



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 207 OF 2016**

**NAOMI MWIKATHI.....PLAINTIFF**

**VERSUS**

**ROSEMARY RUGURU.....1<sup>ST</sup> DEFENDANT**

**MERCY NGUTA GATOBU .....2<sup>ND</sup> DEFENDANT**

**R U L I N G**

**BACKGROUND**

1. This ruling is in respect of the Preliminary Objection dated 09:11:16 and the application dated 25:10:16. On 27/2/2017, the court gave direction that submissions be filed .
2. When the application of 25:10:16 was filed, Interim Orders were given on 03:11:16. Thereafter, 1<sup>st</sup> Defendant filed an application dated 24:02:17 to have the Interim Orders discharged but this application was abandoned for the court to deal with the earlier application and the P.O.
3. In the Preliminary Objection, it is averred that the plaintiff did not obtain and did not file the requisite consent as stipulated in Cap 284 and 283.
4. It is also stated that the Plaintiff has abused the process of the Court by filing this suit while there is another suit pending which is C.M.C.C No. 206 of 2015 (Tigania) involving the same parties and same subject matter.

**DETERMINATION**

5. I have weighed all the arguments raised herein. I will first deal with the Preliminary Objection since, in the event that the same is successful, then it will dispose off the application. There are two issues for determination; a) Consent of the Land Adjudication officer b) whether the Tigania case exists.

**CONSENT**

6. It is argued for the 1<sup>st</sup> Defendant that no Consent was obtained pursuant to provisions of Section 30 (1) of the land Adjudication Act and Section 8 of the Land Consolidation Act. The Plaintiff on other hand avers that the suit land is not yet under adjudication so as to call for compliance with the law set out in Cap 284 and Cap 283.

7. This Court issued an order on 21:04:17 for the District Land Adjudication and Settlement Officer to

avail a report to indicate whether the Suit land is under adjudication or not. A report thereof was filed on 28:07:17 by the District Land Adjudication and Settlement officer of Tigania West Sub County where he states:-

**“This is to confirm that the suit land in Mumui location is under adjudication as per Cap 284 Land Adjudication Act. The adjudication of this section commenced as per Notice of Establishment dated 13 February, 2016 and it is ongoing”.**

8. It follows that a Consent was a pre requisite document in filing of the plaint. The suit is hence incompetent and so is the application.

#### EXISTENCE OF TIGANIA C.M.C.C NO. 206 OF 2015.

9 It is averred by the 1<sup>st</sup> Defendant that Plaintiff has concealed material facts which is the existence of Tigania C.M.C.C. No. 206/15 where Injunctive Orders had been given in favour of the Defendants herein. In support of this averment, 1<sup>st</sup> Defendant has availed the following documents:-

- The Plaint in case no. 206/15, Tigania where by the present Plaintiff was the Defendant whereas the present Defendant were the Plaintiff.
- In the aforementioned Tigania case, interim orders of Injunction were issued on 7:1:16 in favour of the current defendants as against the present plaintiff.

10. 1<sup>st</sup> Defendant therefore submits that Plaintiff was all along aware of the existence of the Tigania suit and therefore she (plaintiff) filed the present suit contrary to the provisions of section 6 of the Civil Procedure Act.

11. To this end, 1<sup>st</sup> Defendant has relied on the case **Misc. Civil App 4. Of 2013 (JR) Angote J.**

12. 1<sup>st</sup> Defendant further contends that the injunctive orders in P.M.C.C 206/2015 are still in force and hence different Courts should not issue similar orders in respect of the same property.

13. Plaintiff on the other hand contends that she is not aware of the existence of the TIGANIA 206/15 case. She also contends that the Tigania Court had no jurisdiction to give any orders in light of the Malindi H.C.C.C Pet No 3 of 2016 and hence no order or case existed in the eye of the law to bar her from bringing forth the present suit.

14. Plaintiff also avers that the parcel land could be different since in both suits, the land parcels have not been identified and hence the land has no parcel number.

15. I find that 1<sup>st</sup> defendant has availed annextures filed as Notice of Appointment and Notice of withdrawal of Suit. The two documents emanate from the present Plaintiff's Advocates in reference to a Misc. High Court App. No. 83 of 2016(Tigania P.M.C.C). Even if the year is indicated as 2016, I am inclined to believe that reference was to the Tigania case. I have no doubts in my mind that the Plaintiff here in was aware of the existence of the Tigania suit in the circumstances.

16. On issue of jurisdiction, Plaintiff ought to have raised the same before the Court where the matter had been filed instead of filing a fresh suit.

17. On the issue as to whether the land in question could be two different parcels, I find that indeed the suit Parcel is yet to be surveyed or adjudicated. That is why in both the present suit and the suit in Tigania Court, the land is identified by where it is located. The order issued by the Magistrate in 206/15 is even more specific as it makes reference to that land which borders Paster Japhet Kirario, Karwitha, Linhulo and Veronica Nkatha.

18. It follows that the parcel of land is the same, and it is the land situated at Ngaitethia Village/Sub

location of Mumui location, Tigania West Sub-County.

19. This is a situation whereby the present Plaintiff was sued at the Tigania Court where Interim Orders of Injunction were issued against her. She (1<sup>st</sup> Plaintiff) then moved to this Court and obtained Injunction Orders against the present defendants. This not only amounts to an abuse of the Court's Process, but it is a recipe for anarchy.

20. I do find that this Preliminary Objection also succeeds on the ground that another suit ,Tigania 206/15 exists and therefore this suit violates the provisions of section 6 of the civil procedure act.

#### CONCLUSION

**21. The suit and the application of 25:10:16 are hereby dismissed with costs to the 1<sup>st</sup> Defendant.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 13<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

**CA: Janet**

Nyenyire H/B for Ndubi for Plaintiff Present

Ashaba H/B for Kaume for Defendant Present

**Hon. L. N. MBUGUA**

**ELC JUDGE**