



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 93 OF 2014

HARID DHANJI VARSANI.....PLAINTIFF/APPLICANT

=VERSUS=

HAMISI MURINZI KOKOI.....1ST DEFENDANT/RESPONDENT

JAMAL ABEID KHAMIS.....2ND DEFENDANT/RESPONDENT

ABDULKARIB ABEID KHAMIS.....3RD DEFENDANT/RESPONDENT

MOHAMED ABEID KHAMIS.....4TH DEFENDANT/RESPONDENT

R U L I N G

Introduction:

1. The Application before me is the one dated 29th October 2014. In the Application, the Plaintiff is seeking for the following orders:

(a) That for case management purposes and in order to achieve the overriding objective the court files in Malindi ELC cause number 93 of 2014, Harji Dhanji Varsani Versus Hamisi Murinzi Koikoi & 3 OTHERS, Mombasa High Court Misc Cause No. 128 of 2010 (JR) Said Mbarak Awadh Versus Commissioner of Lands & ORS and Hamisi Murinzi Koikoi and 24 others and Mombasa ELC Civil Case NO. 139 of 2014 between Said Mbarak Awadh Versus the National Land Commission and 4 Others be handled together.

(b) That the cost of this Application be provided for.

2. According to the Plaintiff's Affidavit, he has since established that there is another case being Mombasa Civil Case Number 139 of 2014 between Said Mbarak Awadh Versus The National Land Commission & 4 others in which the suit property the subject matter of the suit herein is the same subject matter in the later suit.

3. It is the Plaintiff's deposition that similar questions of law and facts are involved in both cases; that this court has unfettered discretion to consolidate suits and that the consolidation of the two suits will assist the court to facilitate the just, expeditious, proportionate and affordable resolution of the dispute.

The Defendants'/Respondents' case:

4. The 2nd, 3rd and 4th Defendants' advocate filed Grounds of Opposition in which he averred that the Application and the suit herein has been instituted in breach of the rule of subjudice and that the Plaintiff was well aware of the interest of Said Mbarak Awadh, the Plaintiff in Mombasa ELC No. 139 of 2014, prior to the institution of this suit.
5. The parties filed their respective submissions which I have considered.
6. This suit was commenced by way of a Plaint dated 17th May, 2014. In the Plaint, the Plaintiff claims to be the beneficial owner in possession, use and occupation of land known as Kilifi/Kiwale "A"/32 and that the 1st Defendant was his caretaker maintaining the property.
7. It is the Plaintiff's case that while he was waiting to be issued with the title deed, the 1st Defendant fraudulently and through misrepresentation caused the title deed to be processed in his name. The Plaintiff is seeking for the nullification of the title deed.
8. In Mombasa ELC Civil case number 139 of 2014, Said Mbarak Awadh, the Plaintiff, has sued the National Land Commission and the Chief Land Registrar.
9. In the said suit, the Plaintiff has averred that he purchased land known as Kilifi/Kiwale "A" 32 from Mr. Dzuna Dzombo Chironda in 1984 and thereafter employed Hamis Murinzi Koikoi, the registered proprietor, as his caretaker.
10. The Plaintiff in Mombasa ELC Civil Case Number 139 of 2014 is seeking to be declared the owner of the suit property.
11. As for Mombasa Miscellaneous Civil Cause No 128 of 2010 (JR), a Judgment was delivered by Muriithi J. In the said Judgment, the Judge quashed the adjudication proceedings and the adjudication register for Kilifi/Kiwale "A"/32.
12. The court further ordered for the removal of Hamisi Murinzi Koikoi from the register.
13. It is not in dispute that this suit, Mombasa ELC No. 139 of 2014 and Mombasa Miscellaneous Civil Cause No. 128 of 2010 are in respect of the same property, that is Kilifi/Kiwale "A" 32.
14. Both the Plaintiff in the Mombasa Case and in this suit are claiming to be the proprietors of the suit property. Indeed, both of them are claiming that they employed the 1st Defendant as their caretaker.
15. It is therefore obvious that the court will have to make a determination as who between the two Plaintiffs in the two suits and the 1st Defendant herein is entitled to the suit property.
16. That determination can only be made by this court considering that the land in question is within the geographical jurisdiction of this court.
17. The hearing of this matter and Mombasa ELC Civil Case Number 139 of 2014 by different courts might lead to the delivery of two conflicting decisions on the same subject matter. Other than the likelihood of conflicting decisions being made, the hearing of the two suits by two courts will be a waste of judicial time.
18. The circumstances under which suits can be consolidated was stated by the Court of Appeal in the case **David Ojwang Okeba & Others Vs South Nyanza Sugar Company Limited & Others (2009) e KLR** where it was held as follows:

“The main object of consolidation is to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus, where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or series of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do.”

19. That is the case before me. Mombasa ELC No. 139 of 2014 and the suit herein raises common questions of law and facts and they are in respect to the same suit property.

20. Consequently, the two suits should be consolidated to enable the court deliver either one Judgment or Judgments in both matters.

21. It does not matter that the Plaintiff herein was aware of the existence of the Mombasa suit. I say so because most often than not, a party may not be able to effectively and sufficiently ventilate his case by joining an already existing suit. The most appropriate procedure in such a case is to file an independent suit and then seek for an order of consolidation , without offending the subjudice rule.

22. Considering that Mombasa Miscellaneous Cause No. 128 of 2010 (JR) has already been concluded, it will not be appropriate to consolidate it with the pending suits. However, parties are at liberty to refer to the pleadings, and the Judgment in the said suit during the hearing of the two matters.

23. For those reasons, I allow the Application dated 29th October 2014 as follows:

- (a) Mombasa ELC Civil Case No. 139 of 2014 between Said Mbarak Awadh Vs the National Land Commission and Others be transferred to this court.**
- (b) That this suit be and is hereby consolidated with Mombasa ELC No. 139 of 2014 between said Mbarak Awadh versus The National Land Commission & 4 others**
- (c) Each party to bear his own costs.**

Dated and delivered in Malindi this 5th day of **June**, 2015.

O. A. Angote

Judge