIJIWE.....4TH DEFENDANT

MWITI MBIJIWE.....5TH DEFENDANT

KINYUA MBIJIWE.....6TH DEFENDANT

RULING

1. The application dated 17.4.2018 seeks orders for stay of proceedings in this suit pending the hearing and determination of Meru HCCA No. 34 of 2009.

2 The grounds in support of this application are that this suit and Meru HCCA no. 34 of 2009 are in respect of the same subject matter being land parcels no. Abogeta/U-Kithangari/1231 (now subdivided into Abogeta/U-Kithangari/1947 and Abogeta/U-Kithangari/1948). Applicant claims that he stands to suffer if this suit is heard and determined before Meru HCCA 34 of 2009.

3. Applicant has filed a supporting affidavit where he has deponed as follows:

(i) That the land parcel no. Abogeta/U-Kithangari/1947 is the subject of this suit.

(ii) That appeal no. 34 of 2009 concerns land parcel no. Abogeta-U-Kithangari/1231 which belonged to their father, Alexander Mbijiwe M'Itiabi (deceased).

(iii) That the appellant in appeal no. 34 of 2009 is Jackim Muriuki Mbijiwe who is a brother of the applicant ,and who is also the legal representative of their deceased father Alexander Mbijiwe M'Itiabi.

(iv) That land parcel no. Abogeta/U-Kithangari/1947 the subject of this suit was hived out of land parcel No. Abogeta/U-Kithangari/1231 which belonged to their deceased father.

(v) That appeal no. 34 of 2009 is challenging the irregular transfer and sub-division of their father's land by their half-brother Lucus Kimathi at a time when their father was already dead and before any succession had been filed.

(vi) That the appellant in appeal no. 34 of 2009 sub-divided their fathers land into two parcels Abogeta/U-Kithangari/1947 and Abogeta/U-Kithangari/1948 and this suit concerns the ownership of land parcel no. Abogeta/U-Kithangari/1947.

(vii) That if this case proceeds and is determined before the appeal no. 34 of 2009 is heard and determined, applicant will suffer great prejudice.

4. Plaintiff has opposed the application vide his replying affidavit dated 9.7.2018 where he avers that:

- (a) That the application is malicious and vexatious aimed at wasting the courts time in that the applicant and even respondent are not a parties in Meru HCCA No. 34 of 2009.
- (b) That the appeal, HCCA no. 34 of 2009 is premised on the grounds challenging the orders of Hon. Ndubi (given on 2.4.2009) which barred the appellant therein from being enjoined in CMCC No. 40 of 2008 as a legal representative.
- (c) That the outcome of appeal HCCA No. 34 of 2009 shall not stand to affect the present suit herein.
- (d) That the issues for determination in appeal HCCA no. 34 of 2009 are completely different with the issues in the present suit.
- (e) That the applicants have approached this court in bad faith with the sole intention of delaying this matter as they continue enjoying tea leaves which up to now they have earned Kshs.33,000,000.
- (f) That the applicant has not shown any prejudice he will suffer as this matter and HCCA no. 34 of 2009 have been pending for over 7 years.

5. I find that applicant has given plausible account of why he wants a stay of these proceedings. He avers that the subject matter of this suit is parcel no. Abogeta/U- Kithangari/1947 which was hived off from parcel no. Abogeta/Kithangari/1231 which is the subject matter in H.C.C No. 34 of 2009. These averments are clearly captured in paragraph 4 of the plaint.

6. I note that respondent is worried about the issue of delay. I will therefore allow the application for a limited period of eight months only.

7. Final orders;

- (1) There is to be a stay of these proceedings for a period of 8 months.
- (2) Applicant is to bear the costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH DAY OF SEPTEMBER, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Rimita holding brief for Kithaka for applicants

1st and 3rd defendants

HON. LUCY. N. MBUGUA

ELC JUDGE