



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 329 OF 2017

ESTHER MBULA MWANGANGI.....PLAINTIFF

VERSUS

NELSON MUTISYA MUUNDA.....1ST DEFENDANT

DANIEL ONGERI ONGERA.....2ND DEFENDANT

RUTH MORAA ONGERA.....3RD DEFENDANT

AND

NGURISH INVESTMENT LIMITED.....1ST INTERESTED PARTY

ICIPE STAFF HOUSING CO-OPERATIVE.....2ND INTERESTED PARTY

RULING

1. What is before me is the Application by the Defendants dated 13th June, 2018 seeking for the following orders:

a. That the Honourable Court be pleased to review, vary and or set aside its orders made on 10th April, 2018.

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

2. The Application is premised on the grounds that on 10th April, 2018, the court made an order that the Machakos ELC. No. 359 of 2011 and Machakos Succession Cause No. 28 of 2009 be consolidated and be heard together with the current suit; that the issues raised in Succession Cause No. 28 of 2009 are totally different from the issues raised in the current suit and that the parties in the two suits are also different.

3. The 1st Defendant has deponed that the advocate on record for the Plaintiff in Machakos ELC.L No. 359 of 2011 was never notified of the intended consolidation and that the Application dated 21st February, 2018 was made by the 1st Interested Party but supported by the Affidavit of the Plaintiff.

4. In reply, the Plaintiff deponed that the orders of 10th April, 2018 were made in the presence of and with the participation and consent of all the parties who were duly represented by their counsels; that the three matters relate to the same suit property where common questions of law and fact exist and that there is no apparent error on the face of the record to warrant a review of the orders of the court.

5. According to the Plaintiff, the rights and reliefs sought in the three matters arise from the same series of transactions which is the sub-division of the original title being Machakos Town Block 3/1970 and the transfer of the subsequent sub-divisions to the 2nd and 3rd Defendants and that he is also the Plaintiff in ELCL No. 359 of 2011. The Applicants' advocate did not file submissions. The Plaintiff's advocate filed submissions and authorities which I have considered.

6. The Defendants/Applicants are seeking to set aside the orders of the court that were made on 10th April, 2018 on the ground that their advocate did not participate in the proceedings and that the three suits are not fit for consolidation.

7. The record shows that on 10th April, 2018, when the Application dated 21st February, 2018 came up for hearing, the Defendants'/Applicants' advocate was represented by Mr. Ndeto advocate. On the said date, the Defendants' advocate requested for time to

file a response to the Application dated 21st February, 2018, which Application was declined by the court. The court went ahead to allow the Application dated 21st February, 2018.

8. It is therefore not true that the Defendants'/Applicants' advocate was not heard on the Application dated 21st February, 2018. The Defendants had the opportunity to file a response to the said Application which they failed to do. Although the Defendants have deponed that the Plaintiff's advocate in ELC. No. 359 of 2011 was not notified of the intended consolidation, the Plaintiff in this matter, who is also the Plaintiff in ELC. No.359 of 2011, has deponed that he is not opposed to the order of consolidation.

9. In any event, the Defendants have not denied that the suit property in the three matters is the same. The Defendants have also not stated the prejudice that they will suffer with the consolidation of the three matters. Considering that the same questions of law and fact will arise in all the three matters, and the reliefs claimed arise out of the same transactions or series of transactions, I find the Defendants'/Applicants' Application dated 13th June, 2018 to be unmeritorious.

10. For those reasons, I dismiss the Application dated 13th June, 2018 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 10TH DAY OF DECEMBER, 2018.

O.A. ANGOTE

JUDGE