



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELC NO 141 OF 2014**

**BISHOP LAWI IMATHIU**( Suing as the trustee

Of Kenya Young Men's Christian Association).....**PLAINTIFF**

**VERSUS**

**JOSEPH MUTUNE WAMBUI** (Sued as pastor and trustee of Kenya Association of God "Heavens Gate Worship Centre" ) & **11 OTHERS**.....**DEFENDANTS**

**RULING**

***(Application to strike out suit for being res judicata; consolidation ordered).***

1. The application before me is that dated 15 September 2014 filed by the defendants pursuant to the provisions of Order 2 Rule 15 of the Civil Procedure Rules. The application seeks the order that the plaint be struck out on the principal ground that there is another similar pending suit, Nakuru HCCC No. 123 of 2010 (the other suit). It is averred in the supporting affidavit, that the issues in the other case are similar to this one. A copy of the plaint in the said case has been annexed. It is also averred that the same plaintiffs had sued in Naivasha CMCC No. 433 of 2012 which was struck out for want of jurisdiction and that after its dismissal, the plaintiffs filed this suit yet the other suit was still pending.

2. The plaintiff filed Grounds of Opposition to oppose the motion. It is stated that the parties in the other suit are different; that Naivasha CMCC No. 433 of 2012 was struck out on grounds of jurisdiction and was never heard on merits; that the prayers in this suit and the case Nakuru HCCC No. 123 of 2010 are not similar; and that the ends of justice will be served if the two suits are consolidated.

3. I have considered the matter. I do not think that there can be an issue regarding Naivasha CMCC No. 433 of 2012 which was struck out for want of jurisdiction and it no longer exists. I think what I need to determine is whether by reason of Nakuru HCCC No. 123 of 2010, this suit needs to be struck out.

4. I have looked at the plaint in Nakuru HCCC No. 123 of 2010. The plaintiff is Joseph Mutune Wambua (suing as a Pastor and the Trustee of Kenya Assemblies of God "Heavens Gate Worship Centre"). The defendant is Bishop Lawi Imathiu (sued as the Trustee of Kenya Young Men Christian Association). In the plaint, it is pleaded that the plaintiff has been operating a worship centre in the premises of the defendant identified as L.R No. 1169, South Lake Naivasha since the year 2004. It is pleaded that there was understanding that the plaintiff would build a church and on its final completion, the parties fine tune an agreement as to rent. It is pleaded that on 24 February 2009, the defendant alerted the plaintiff that it would demolish its church which is said to be without justification. In the suit, the plaintiff has sought a permanent injunction to restrain the defendant from evicting them or demolishing the plaintiff's church.

5. The present suit has been filed by Bishop Lawi Imathiu (suing as the Trustee of Kenya Young Men's Christian Association). He has sued 12 persons as defendants. The 1<sup>st</sup> defendant is Joseph Mutune Wambua (sued as a Pastor and the Trustee of Kenya Assemblies of God "Heavens Gate Worship Centre"). The other 11 defendants are individuals sued in their personal capacity. The plaintiff in the present suit has pleaded to be the owner of the land parcel No. 1169 South Lake Naivasha. It is pleaded that on 20 August 2008, the plaintiff and defendants entered into a tenancy agreement on condition that the same would terminate when the plaintiff was ready to develop the land and upon them receiving notice to vacate. It is pleaded that on 24 February 2010, the plaintiff issued a 3 month notice to the defendants to pull down structures built on the suit land. In the suit the plaintiff has sought orders of eviction against the defendants. There is mention in the pleadings of the case Nakuru HCCC No. 123 of 2010 but it is said that the case was dismissed.

6. It is not clear to me who the other 11 persons sued by the plaintiff in the present suit are. I do not know if they have separate tenancies or whether they claim occupation under the 1<sup>st</sup> defendant church. I therefore hesitate to state categorically that the two suits are similar and that the cause of action is the same. I am also not sure, and counsels never addressed the point, of whether the suit Nakuru HCCC No. 123 of 2010 exists. It will be observed that in his pleadings the plaintiff in the present suit averred that it does not exist as it was dismissed. In the application herein, it is contended that it still exists. My efforts to trace the file have been futile and I am not sure if the suit is still pending or it has been dismissed.

7. I think the best order I can make is to consolidate the two files, assuming that the suit Nakuru HCCC No. 123 of 2010 exists. If it does not exist there will be no prejudice caused to the applicant for there will only be one suit pending, that is, the present suit.

8. I therefore order a consolidation of this case with Nakuru HCCC No. 123 of 2010 if it is still pending.

9. On this application, I make no orders as to costs.

**Dated, signed and delivered in open court at Nakuru this 19<sup>th</sup> day of May, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Mr. Bosire holding brief for Mr. Simiyu for applicants.

N/A on part of M/s Aming'a, Opiyo, Masese Advocates for respondent

Court Assistant : Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**