



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 209 OF 2016**

**RUTH WANJIRU KINYUA ..... 1<sup>ST</sup> PLAINTIFF**

**MARGARET WANJIRU NJUGUNA ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ELIZABETH WANGARI NGURE..... 1<sup>ST</sup> DEFENDANT**

**ATTORNEY GENERAL (sued on behalf of County**

**Land Registrar Nakuru County).....2<sup>ND</sup> DEFENDANT**

**RULING**

***(Application to dismiss suit for reason that another prior suit is pending in the Magistrate's Court; the second suit having been filed by the defendants in the prior suit but with different capacities; suit not an abuse of court process; however the two suits raise similar questions of law and fact and ought to be heard together; the lower court case transferred to the Environment and Land Court and consolidated with the suit in the said court)***

1. Through an application dated 25 September 2017, brought pursuant to the provisions of Order 2 Rule 15, the 1st defendant has sought to have this suit dismissed as being an abuse of the process of court. The main ground upon which the application is based is that there already exists a suit, being Nakuru CMCC No. 1406 of 2015, filed prior to this suit, and which is over the same subject matter. The application is opposed by the plaintiffs herein who have inter alia averred that the suit herein is brought for the estate of Esther Njeri Kiritu (deceased) of whom they are administrators. They have pointed out that in the suit before the Magistrate's Court, they have been sued in their personal capacities and it is therefore their view that the two cases are substantially different. It is also averred that the jurisdiction of Magistrates to handle land cases is still controversial. It is their view that it is best that the case in the Magistrate's Court be brought to this court and the two cases heard together.

2. I have considered the matter. I have seen that on 9 December 2015, the applicant herein filed the suit Nakuru CMCC No. 1406 of 2015 against the two plaintiffs in this suit. In her case, she contended that she is the sole registered proprietor of the land parcel Dundori/Mugwathi Block 1/769 (Wanyororo 'A') pursuant to a title issued to her on 17 June 2009. She averred that sometimes in the months of October and November, the defendants in the suit (respondents herein), invaded her land and commenced subdivision of it. In the suit, she asked that they be permanently restrained.

3. In this suit, which was filed on 13 June 2016, the respondents have pleaded that they bring the suit on behalf of the estate of Esther Njeri Kiritu (deceased). It is pleaded that the deceased died on 5 January 2009, and prior to her death, she was the registered proprietor of the land parcel Dundori/Mugwathi Block 1/769 (Wanyororo 'A') (hereinafter referred to as "the suit land"). It is claimed that the applicant fraudulently obtained title to the suit land in contravention of the Law of Succession Act, Cap 160, Laws of Kenya. In the suit, they wish to have a declaration that the suit land belongs to the estate of the deceased and an order to have the register rectified by deleting the name of the applicant as proprietor.

4. It appears to me that the respondents, as defendant in the suit before the Magistrate's Court, were sued in their individual capacity. In this suit, they have sued as administrators of the estate of the deceased. I cannot fault them for filing this suit and I therefore do not consider this suit to be an abuse of the court process. Nevertheless, the two suits raise more or less similar issues of fact and law and are best heard together. I have the option of either referring this matter to the Magistrate's Court to be consolidated with the case Nakuru CMCC No. 1406 of 2015, or bring the said case before this court. I am aware of the judgment by the Court of Appeal in Nairobi Court of Appeal, Civil Appeal No. 287 of 2016, where the Court of Appeal in a judgment delivered on 19 October 2017, did rule that Magistrates may hear disputes over land upto their pecuniary jurisdiction. However, I am also aware that a notice of appeal to the Supreme Court has been filed meaning that the question whether Magistrates have jurisdiction on such matters is not yet fully settled.

5. Given that position, I think it is best that I move the case Nakuru CMCC No. 1406 of 2015 to this court and have it consolidated with this suit for the two suits to be determined together. I therefore order the case Nakuru CMCC No. 1406 of 2015 to be transferred to this court and be heard alongside this suit.

6. On the application, I am not persuaded that this suit is an abuse of the court process and I will proceed to dismiss the same. I however make no orders as to costs.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of November 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of : -**