



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 240 OF 2012

EDDAH WANJIRU MBURU (Suing as the Legal Representative of the Estate of PETER MBUTU NJOROGE).....PLAINTIFF

VERSUS

TAYARI FARMERS CO. LTD.....1ST DEFENDANT

DORCAS WANJIRU MWANGI2ND DEFENDANT

RULING

(Application to stay a separate suit on grounds that it is related to this case, no demonstration that subject matter is the same; application dismissed)

1. The application before me is that dated 28 February 2011 filed by the plaintiff. She seeks orders to have the suit Molo PMCC No. 290 of 2009 stayed pending hearing and determination of this suit.
2. In this suit, the plaintiff/applicant has sued Tayari Farmers Company Ltd and Dorcas Wanjiru Mwangi as defendants. She has filed this suit in her capacity as legal representative of the estate of Peter Mburu Njoroge (deceased) who is also her late husband. Her case is that in the 1970s her late husband was a member of Tayari Farm and was allotted a ballot No. 204 which entitled him to 2 acres of land. It is averred that they then moved their mother to the allocated land and built a semi-permanent house for her and that their relatives have been in possession of the land to date. Sometimes in the year 2009, Dorcas Wanjiru Mwangi (2nd defendant) claimed to be the owner of the land holding a title deed Mau Summit/Molo Block 7 (Tayari). It is the plaintiff's position that the title of the 2nd defendant was acquired by way of fraud and/or illegality inter alia by annexing the two acres claimed by the plaintiff into her title. In this case, the plaintiff wants the defendant restrained from trespassing into the land Mau Summit/Molo Block 7 (Tayari) and an order for cancellation of the said title.
3. The defendants filed a joint statement of defence in which all the claims of the plaintiff were refuted. It was further averred that the issues being raised here were raised in a suit *HCCC No. 478 of 1994 John Mureithi Gitara & 98 Others vs Milton Kamau & 3 Others*.
4. It will be noted that in the application before me, the plaintiff wants the case Molo PMCC No. 290 of 2009 stayed. I called for the Molo file and I have perused it. I have noted that the plaintiff in the Molo case is Dorcas Wanjiru Mwangi (the 2nd defendant in this case) whereas the defendants are Simon Nguri, Joseph Njoroge, Francis Narumba and Simon Kimemia. In the plaint, it is pleaded that the 1st three defendants are officials of Huruma Self Help Group, and that members of the Self Help Group and the 4th

defendant, have been in illegal occupation of the plaintiff's (Dorcas') land parcel Mau Summit/Molo Block 79 (Tayari)/ 324. In the case, Dorcas sought orders for them to be evicted. I have further noted that in the said suit, only the 2nd defendant therein (Joseph Njoroge) has entered appearance and filed defence. He pleaded inter alia that he is in lawful occupation of the land having purchased it through his wife, one Rose Njeri, from persons identified as Miriam Nyambura Keriko and Nancy Njeri Kiarie who were shareholders of Tayari Farmers Co. Ltd.

5. The reasons for the plaintiff in this case seeking a stay of the Molo suit are that Dorcas, as plaintiff in the Molo suit, is seeking eviction of the relatives of the applicant herein.

6. In her replying affidavit, Dorcas has deposed inter alia that the applicant is not a party in the Molo case and cannot therefore ask for it to be stayed. She has also given a history of how she acquired the land, which to me, probably should be left to the merits of the case. She has also mentioned the case Nakuru HCCC No. 478 of 1994 as having determined the issue of boundaries. A supplementary affidavit was filed by the applicant vide which she inter alia deposed that the fact that she is not a party in the Molo case does not bar her from filing this application. She further deposed that in the Molo suit, the plaintiff therein is seeking to evict her relatives who are residing on the land with her permission.

7. Both Mr. Ikuu for the applicant and Mr. Karanja Mbugua for the respondents filed written submissions which I have taken into account in my ruling.

8. At the outset, I note that in this case, the subject matter of the case as pleaded, is the land described as Mau Summit/ Molo Block 7 (Tayari). That is the description of the land in the plaint. That to me appears to be different from what is pleaded in the plaint in the Molo case which is the land parcel Mau Summit/ Molo Block 79 (Tayari) 324. I have doubts therefore whether the parties in the two suits are litigating over the same subject matter. It was incumbent upon the applicant to demonstrate to me that the subject matter in this case is the same subject matter in the Molo case, and I am afraid that she has not convinced me of this, given the disparity in the manner in which the land parcels are described in the two suits.

9. Even if the parties are litigating over the same subject matter, I think the issues in the two cases are different. There are no pleadings in the Molo case which seem to suggest that the defendants in that case are in any way related to the applicant, or are in occupation of that land under the instructions of the applicant, or are agents of the applicant. As I mentioned earlier, of the defendants sued in the Molo case, only one has entered appearance and filed defence, and his position is that he is on that land by virtue of purchase, not because he is an agent or an assignee of the applicant in this case. Save for the mere allegations of the applicant, I have nothing to suggest that the defendants in the Molo case are agents of the applicant. 10. I am therefore not convinced of the nexus between the applicant and the defendants in the Molo case.

11. In case I am completely wrong, I still do not think that the applicant will suffer any prejudice. She can still apply to be enjoined in the Molo case and she can agitate her position in the said suit. Nothing bars her from doing so. Moreover, she still has this case and if she succeeds, she will claim the land (assuming that it is the same land in the Molo case, of which as I have stated earlier, I am not too sure of).

12. For the above reasons, I find no merit in this application and it is hereby dismissed with costs. The case Molo PMCC No. 290 of 2009 may proceed to its logical conclusion.

13. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th Day of July 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Gatonye holding brief for Mr. Ikua for applicant

Mr. Karanja Mbugua present for respondent

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU