



**Wanyonyi v Murunga & another (Environment & Land Case
E009 of 2022) [2023] KEELC 19261 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19261 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE E009 OF 2022
EC CHERONO, J
JULY 27, 2023**

BETWEEN

EDWARD WANYAMA WANYONYI APPLICANT

AND

GLADYS NEKOYE MURUNGA 1ST RESPONDENT

ELGON RELIGIOUS SOCIETY OF FRIENDS 2ND RESPONDENT

RULING

1. What is before me determination is the Notice of Motion application dated May 22, 2023 seeking the following orders;
 1. An order do issue consolidating this instant suit with BGM ELC No124 of 2014
 2. That this Honourable Court be pleased to order to make such further and or other order as it may deem just, reasonable and appropriate in the circumstances in order for the ends of justice to be met.
 3. That costs of this application be provided for.
2. The application is premised on grounds apparent on the face of the said application supported by the affidavit of the applicant sworn on even date.
3. In her supporting affidavit sworn on her own behalf and that of the 2nd respondent, the applicant deposed that the cause of action in the instant suit being Land parcel No Kimilili/Kamukuywa/2268 and 2269 is the same in ELC Case No124 of 2014. She also deposed that the Advocates appearing for the applicants in the instant suit are the same in ELC Case No124 of 2014.
4. The applicant further deposed that it would be proper to consolidate the two suits for expeditious and proportionate disposal of the dispute and to save time and costs.



5. The respondents did not file response to the application within the timelines given by the Court.

Analysis and Decision.

6. I have considered the application dated May 22, 2023, the supporting affidavit and the annexures thereto. I have also considered the applicable law.

7. The main issue for determination in the present application is whether an order for consolidation of this suit and ELC Case No124 of 2014 (Bungoma) should be granted. The principles to be considered in such an application has been discussed in numerous decisions by the superior courts. In the case of *RMG v NG & Another* (2013) eKLR where it was held;

“The principle is that consolidation of suits will be ordered where common questions of law or fact arise of such importance as to make it desirable that the whole of the subject matter be disposed of at the same time. This would mean that the suits are brought together for the purpose of disposing of them simultaneously; if the questions of law or fact to be answered in each of them are common, and they can conveniently be disposed of simultaneously.”

8. Similarly, in the case of *Nyati Security Guards and Services Ltd. V Municipal Council of Mombasa* (2004) eKLR, it was held;

“The situation in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where;

1. Some common question of law or fact arises in both or all of them; or
2. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions; or
3. For some reason it is desirable to make an order consolidating them.”

9. Though the parties in the two suits are not necessarily the same, the subject matter in dispute between the parties are the same being land parcels NoKimilili/kamukuywa /2268 And Kimilili/kamukuywa/2269. In ELC Case No 124 of 2014, the plaintiffs are seeking eviction orders while the claimant in the instant suit ELC E009 of 2022(O.S) is seeking registration as owner of the suit properties on the basis of Adverse possession.

10. Bearing in mind the above principles and considerations, this court is of the view that the two suits sought to be consolidated raise common questions of law and fact. Consequently, this court finds and holds that the two cases would conveniently be heard and determined together. I believe that none of the parties would be prejudiced in any way by consolidation of the two suits and their hearing and determination together.

10. The upshot of the foregoing is that the Notice of motion application dated May 22, 2023 is merited and the same is hereby allowed as prayed. Costs shall be in the cause.

READ, DELIVERED and SIGNED in the open court/Virtually at Bungoma this 27th July, 2023

HON.E.C. CHERONO

ELC JUDGE

In the presence of;

SUBPARA 1.



Mr. wattangah H/B Mr. Paul Juma

SUBPARA 2.

Respondent/Advocate-absent

SUBPARA 3.

M/S Joy-C/A

