



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 130 OF 2012

SAMUEL NJUGUNA WAINAINAPLAINTIFF

VERSUS

JOSEPH NDEGWA KAMAU T/A LUCKY BASE

SHELTERS & PROPERTIES.....1ST DEFENDANT/RESPONDENT

MOSES ISACK OLE RAKITA2ND DEFENDANT/RESPONDENT

RULING

1. The two Applications by the Plaintiff and the 2nd Defendant are dated 24th June, 2013 and 6th July, 2012 respectively.
2. In the Application dated 6th July, 2012, the 2nd Defendant is seeking to strike out the suit as against him.
3. The Application is premised on the grounds that the pleadings do not disclose a reasonable cause of action against the 2nd Defendant; that there is no privity of contract between the Plaintiff and the 2nd Defendant and that an order of specific performance cannot issue as against the 2nd Defendant.
4. In his Affidavit, the 2nd Defendant deponed that the Plaintiff is a stranger to him; that the prayers in the Plaintiff lack a legal or factual basis and that the suit seeks to deprive him of the suit property.
5. In his response, the Plaintiff deponed that he has filed the suit against both Defendants claiming an interest in parcel of land number Kajiado/Kaputiei-North/29453; that the said land is registered in favour of the 2nd Defendant and that he is aware of a suit that is pending between the 1st Defendant and the 2nd Defendant in respect to the same property.
6. The Plaintiff deponed that he has filed an Application to have the two suits consolidated and that it will be unfair if he is denied an opportunity to canvass his suit.
7. In his Application dated 24th June, 2013, the Plaintiff is seeking for the consolidation of the suit with HCCC No. 257 of 2009.
8. The said Application is premised on the grounds that the issues of fact and law are similar in the two suits; that it would be expedient to canvass the two suits together and that none of the parties will be prejudiced by the consolidation.

9. Neither the 1st nor the 2nd Defendants filed a response to the Application dated 24th June, 2013.
10. The Plaintiffs' advocate filed written submissions which I have considered.
11. As I have stated above, the Application dated 24th June, 2013 for the consolidation of this suit and HCCC No. 257 of 2009 has not been opposed by the Defendants.
12. Indeed, the Defendants have not denied that the suit property in the two matters is the same.
13. In the circumstances, I allow the Application dated 24th June, 2013 as prayed.
14. The Plaintiff's claim is that he purchased a parcel of land excised from L.R. No. Kajiado/Kaputiei-North/1240 from the 1st Defendant; that it transpired that the 1st Defendant had sold all the sub-divisions and that the 1st Defendant promised him that he will give him another plot of the same size being Kajiado/Kaputiei-North/8269 which the 1st Defendant had purchased.
15. However, it transpired that the 1st Defendant was engaged in a dispute with the 2nd Defendant in respect to Plot No. 8269 in HCCC. No. 257 of 2009.
16. In the circumstances, it follows that the Plaintiff's claim in this suit is grounded on the success of the 1st Defendant's claim as against the 2nd Defendant in Machakos HCCC No. 257 of 2009.
17. Having not opposed the Application for the consolidation of the suits, it suffices that the issue of who is entitled to parcel of land number Kajiado/Kaputiei-North/8269 is central in the two suits.
18. For those reasons, it cannot be said at this stage that the suit as against the 2nd Defendant is an abuse of the court process or frivolous and vexatious as claimed by the 2nd Defendant considering that the 2nd Defendant has an interest in plot number 8269.
19. Consequently, I dismiss with costs the 2nd Defendant's Application dated 6th July, 2012 and allow the Plaintiff's Application dated 24th June, 2013 in terms of prayer number 1.

DATED AND DELIVERED AT MACHAKOS THIS 24TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE