



**Mwananchi Credit Ltd v Rioki & another (Environment & Land Case E001 of 2023) [2023] KEELC 22274 (KLR) (27 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22274 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE E001 OF 2023**

**JM KAMAU, J  
NOVEMBER 27, 2023**

**BETWEEN**

**MWANANCHI CREDIT LTD ..... PLAINTIFF**

**AND**

**CAROLINE NYAKERARIO RIOKI ..... 1<sup>ST</sup> DEFENDANT**

**QMACS PEALTORS LTD ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 4/7/2023 the Plaintiff prays for the following orders:-
  - a. Spent
  - b. That this court be pleased to consolidate this suit with Nyamira ELC No. E007 of 2022 for final hearing and determination.
  - c. That this court be pleased to visit parcel No. West Mugirango/Siamani/3481 with the County Surveyor to establish its exact location, boundary or any development therein.
  - d. That the costs of this Application be borne by the Defendants.
2. The ground upon which the Application is made as shown on the face of the Application and in the Affidavit in support sworn by Sylvia Wanjiru Njoroge, the Plaintiff's legal Officer/Secretary are that the Plaintiff holds a charge over the 1<sup>st</sup> Defendant's parcel of Land known as WEST MUGIRANGO/SIAMANI/3481 in respect of a loan advanced to her. The same was advanced based on an inflated, faulty, fraudulent and misleading valuation Report by the 2<sup>nd</sup> Defendant. The Plaintiff claims to be an innocent party who advanced an inflated loan as compared to the value of the charged property. The collateral charged has been challenged in Nyamira ELC NO. E001 of 2022.



3. The Plaintiff depones that she would want to protect her interest in the suit land and has therefore introduced the issues it could not raise as a Defendant in the other suit. She also depones that she has decided to bring the 2<sup>nd</sup> Defendant on board to assist the court to arrive at a just conclusion. The Applicant's Legal Officer has interestingly deponed that this suit will enable the court to establish the exact location of the suit land before hearing and determining this suit.
4. Finally, the Plaintiff avers that the issues raised in both cases pertain the same subject matter.
5. On the other hand, the 1<sup>st</sup> Defendant has filed grounds of opposition dated 21/7/2023 and a Replying Affidavit sworn on 21/7/2023 where she has deponed that the Application is calculated to muddle issues with the aim of defecting the objectives of a just quick and final conclusion of the 2 matters. She says that the 2<sup>nd</sup> Defendant is a Stranger to her and is not aware that this had been instructed to value the property before the loan was advanced to the Plaintiff and that the issues in the 2 suits are distinct. She depones that what the Plaintiff should be asking for is for the stay of the earlier suit pending the Hearing and determination of the earlier suit. She finally depones that she would be dragging issues between the Plaintiff and the 2<sup>nd</sup> Defendant which issues she is a stranger to yet the matter in Nyamira ELC E007 of 2022 is at its tail end.
6. I am alive to the fact that the 1<sup>st</sup> Defendant filed a Defence and a counterclaim on 24/7/2023. No Defence to the said Counterclaim has been filed. We are not told whether the 2<sup>nd</sup> Defendant has been served with the summons to enter appearance or not and if so, when. No interlocutory Judgment has been sought in default of entering appearance if summons have been indeed served on her. I believe that the 2<sup>nd</sup> Defendant would also want to be heard on whether the 2 suits should be consolidated or not and more so because she is not a party in the other suit and *prima-facie* the issues in Nyamira ELC E007 of 2023 and none of the issues directly touch on her. This Application is therefore premature. Secondly, I believe that once the Defence to the Counterclaim is filed, if at all, the matrix of the case may change. I do not understand why the Plaintiff rushed to have the Application for consolidation made and filed instead of having the same energy to file the Defence to the Counterclaim or why she filed the Application in a manner that would truly be interpreted to mean that the Plaintiff did not want the 2<sup>nd</sup> Defendant to be heard on the issue of Consolidation. Supposing the 2<sup>nd</sup> Defendant entered appearance and admitted the Plaintiff's claim and exonerated the 1<sup>st</sup> Defendant therefore owning up to the fraud, negligence, misrepresentation and illegal acts, commits herself to solely compensate the Plaintiff for the loss and Damage to pay the costs of the suit and interest on the 2 prayers, would the suit not be brought to an abrupt end? You cannot consolidate a suit where pleadings have been closed with another one where parties are yet to file all their pleadings and comply with order 11 of the [Civil Procedure Rules](#). This is tantamount to comparing mangoes with beans where characters are quite distinct. One must be cooked while the other is picked from the tree and eaten without anything else done to it. One is juicy the other one is dry and one can be stored for years without an expiry date while the other must be preserved under extreme conditions. This brings this court to the inescapable conclusion that the Plaintiff's Application dated 4/7/2023 must be dismissed with costs and I do no less.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 27<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**MUGO KAMAU**

**JUDGE**

