



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ELC CASE NO.14 of 2013

JAMES ODONGO SUNGA.....PLAINTIFF

VERSUS

GILBERT APIYO ORENGO.....DEFENDANT

RULING

1. **James Odongo Sunga**, the Plaintiff, seeks to consolidate **ELC No.70 of 2015** to this suit for hearing and determination vide the notice of motion dated 24th June 2016. The Plaintiff has listed six grounds among them that the parties in both suits are the same and that the subject matter in both suits is land parcel **Kisumu/Korando/4610**. The application is supported by the affidavit sworn by the Plaintiff on the 24th June 2016, in which he among others depones that he holds beneficial interest to the land that remained after he transferred the land to Charles Odhiambo, the 2nd Defendant in ELC No..70 of 2015.

2. The application is opposed by **Gilbert Apiyo Orengo**, the Defendant through the replying affidavit sworn on 21st November 2016 in which he among others avers that the Plaintiff has not shown any legal interest on Land Parcel **Kisumu/Korando/4610** which is the subject matter in the current suit and there is therefore no basis on consolidating it with ELC No.70 of 2015.

3. The application came up for hearing on the 2nd March 2017 when only Mr. Anyul, learned counsel for the Defendant appeared. That at the proposal of the counsel, the court directed that written submissions be filed and fixed the matter for mention on 15th June 2017. That on that date only Mr. Nyanga, learned counsel for the Plaintiff had filed submissions dated 24th March 2017 and attended court. That the court fixed the matter for ruling today.

4. The following are the issues for consideration by the court;

- a) Whether the parties in the two suits are the same or are suing under the same capacities.
- b) Whether the subject matter of the two suits are the same.
- c) Whether it is desirable for the two suits to be consolidated for hearing and determination.

5. The court has considered the grounds on the notice of motion, affidavit evidence, the pleadings and come to the following determination;

- a) That this suit was commenced by the Plaintiff against the Defendant through the plaint dated 24th January 2013. The Plaintiff at paragraph 3 avers that he is the registered proprietor of land parcel

Kisumu/Korando/4610 from which he seeks, at prayer (a, to have the Defendant evicted.

b) That through the statement of defence dated 22nd March 2013, the Defendant filed a counterclaim against the Plaintiff for a portion of 37 by 17 steps from the said land under adverse possession among others.

c) That from the copy of the plaint and statements of defences filed in ELC No.70 of 2015, that are annexed to the notice of motion, the Defendant in the current suit is the Plaintiff while the Plaintiff in this suit and one Charles Odhiambo are the 1st and 2nd Defendants respectively.

d) That the subject matter in ELC No.70 of 2015 is land parcel **Kisumu/Korando/4610**, as confirmed in paragraph 3, 8, 10, and prayer (a) (b) and (d) of the said plaint dated 9th March 2015, which is the same subject matter in this suit and the counterclaim.

e) That even though the 2nd Defendant in ELC No.70/2015 is not a party in the current suit, the certificate of official search in respect of land parcel **Kisumu/Korando/4610** issued on the 30th January 2015 indicates that he become its registered proprietor on the 23rd April 2014 and the title deed was issued to him on the same date. That the said Charles Odhimbo obtained registration with the suit land when the current suit was still pending. That it is therefore necessary and reasonable to have the two suits consolidated and heard together for the issues relating to the ownership and possession of the said land to be decided.

6. That for reasons set out above, the notice of motion dated 24th June 2016 has merit. The same is allowed in the following terms;

a) That the Kisumu ELC No.70 of 2015 be and is hereby consolidated to this suit for hearing and determination.

That the costs of the notice of motion be in the cause.

c) The Deputy Registrar do ensure the record for Kisumu ELC

No.70/2015 is attached to this file before the next mention date when further directions will be given.

Orders accordingly.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 15TH DAY OF NOVEMBER 2017

In presence of;

Plaintiff Absent

Defendant Absent

Counsel Mr. Arikho for the Plaintiff

Mr. Kowinoh for Anyul for defendant

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

15/11/2017

15/11/2017

S.M. Kibunja Judge

Oyugi court assistant

Parties absent

Mr. Arikho for Plaintiff

Mr. Kowinoh for Anyul for Defendant

Court: ruling dated and delivered in open court in presence of Mr. rikho for Plaintiff and Mr. Kowinoh for Anyul for Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

15/11/2017