



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 186 OF 2008

RICHARD MWENDWA MUINDI1ST PLAINTIFF

JUSTUS KINIU MUINDI2ND PLAINTIFF

JOHN KALYA MUINDI3RD PLAINTIFF

JEDIDAH NDUNGI NGOMA4TH PLAINTIFF

VERSUS

SAMMY MWOVE MUTINDIDEFENDANT

RULING

1. In the Application dated 12th October, 2012, the Plaintiffs are seeking for the following orders:

a. That Kitui Senior Resident Magistrate Court Civil Case Number 638 of 2006 and Land Case Number 1 of 2007 be withdrawn and transferred to this court for trial and disposal.

b. That upon transfer Kitui Senior Resident Magistrate Court Civil Case Number 638 of 2006 and Land Case Number 1 of 2007 be consolidated with this suit for trial and disposal.

c. That costs of this Application be in the cause.

2. The Application is premised on the grounds that the Kitui SRMCC No. 638 of 2006 and Land Case No. 1 of 2007 involves similar issues with the same subject matter; that this court is the proper and ideal court for trial of the issues in the three (3) suits and that the transfer of the said suits will enhance and further the overriding objectives as provided for in Section 1A and 1B of the Civil Procedure Act.

3. The Application is supported by the Affidavit of the 2nd Plaintiff who has deponed that the Defendant filed a dispute in the then Kitui District Land Tribunal in Land Case No. 1 of 2007 and that the award in Land Case Number 1 of 2007 has not been executed.

4. It was the deposition of the 2nd Plaintiff that the Defendant had previously sued the 1st Plaintiff and other family members claiming that they had trespassed on parcel of land known as Mutonguni/Nzalae/212 and that the said suit is still pending.

5. In response, the Defendant deponed that he is the Plaintiff in Kitui SRMCC No. 638 of 2006; that the Kitui court adopted the award in Land Case No. 1 of 2007 and that the cause of action in Kitui SRMCC No. 638 of 2006 is different from the current suit.

6. The Respondent finally deponed that the parties in Kitui SRMCC No. 638 of 2006 are not similar to the parties herein and that the Application should be disallowed. Both the Plaintiff and the Defendant's advocate filed brief written submissions which I have considered.

7. The Plaintiffs are seeking to have this suit consolidated with Kitui SRMCC No. 638 of 2006 and Land Case No. 1 of 2007. I have perused the pleadings in the two (2) matters that the Plaintiff is seeking to be transferred to this court and be consolidated with this particular one. All the three (3) suits relate to the same subject matter, that is Mutonguni/Nzalae/212.

8. Considering that the three (3) suits deal with the same suit property, with parties alleging trespass against each other, it would be embarrassing if the lower court reaches a conclusion that is different from the conclusion of this court. Even though all the parties may not be the same, the test to be applied in an Application for consolidation is not whether the parties are the same or not, but whether the same or similar questions of law or fact are involved (*See EAN Kenya Limited vs. John Sawers & 4 others (2007) eKLR*).

9. Having come to the conclusion that similar questions of law and fact apply in the three (3) suits, I shall, which I hereby do, allow the Application dated 12th October, 2012 as prayed.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 19TH DAY OF OCTOBER, 2018.

O.A. ANGOTE

JUDGE