



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
ENVIRONMENT AND LAND CASE NO 55 OF 2016

**SALOME KINYA KIOGORA (Suing as the administrator of the estate of
M'NKIRIMITI M'MBWIRIA) DECEASEDPLAINTIFF/APPLICANT**

VERSUS

HELLEN GACHERI.....DEFENDANT/ RESPONDENT

R U L I N G

1. This Notice of Motion dated 21st December, 2016 seeks the following orders;

1. **THAT** this case be consolidated with MERU E.L.C CASE NO. 210 OF 2013 ,and the two files be handled under this file.
2. **THAT** the costs of this application be in the cause.

2. The grounds in support of the application are ;

- a) **THAT** the two cases concern the same parties, the same parcel of land and the same cause of action which is based on fraud.
- b) **THAT** the facts on compulsory acquisition of a portion of the suit land are not captured in MERU EL.C CASE NO. 210 OF 2013.
- c) **THAT** there are interim orders of injunction herein.
- d) **THAT** consolidation shall save costs on the part of the parties and time on the part of the Court and the parties as well.
- e) **THAT** neither party shall be prejudiced by the consolidation sought.
- f) **THAT** the application is made in the best interest of justice and *has merit*.

4. The application is also supported by the Affidavit of the Plaintiff SALOME KINYA KIOGORA ,and she avers that;

1. This case be consolidated with MERU E.L.C CASE NO. 210 OF 2013 and the dispute be determined in this file.
2. The parties, the parcel of land and the cause of action based on fraud, are the same in both cases.

3. The defendant in both cases is a step-daughter of the applicant.

4. Consolidating the two cases shall save costs on the part of both parties as well as time on the part of the Honourable Court and the parties in attending Court.

5. Interim Orders of injunction have been issued herein, and that the facts on compulsory acquisition of a portion of the suit land are not reflected in the other case and that is why applicant prefers this file to proceed.

6. Applicant is aged over 80 years and illiterate and was dupped by some brokers who took her to the advocate who filed MERU E.L.C CASE NO. 210 OF 2013, without disclosing as to what he was doing. She only instructed him in CHUKA C.M.C. SUCC.C NO. 310 OF 2011.

7. The application is made in utmost good faith and if allowed, the defendant/respondent shall not be prejudiced or suffer any miscarriage of justice in any way.

5. This Court has perused the application, the grounds in support and the Supporting Affidavit. The Court has also perused the proceedings in Meru E.L.C NO 210 OF 2013. Though E.L.C no.210/13 is three years old, the case is still at the infancy stage. Nothing much has happened in that case.

6. Under paragraph 5 of her affidavit ,applicant has clearly stated that she desires this case to be the one to proceed as it captures the issue of land acquisition.

7. The question is , what purpose will the consolidation serve if the present case can stand on its own? .Why didn't the plaintiff proceed by way of amendment of pleadings in case number 210 of 2013?.

8. For proper Court and Case Management it is preferable that one suit should leave the system.

9. In the circumstances, **this court declines to allow the consolidation of the two suits. Instead, applicant should move with speed to withdraw one of the suits to avoid the hearing of the Preliminary Objection of 26/08/16 in ELC NO. 55 OF 16.**

10. The application is dismissed with costs to Respondent.

DELIVERED IN OPEN COURT AT MERU THIS 23RD DAY OF FEBRUARY, 2017 IN THE PRESENCE OF:-

C:A James /Kananu

Gitonga h/b for CarlPeters Mbaabu

Salome Kinya Kiogora -Plaintiff

L.N. MBUGUA

JUDGE