



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

CASE No. 159 OF 2017

DAVIDSON MARITIM.....PLAINTIFF

VERSUS

PAUL ONGERI MAGWARA.....DEFENDANT

AND

PHILEMON CHEBON BOSWONY.....INTERESTED PARTY

RULING

1. This ruling is in respect of plaintiff's Notice of Motion dated 10th April 2017. The application is brought under section 18 of the Civil Procedure Act and Orders 40 and 51 of the Civil Procedure Rules. The pertinent orders sought in the application are:

1. Spent.

2. Spent.

3. That pending hearing of this suit this Honourable Court be pleased to grant temporary orders of injunction restraining the defendant either by himself, servants and or agents from entering into, trespassing upon, remaining therein, damaging, wasting, or in whatsoever manner dealing in all that parcel of land known as NJORO/NGATA BLOCK 1/5456 (KIAMUNYI).

4. That this Honourable Court be pleased to withdraw and transfer for purposes of hearing and final determination by this honourable court Nakuru CMCC No. 1214 of 2012 between the interested party and the defendant herein pending before the Chief Magistrate's Court Nakuru.

2. The application is supported by the plaintiff's affidavit wherein he deposes that he is the owner of the parcel of land known as NJORO/NGATA BLOCK 1/5456 (KIAMUNYI) and that there is currently a suit pending before the Chief Magistrate's Court at Nakuru being Nakuru CMCC No. 1214 of 2012 between the interested party and the defendant concerning the aforesaid property. That pursuant to orders issued in the said suit on 20th January 2017, the defendant herein trespassed on the suit property on 22nd January 2017 and destroyed the fence. As a result, the plaintiff herein filed an application on 31st January 2017 seeking to be enjoined in the suit as an interested party. The application is still pending before the said court. The applicant now urges the court to grant the orders sought in the present application.

3. I have considered the application. Though served, the defendant and the interested party neither filed any response to the application nor attended the inter parte hearing.

4. The applicant readily concedes that there is another suit pending before the Chief Magistrate's Court at Nakuru being Nakuru CMCC No. 1214 of 2012 between the interested party and the defendant concerning the very same property. The applicant has applied to be admitted in that suit as an interested party. The application is yet to be determined by the said court. It is not clear why the applicant chose to abandon the application and instead opted to file a fresh suit in this court. There is no allegation that the Chief Magistrate's Court lacks jurisdiction in the matter. No valid reason has been advanced as to why the said court cannot continue handling the matter. In those circumstances, can the suit be transferred to this court? I do not think so.

5. Section 6 of the Civil Procedure Act bars this court from dealing with the matter. It provides as follows:

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.

6. Whereas this court has both appellate and supervisory jurisdiction over the subordinate court in all matters falling within the jurisdiction of the court, no such jurisdiction has been invoked in the present matter. Good order dictates that the Chief Magistrate's Court be given an opportunity to consider the issues that are pending before it in CMCC No. 1214 of 2012. In the end, Notice of Motion dated 10th April 2017 is dismissed. Parties are advised to deal with the issues in CMCC No. 1214 of 2012. Costs in the cause.

Dated, signed and delivered in open court at Nakuru this 27th day of September 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Mr. Okwengu holding brief for Mr. Orege for the plaintiff/applicant

No appearance for the defendant

No appearance for the interested party

Court Assistant: Gichaba