



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT EMBU

E.L.C. CASE NO. 3 OF 2017

TERESINA MUTHONI NGARI.....PLAINTIFF

VERSUS

MATI MUGO.....DEFENDANT

RULING

1. On or about 9th May 2017 the Plaintiff filed a notice of motion of even date seeking for a stay of proceedings in Siakago Civil Suit No. 61 of 2016 pending the hearing and determination of this suit. The said application was based upon the following grounds;

- a. That the instant suit and the one pending at Siakago involve the same parties and relate to the same subject matter namely, Title No. Nthawa/Siakago/721.
- b. That the subject matter in the two suits is ownership and occupation of the suit property.
- c. That it is prudent to have the instant suit heard first as its outcome may determine the direction of the other suit.
- d. That the Defendant will not be prejudiced if the orders sought are granted.

2. The said application was supported by the affidavit sworn by the Plaintiff's advocate on a date which is not indicated on the affidavit. The said affidavit simply reiterated the grounds contained in the notice of motion. A copy of the plaint in Siakago PMCC No. 61 of 2016 was exhibited.

3. The Defendant filed a replying affidavit in opposition to the said application for stay on 28th June 2017. He stated that he was the registered proprietor of the suit property and that the Plaintiff had unjustifiably placed a caution against the title in 2015 in consequence of which he filed Siakago PMCC No 61 of 2016. He further stated that the instant application was vexatious, misleading and an abuse of the court process. He asked the court to dismiss it with costs.

4. The Defendant did not attend court for hearing of the said application on 28th June 2017 when it came up for hearing. The Plaintiff's advocate therefore prosecuted the said application in the absence of the Defendant. Mr Kamunyoru reiterated the contents of his application and submitted that a stay of further proceedings should be granted in respect of Siakago PMCC No. 61 of 2016. He further informed this court from the bar that the said suit was partly heard and that it was scheduled for further hearing on 3rd August 2017.

5. The primary issue in this application is whether or not the Plaintiff has made out a case for stay of the suit pending before the PM's court at Siakago. According to the copy of the plaint exhibited by Mr Kamunyori in his supporting affidavit, the said suit is for removal of a caution which was placed upon the suit property by the plaintiff. The other relief sought is an order for costs and any other relief the court may deem fit to grant. On the other hand, the instant suit is a claim for an order for adverse possession by the Plaintiff who is a Defendant in the Siakago suit.

6. I do not see how the hearing of the suit pending at Siakago Law Courts can adversely affect this suit, regardless of the outcome. Whether that court grants or declines to grant the order sought for removal of a caution that will not affect the claim for adverse possession pending before this court between the same parties. It is not contended that the court at Siakago has no jurisdiction or that it was not entitled to hear and determine the dispute submitted to it for resolution. The hearing and conclusion of that suit will not render the instant suit nugatory in any way. See **Global Tours & Travels Ltd, NBI Winding up Cause No. 43/2000**. If the Plaintiff is apprehensive that the Defendant may deal with the suit property during the pendency of the instant suit, it would be upon her to seek appropriate orders for preservation thereof within the applicable legal framework.

7. The Plaintiff has not contended or demonstrated that she would suffer any or any substantial loss or prejudice if the stay of proceedings sought is not granted. In those circumstances, this court should be slow to curtail the Defendant's right of access to justice which is guaranteed by Article 48 of the Constitution of Kenya. This court should also bear in mind that it is in the public interest that suits, once filed, should be heard and concluded expeditiously. The part-heard suit at Siakago ought to be allowed to proceed expeditiously.

8. The upshot of the foregoing is that the court finds no merit in the Plaintiff's notice of motion dated 9th May 2017 and the same is consequently dismissed. Costs of the application shall be in the cause.

9. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **26th** day of **JULY, 2017**

In the presence of Ms Muriuki holding brief for Mr Kamunyori for the Plaintiff and in the absence of the Defendant.

Court clerk Njue/Leadys

Y.M. ANGIMA

JUDGE

26.07.17