



Muteti v Ndolo (As the Executrix of the Will of the Late General Joseph Musyimi Ndolo) & another (Environmental and Land Originating Summons E010 of 2022) [2023] KEELC 21413 (KLR) (25 October 2023) (Ruling)

Neutral citation: [2023] KEELC 21413 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E010 OF 2022
TW MURIGI, J
OCTOBER 25, 2023

BETWEEN

RAPHAEL MULWA MUTETI PLAINTIFF

AND

REGISTRAR OF TITLES 1ST DEFENDANT

ELIZABETH KAMENE NDOLO (AS THE EXECUTRIX OF THE WILL OF THE LATE GENERAL JOSEPH MUSYIMI NDOLO) 2ND DEFENDANT

RULING

1. Before me for determination is the Notice of Motion dated 7th November, 2022 brought under Order 8 Rule 3, Order 11 Rule 3, Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act* Chapter 21 of the Laws of Kenya and all other enabling provisions of the law in which the Applicant seeks the following orders:-
 1. That the Honourable court be pleased to order the consolidation of the following suits:
 - a. Makueni ELC OS E10/2022 - Raphael Mulwa Muteti v Elizabeth Kamene Ndolo & The Registrar of Titles.
 - b. Makueni ELC OS E5/2022 and Suit Nos. E6, E7, E6, E9, E11. E12, E13, E14, E15, E16, E17, E18, E19, E20, E21, E22, 23, E24, E25, E26, E27, E28, E29 and E30 all of 2022.
 2. That further proceedings in suits Makueni ELCOS E5/2022 and E6, E7, E8, E9, E11, E12, E13, E14, E15, E16, E17, E18, E19, E20, E21, E22, E23, E24, E25, E26, E27, E28, E29, E30 and E31 be stayed.
 3. That in the result all the suits be heard together.



2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Raphael Mulwa Muteti sworn on even date.

The Applicant's Case

3. The Applicant averred that the Plaintiff's claims in all the suits are based on the same subject matter that is, LR No. 1757/6 formerly LR No. 1757.
4. The Applicant contended that consolidating the suits will expedite the hearing and determination of the said suits, save judicial time, and cut on expenses to be incurred by the parties. He asserted that by consolidating the suits, the judicial process will not be embarrassed as there will be a common order. He argued that the Defendants will not be prejudiced in any way if the orders sought are granted.
5. Though duly served, the Defendants did not file any response to the application.
6. The application was canvassed by way of written submissions.
7. The Applicant's submissions were filed on 3rd February, 2023 which I have duly considered.

Analysis And Determination

8. Having considered the application, the submissions by the Applicant and the relevant provisions of the law, the only issue for determination is whether this suit should be consolidated with ELC OS Nos. E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18, E19, E20, E21, E22, E23, E24, E25, E26, E28, E29, E30 and E31 all of 2022.
9. In the case of *Law Society of Kenya v The Centre for Human Rights and Democracy and 12 Others* [2014] eKLR, the Supreme Court of Kenya had this to say;

“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 a disadvantage towards the party that opposes it”.
10. The principles of consolidation were set out in the case of *Nyati Security Guards and Services Ltd v Municipal Council of Mombasa* (2004) eKLR as follows:

“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 arises out of the same transaction or series of transactions; or
 3. For some other reason it is desirable to make an order for consolidating them.”
11. In deciding whether or not to order for consolidation of suits the following factors must be taken into consideration:-
 - a. Whether common questions or issues of law or facts arise.
 - b. Whether the claimed right to relief arises out of the same or similar transactions or series of transactions.



- c. Whether the interest of justice favour consolidation.
 - d. Whether the suit can be consolidated as cross actions between the same parties arising out of the same subject matter.
12. Turning to this case, the subject matter in all the suits relates to the same subject matter. The common thread in all the suits is that the Defendant is the same.
 13. Considering the above, it is my view that this is a proper case for consolidation. I agree with the Plaintiff that separate trials will delay the hearing and determination of these matters.
 14. In the end I find that the application dated 7th November 2022 is merited and the same is allowed in the following terms:-
 1. Makueni ELC Case No. E010 OF 2022 be and is hereby consolidated with ELC Nos. E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, E17, E18, E19, E20, E21, E22, E23, E24, E25, E26, E27, E28, E29 and E30 all of 2022.
 2. This suit shall be the lead file for purposes of filing any further pleadings and recording of proceedings.
 3. Costs shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 25TH DAY OF OCTOBER, 2023.

In the presence of:-

Court assistant - Mr. Kwemboi.

Muoka for the Applicant.

