



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI COMMERCIAL & TAX DIVISION

CIVIL SUIT NO. 142 OF 2015

NANCY WANJA GATABAKI.....PLAINTIFF

VERSUS

JACARANDA HOLDINGS PROPERTY LIMITED.....1ST DEFENDANT

SURAYA PROPERTY GROUP LIMITED.....2ND DEFENDANT

AND

GEORGE NJOROGE KIHANYA.....1ST INTERESTED PARTY

DR. FRANK NJOROGE.....2ND INTERESTED PARTY

JOSEPH KANURI.....3RD INTERESTED PARTY

JOHNSON KINYANJUI.....4TH INTERESTED PARTY

PATRICK MACHARIA KOORO.....5TH INTERESTED PARTY

VINCENT KURIA MUCHIRU.....6TH INTERESTED PARTY

CATHERINE MUTHONI KURIA.....7TH INTERESTED PARTY

RAHAB MWIHAKI KAROKI.....8TH INTERESTED PARTY

DR. SAMUEL MUNDATI GATABAKI.....9TH INTERESTED PARTY

RULING

1. By a Motion on Notice dated 14/5/2020, brought under **Order 1 Rule 10(4) of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act**, the 2nd defendant sought the consolidation of this suit with HCCC No. 352 of 2011 and HCCC Nos. 89, 90, 133, 134, 135, 137, 143, 174, 175 and 181 all of 2015 and HCCC No. 272 of 2017, respectively.

2. The grounds for the application were set out in the body of the Motion and in the supporting affidavit of **Peter Muraya** sworn on 14/5/2020. These were that; the questions of law and fact arising from the suits and the rights and reliefs claimed are in respect of the same series of transactions; the 2nd defendant is a common defendant in all the suits and that no prejudice will be suffered by any of the parties and that it will be convenient to dispose the suits together as it will save judicial time.

3. In his lengthy affidavit, **Peter Muraya** set out in detail the origins of the dispute in all these cases. He stated that the same concerns properties known as **LR 5980/1, 5980/3, 5980/4 & 4508 (“the suit properties”)** all totalling 200 acres. That the 2nd defendant entered into an agreement with the plaintiff and the 9th interested party to undertake development on the suit properties through some special purpose vehicle known as **Muga Developers Ltd.**

4. That when the 2nd defendant sought to actualise the development, it encountered difficulties because, unbeknown to it, both the plaintiff and the 9th interested party had earlier on sold parts of the suit property to amongst others, the 1st defendant. That the 1st defendant or the plaintiff and the 9th interested party had also sold portions of the suit property to the 1st to 8th interested parties.

5. **Mr. Muraya** went on to depose on the various effort made to clear the obstacles that had hindered the carrying out of the original intention of the development. He concluded that the plaintiff had brought all the suits sought to be consolidated for the sole purpose of scuttling any effort meant to settle the matter. He prayed that the application be allowed.

6. The plaintiff opposed the application vide her two affidavits sworn on 24/6/2020, respectively. She contended that, **HCCC No. 352 of 2011** had been concluded and cannot be consolidated with the other suits. That **HCCC No. 272 of 2017** was between her and her late husband and had no relation with the other suits.

7. The plaintiff averred that all the defences in **HCCC Nos. 133, 134, 135, 136, 137, 142, 143, 174, 175 and 181 all of 2015** are similar. They raise similar issues of law and fact. That they may be partially consolidated. That full consolidation will not attain the overriding objective because; it will be time consuming as, her claim is for different amounts from different defendants on different contracts. In her view, it will not therefore be possible to execute one decree.

8. The parties filed their submissions which are on record and which the Court has carefully considered. It was the 2nd defendant's submission that in the suits filed by the plaintiff, the questions of law and fact arising therefrom and the rights and reliefs claimed are in respect of a series of transactions relating to the same subject matter, the suit properties. That the plaintiff had admitted this fact in her replying affidavit.

9. The 2nd defendant further submitted that **HCCC No. 352 of 2011** should not be consolidated with this suit but be tendered as evidence. That **HCCC Nos. 272 of 2017, 89 of 2015 and 90 of 2015** be tried separately. The cases of **Stumberg & Another v. Potgeiter [1970] EA. 323** and **Brij Kishore v. Bir Singh & Others HC od Punjab L.R. 5922 of 2013** were cited in support of those submissions.

10. On the part of the plaintiff, it was submitted that; since the 2nd defendant had abandoned the consolidation of this suit with **HCCC No. 352 of 2011, HCCC Nos. 272 of 2017, 89 and 90 of 2015**, respectively, there were only 9 suits that were for consolidation. That the plaintiff was not opposed to the consolidation of those suits but wanted the consolidation to be partial. The case of **TSS Transporters Limited & 2 Others v. Akinyi Lidambiza [2018] Eklr** was cited in support of that submission.

11. It was therefore submitted that the partial consolidation can be effected for purposes of determining liability only. That since the plaintiff's claim against the defendants and the interested parties is for different amounts, a full consolidation would lead to further amendment of the pleadings and fresh pre-trials which will delay the matter. That there would be no single decree issued against all the parties thereby making execution cumbersome.

12. I have carefully considered the depositions of the parties and the respective submissions. This is an application for consolidation of a total of nine suits. In **Hilton Walter Nabongo Osinya & Another v. Savings & Loan (K) Limited & Another Nbi HCCC No. 274 of 1998**, the court held: -

“The whole point of consolidation suits is to enable common questions of law and fact to be tried together in the same forum with a view to saving judicial time and avoiding the possibility of conflicting decisions on the same issues by different courts. A consolidated trial of two actions results in one common decree and there is no question of abandoning any of the suits”.

13. In **Stumberg & Another v. Portgieter [1970] EA 323**, the court held: -

“Where there are common questions of law or fact in actions having sufficient importance in the proportion to the rest of each other to render it desirable that the whole of the matters should be disposed of at the same time consolidation should be ordered”.

14. The Supreme Court of Kenya then put it emphatically in **Law Society of Kenya v. Centre for Human Rights and Democracy & 12 Others [2014] Eklr**, that: -

“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”.

15. From the foregoing, it is clear that consolidation will be ordered where in two or more suits, there is some common question of law or fact or where the rights or reliefs sought in such suits are in respect of or arise from the same transaction or series of transactions, or for some other good reason such as where it will lead to the attainment of the overriding objective of expeditious disposal of the dispute.

16. In **City Chemists (NBI) v. Oriental Commercial Bank Ltd Civ Appln. No. NAI 302/2008 (UR)**, the Court of Appeal held: -

“The jurisdiction of this Court has been enhanced and its latitude expanded in order for the Court to drive the civil process and to hold firmly the steering wheel of the process in order to attain the overriding objective ... and its principal aims. In our view, dealing with a case justly includes inter – alia reducing delay, and costs expenses at the same time acting expeditiously and fairly. ...”.

17. The Court has considered the various pleadings filed in the suits sought to be consolidated. The Court agrees with the plaintiff that

HCCC Nos. 352 of 2011 and 272 of 2017 are not related to the suit herein. The abandonment by the 2nd defendant of the same is therefore well thought out.

18. As regards the rest of the cases, *to wit*, in **HCCC No. 133, 134, 135, 136, 137, 142, 143, 174, 175 and 181 all of 2015**, they relate to the same subject matter, the suit properties. The defences raised as well as the reliefs sought are similar. It may well be that the witnesses may be the same.

19. The Court has also considered that the 2nd defendant is a common defendant in all the suits. Its defence in all the suit is the same.

20. Consolidating the said suits will enable the Court deal with all the issues at the same forum. It will be convenient and cost effective to deal with all the suits together. The fears of the plaintiff are unwarranted. During the trial, the issue of liability can be determined at the same time with that of damages. All the plaintiff has to do is to specify the damages or quantum she seeks from each individual interested party and if proved judgement will be entered accordingly.

21. If judgment is entered against each party as the case against one would have been proved, the decree will be drawn accordingly and there will be no difficulties executing the same.

22. Accordingly, there is no need of having to order a partial consolidation. The court therefore finds the application to be meritorious and is allowed as follows: -

a) **HCCC Nos. 133, 134, 135, 136, 137, 143, 174, 175 and 181 all of 2015** be and are hereby consolidated with this suit.

b) This suit, **HCCC No. 142 of 2015**, will be the head file.

c) The costs of the application will be in the cause.

It is so ordered.

DATED AND DELIVERED AT NAIROBI THIS 18TH DAY OF MARCH, 2021.

A. MABEYA, FCI Arb

JUDGE