



**Sesi v Musyoki & another; Munguti (Intended Defendant) (Environment & Land Case E034 of 2022) [2023] KEELC 17434 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17434 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE E034 OF 2022  
CA OCHIENG, J  
MAY 18, 2023**

**BETWEEN**

**LEONARD SESI ..... PLAINTIFF**

**AND**

**ZUBERI MUSYOKI ..... 1<sup>ST</sup> DEFENDANT**

**JANE NGINA NTHENGE ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**ADV. ISAIAH MANYANZA MUNGUTI ..... INTENDED DEFENDANT**

**RULING**

1. What is before the court for determination is the Plaintiff's Notice of Motion Application dated the 8<sup>th</sup> June, 2022 where he seeks the following orders:
  1. That Isaiah Manyanza Munguti be enjoined in this matter as a Defendant.
  2. That this Honourable Court be pleased to transfer and consolidate Kangundo ELC No. 19 of 2022 with instant for hearing and determination.
  3. That costs do abide the Application.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of the Plaintiff Leonard Sesi where he deposes that the Intended Defendant who is an Advocate has been facilitating subdivisions in this matter. He explains that the intended Defendant is a beneficiary of two plots being Matungulu/Kyaume/2807 and 2809 respectively, arising from the suit land. He claims the said Advocate handled his matter at one time and that is how he convinced the Defendants to defraud him. He states that the Intended Defendant colluded with the other Defendants to defraud him. He avers that the alleged fraud is under police investigation and it is only fair that the Intended Defendant



be enjoined in this matter to enable the court know how he acquired the said title. He contends that the suit parcels which are subject matter in Kangundo CM ELC No. 19 of 2022 are subdivisions from the subject matter in this instant case. Further, that transfer and consolidation will conclusively solve the issues in dispute.

3. In opposition the Intended Defendant Isaiah Manyanza Munguti filed a Replying Affidavit where he deposes that he is the registered owner of the properties known as Matungulu/Kyaume/2807 and Matungulu/Kyaume/2808 which he acquired from the 1<sup>st</sup> Defendant some time in 2017. He confirms that the two parcels of land originated from land parcel number Matungulu/Kyaume/2354 which was at the time registered in the names of the 2<sup>nd</sup> Defendant. He contends that the 2<sup>nd</sup> Defendant was unable to pay the purchase price and transferred the same to him. He avers that he got vacant possession of the properties. He explains that sometime in May 2022 the Plaintiff illegally trespassed unto the said properties without his consent and denied him access leading him to report the matter and file Kangundo CM ELC Suit No. 19 of 2022 seeking injunctive orders which Application was allowed on 11<sup>th</sup> May, 2022. Further, that the main suit remains pending determination. He insists that he will be prejudiced if the two matters are consolidated. He denies that the Plaintiff has ever been his client nor has he been charged with fraud regarding the said properties. The Plaintiff filed a Supplementary Affidavit dated the 6<sup>th</sup> March, 2023 and stated that enjoinderment of the Intended Defendant would avoid a litany or multiplicity of suits and subsequent conflicting decisions.
4. The Application was canvassed by way of written submissions.

### **Analysis And Determination**

5. I have considered the instant Notice of Motion Application, respective Affidavits as well as rivalling submissions and the following are the issues for determination: Whether the Intended Defendant should be joined in this suit as a 3<sup>rd</sup> Defendant. Whether Kangundo CM ELC No. 19 of 2022 should be consolidated with this suit.
6. The Applicant in his submissions referred to Order 1 Rule 10(2) of the Civil Procedure Rules 2010 on joinder of parties and stated that the Plaintiff's main prayer was to cancel the subdivisions or subtitles that the Intended Defendant claims to own. To buttress his averments, he relied on the following decisions: *Board v Jaffer Brothers Ltd* (199) E.A 55 (SCU) and *Civicon Ltd v Kivu Watt Ltd & 2 Others* (2015) eKLR.
7. The Intended 3<sup>rd</sup> Defendant in his submissions contends that an Application for joinder must be considered within the context and surrounding circumstances of each case. He explained that the instant suit is seeking cancellation of subdivision of the mother title, that means there is no relief sought against him, but only against the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. He insisted that the only purpose he will serve is as an Interested Party as opposed to being a Defendant. On whether the two suits should be consolidated, he argued that the Kangundo suit does not relate with this suit; parties are conspicuously different and subject matter different. Further, that the instant suit offends the principles of res judicata. To buttress his arguments, he relied on the following decisions: *Zephir Holdings Ltd v Mimosa Plantations Ltd, Jeremiah Matagaro and Ezekiel Misango Mutisya* (2014) eKLR; *Kingori v Chege & 2 Others* (2002) 2 KLR 243; *Skov Estate limited v Agricultural Development Corporation & Another* ELC No. 251 of 2012 eKLR and *Omoke v Kenyatta & 83 Others* (Petition II 9E015 of 2021) [2021] KESC 27 (KLR) (Civ).



8. On joinder of a party to any proceedings, Order 1 Rule 10(2) of the *Civil Procedure Rules* stipulates inter alia:-

“(2) The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

9. In *Lucy Nungari Ngigi & 128 others v National Bank of Kenya Limited & another* [2015] eKLR, the Learned Judge while dealing with joinder of parties in respect to a dispute over land, held as follows:

“I do not wish to determine the validity or otherwise of this arrangement between the 1<sup>st</sup> and 2<sup>nd</sup> Defendant because that is a matter for the trial; but one thing is clear from all these things: that the Plaintiffs and the intended Plaintiffs have an inextricable relief arising out of the subdivision and sale of the plots herein to them by the 2<sup>nd</sup> Defendant. Even if each of the Plaintiffs was to file a separate suit, a common issue of fact and law would emerge in relation to the subdivision and sale of the plots to each one of them. Similarly, the validity of the addendum to the mortgage herein between the Defendants is in the center of the cases by the Plaintiffs and the intended Plaintiffs. Therefore, despite the fact that the plots are numerous and perhaps of different sizes or that they were sold to different persons, they are all deduced from the suit property, and derived in the same transaction: they are based on the addendum between the Defendants, and all form part of the mortgaged property. Invariably, the determination of the real issues in controversy between the Plaintiff and the intended plaintiffs on the one hand, and the Defendants on the other hand, will need all concerned parties to be before the court. This course not only prevents duplication of efforts but also allows the court to determine the relief in the entire transaction and all common issues of fact and law which arise among the parties. Accordingly, to enable the court determine the real issues in dispute among all the parties, the intended Plaintiffs must be enjoined in the suit.”

10. In the current scenario, the intended Defendant purchased two resultant subdivisions of the suit land herein, in which the Plaintiff has sought for cancellation of titles. He has further filed the aforementioned suit at Kangundo seeking to restrain the Plaintiff and his brother from interfering with his two parcels of land. I note the Intended Defendant in his Replying Affidavit admits he acquired his parcels of land from the 1<sup>st</sup> Defendant. Insofar as he insists he should not be joined in these proceedings, however, in relying on the legal provisions cited above as well as associating myself with the quoted decision, I opine that the Intended Defendant indeed meets the criteria for joinder as he also purchased resultant subdivisions of the disputed land. In my view, his involvement in these proceedings is necessary to enable the court effectually and completely adjudicate upon and settle all questions involved in the dispute herein. Further, he will be affected by any decision from this suit. In the circumstances, I will proceed to join the Intended Defendant as the 3<sup>rd</sup> Defendant in this suit.



11. On consolidation of suits, Order 11 Rule 3(1) (h) of the *Civil Procedure Rules* provides inter alia: -

“(1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall—

(h) consider consolidation of suits.”

12. In the case of *Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR the learned Judge provided the criteria for consolidation of suits and stated thus:-

“The *Civil Procedure Rules* mandate Courts to consider consolidation of suits and in so doing, to be guided by the following:-

1. Do the same question of law or fact arise in both cases?
2. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction?
3. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party.”

13. Further in the case of *Law Society of Kenya Vs Centre for Human Rights & Democracy & 12 Others* (2014) eKLR, the Supreme Court of Kenya provided the following criteria on consolidation of suits:

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it.”

14. In this instance the Plaintiff has sought to consolidate this suit with the Kangundo CM ELC E 19 of 2022 which was filed by the intended Defendant against him and another party. I note in the said suit, the Intended Defendant admits the Plaintiff operates a slaughter house next to his parcels of land Matungulu/Kyaume/2807 and Matungulu/ Kyaume/2808 respectively. Further, in his Replying Affidavit the Intended Defendant admits that Matungulu/Kyaume/2807 and Matungulu/ Kyaume/2808 were resultant subdivisions of Matungulu/Kyaume/2354. The Plaintiff in this suit has sought for cancellation of titles which were resultant subdivisions of Matungulu/Kyaume/2354. Further, for the said title to be transferred to his name. Insofar as the Intended Defendant as opposed consolidation of these suits, however I note as per annexure ‘IM-2 (a)’ in his Replying Affidavit which is a Sale Agreement, it is clear he was purchasing land parcel number Matungulu/Kyaume/2354 which is also the suit land herein. Based on the facts as presented while associating myself with the abovementioned judicial authorities and relying on the legal provisions cited above, I hold that the same question of law and fact arise in the two suits. Further, that even though some of the parties are different, the suit lands in the Kangundo case arise from a subdivision of the suit land in the instant case. I opine that even though the rights or reliefs claimed in the two cases did not arise out of the same transaction, the original owner of the land was the same and obtained purchase price from the Plaintiff and Intended Defendant at different intervals. It is my considered view that no party will suffer prejudice or disadvantage if the two suits are consolidated. At this juncture, I find that consolidation would be most convenient as it will facilitate the efficient and expeditious disposal of the two cases.



15. It is against the foregoing that I find the Notice of Motion Application dated the 8<sup>th</sup> June, 2022 merited and will allow it.
16. I will proceed to make the following final orders:
  - a. The Intended Defendant be and is hereby joined in these proceedings as 3<sup>rd</sup> Defendant.
  - b. The 3<sup>rd</sup> Defendant be served with all the pleadings herein within seven (7) days from the date hereof, after which he is granted leave of twenty-one (21) days to file and serve his Defence.
  - c. Kangundo CM ELC No. 19 of 2022 be transferred to this court and consolidated with Machakos ELC 34 of 2022 for hearing and final determination.
  - d. Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 18<sup>TH</sup> DAY OF MAY, 2023**

**CHRISTINE OCHIENG**

**JUDGE**

