



Otieno v Safaricom Investment Co-operative & another; National Environment Management Authority (Interested Party) (Environment & Land Petition E015 of 2022) [2023] KEELC 22016 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22016 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E015 OF 2022
EK WABWOTO, J
NOVEMBER 30, 2023**

BETWEEN

JACOB OCHIENG OTIENO PETITIONER

AND

SAFARICOM INVESTMENT CO-OPERATIVE 1ST RESPONDENT

THE COUNTY GOVERNMENT OF KISUMU 2ND RESPONDENT

AND

THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY INTERESTED PARTY

RULING

1. The Petitioner filed an application dated 14th June 2023 and accompanied by a supporting affidavit sworn by Maurice Mkan seeking the following orders:
 - a. Spent...
 - b. That pending the hearing and determination of this application the ruling pending to be delivered on 16th June 2023 on the Respondents application for the transfer of the Petition to Kisumu ELC court be deferred.
 - c. That the Court be pleased to order for the consolidation of the instance petition with Nairobi ELC Petition No. E062 of 2022-Active Environmental Team vs Username Investment Limited & The County Government of Kisumu, The Chief Land Registrar and The National Environment Management Authority and the same be heard together for the court to determine the issue of breach of the Petitioners constitutional rights.



- d. That an order be issued staying the proceedings in Nairobi ELC Petition No. E062 of 2022-Active Environmental Team vs Username Investment Limited & The County Government of Kisumu, The Chief Land Registrar And The National Environment Management Authority.
 - e. That the court be at liberty to grant any other order it deems necessary in the circumstances of the case.
 - f. That the costs of this application be provided for.
2. The Application was premised on the following grounds:
 - i. That all the two Petitions are pending before this Honourable Court.
 - ii. That both the Petitions are handled by the same advocates i.e. the advocates for the petitioners is the same in both the petitions and the advocates for the respondents is also the same.
 - iii. That this matter together with Nairobi ELC Petition No. E062 of 2022-Active Environmental Team vs Username Investment Limited & The County Government of Kisumu, The Chief Land Registrar And The National Environment Management Authority are related.
 - iv. The Petitions are similar as they have common questions of law and facts.
 - v. That the reliefs sought in both are about parcels of land owned by both the Respondents which are located in the same area or were hived off from one mother title and breaches of the Petitioner's constitutional rights
 - vi. The consolidation is a view to disposing of the matters expeditiously and proportionately and in the best interest of justice, time and saving of costs.
 3. Pursuant to the Court's directions on 16th June 2023, the court directed service of the said application on all parties in ELC E062 of 2022 and further directed the application to be canvassed by way of written submissions.
 4. Save for the 1st Respondent herein and the Interested Party in ELC Petition No. E062 OF 2022 CAC Investment Limited, none of the other parties filed written submissions. The 1st Respondent filed written submission dated 24th July 2023 and replying affidavit sworn by Agnes Bukachi on 20th June 2023 in opposition to the application. The Interested party in ELC Petition No. E062 OF 2022 CAC Investment Limited filed written submissions dated 14th June 2023 in support of the Petitioner's application.
 5. The 1st Respondent relying on the case involving Law Society of Kenya vs Center for Human Rights and Democracy and 12 others (2014) eKLR, submitted that consolidation of suits should not confer an undue disadvantage upon either party.
 6. Additionally, the 1st Respondent raised four main reasons in opposition of the application. Firstly, that the 1st Respondent is a stranger to the 1st Respondent-Username Investment Limited, in ELC PET E062 of 2022. It was reiterated that Safaricom Investment had no relation to Username and therefore should not be a basis for consolidation of the petitions. Secondly, the two petitions were based on two separate parcels of land in Kisumu. Whereas the instant petition was premised on LR No 6045 (original no 1596) owned by Safaricom Investment Cooperative Limited, Petition E062 of 2022 related to LR No 185824 (LR No. 6089/3) owned by Username Investment Limited. Thirdly, the fact that advocates on record are the same will not be in the best interest of justice. Lastly, it was argued that the petitions were based on facts geared towards permanently stopping the Respondents from utilizing separate parcels of land with no nexus to each other.



7. Having considered the written submissions, rival affidavits and supporting documents, it is clear that the salient issue for determination is whether the prayer for consolidation is merited.
8. Rule 17 of *The Constitution* of Kenya (protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013, states:

“.....The Court may on its own motion or on application by any party consolidate several petitions on such terms as it may deem just.....”
9. In the case of *Nyati Security Guards & Services Ltd –vs- Municipal Council of Mombasa (2004) eKLR*, Maraga, J (as he then was) aptly captured what consolidation is all about when he stated:-

“...Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action....”
10. The Honourable Judge went on to outline some of the situations where consolidation may be denied:

“... There are however situations where consolidation is undesirable like where in two actions a plaintiff in one is a defendant in the other unless the claim in one is to be treated as a counter-claim in the other. The other situation where consolidation is undesirable is where the plaintiffs in two or more actions are represented by different Advocates. In such situation the hearing will longer and the purpose of saving time will be defeated...”
11. In the instant case, it is undisputed that the Petitioners in both suits are different yet represented by the same advocate. Moreover, the co-relation of the Petitioners interests has not been evidenced. Secondly, the Court sought to understand whether the subject matter is the same. In my opinion, the Petitioner skirted around the issue of the subject matter by presumably stating that:

“....parcels of land owned by both the Respondents which are located in the same area or were hived off from one mother title...”
12. On the other hand, the 1st Respondent vehemently opposed the consolidating the petition. In Paragraph 6 of their submissions, it was stated:

“....Nairobi ELC Petition No E015 of 2022 is a petition by one Jacob Ochieng’ Otieno with regard to a parcel of land known as LR. No. 6045(Original No. 1596) in Kisumu owned by Safaricom Investment Co-Operative Limited. 6.2.2. On the other hand, in Nairobi ELC Petition No 62 of 2022, the petitioner is Active Environmental Team, an unincorporated body with no distinct legal personality with regard to a parcel of land known as Title No. I.R. 185824 (LR. No. 6089/3) in Kisumu owner by Username Investment Limited....”
13. A perusal of the Physical Planning Brief for Change of Use from Agricultural to residential on LR No 1596/1 (marked CA-1 as an annexure to the 2nd Respondent’s replying affidavit dated 25th April 2023) confirms that the parcel in this suit was LR No 1596/1 which is entirely different from suit property in Petition E062 of 2022.
14. Having arrived at the conclusion that the petitions relate to different parcels of land and different parties, this court is convinced that each party ought to sufficiently ventilate its issues and have the



suits determined on merit. In the upshot, it would not be in the interest of justice to consolidate the petitions.

15. In the foregoing, the Court hereby finds that the Notice of Motion application dated 14th June 2023 is unmerited and the same is hereby dismissed with no orders as to costs. The orders herein will apply to ELC Petition E062 of 2022.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF NOVEMBER 2023.

E. K. WABWOTO

JUDGE

