



Ethics & Anti-Corruption Commission v Ngenga & 2 others (Environment & Land Case E360 of 2020) [2023] KEELC 22476 (KLR) (14 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22476 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E360 OF 2020
LN MBUGUA, J
DECEMBER 14, 2023**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

KENNEDY WAINAINA NGENGA 1ST DEFENDANT

NELSON WASWA OTIDO 2ND DEFENDANT

HEZRON OLUOCH 3RD DEFENDANT

RULING

1. Before me is the plaintiff's Notice of Motion dated 3.11.2021 seeking orders for the consolidation of the instant suit with ELC No. 94 of 2020 EACC v Nelson Waswa Otido & 4 others and ELC No. 359 of 2021 EACC v Leading Developers Limited & 6 Others. It also seeks an order that the instant suit be designated as the lead file for purposes of taking evidence and writing judgement.
2. The application is based on grounds on its face and on the supporting affidavit sworn on 3.11.2021 by Pius Nyange Maithya, an investigator with the Plaintiff. He avers that pursuant to its mandate, the Plaintiff conducted investigations into allegations of irregular and illegal alienation of 8 parcels of land belonging to City Council of Nairobi namely; LR 36/VII/253, LR 36/VII/254, LR 36/VII/255, LR 36/VII/256, LR 36/VII/257, LR 36/VII/258, LR 36/VII/259 and LR 36/VII/260.
3. That the Plaintiff clustered the parcels into 3 and instituted suits against the registered owners thereof being the instant suit, ELC 94 of 2020 and ELC 359 of 2021. It avers that in all the 3 mentioned suits, its case is that the suit parcels were illegally, unlawfully and/or irregularly sold to various allottees and transferred to various persons who are the Defendants in the 3 suits.



4. That at the hearing of the said suits, the Plaintiff will rely on the same witnesses to adduce similar evidence and to prove the same set of facts which arise from the same transaction and raise common questions of law and facts. Adding that none of the suits has taken off.
5. The 1st Defendant in ELC Suit 360 of 2021 did not file a response, the suit against the 2nd Defendant in the matter was withdrawn, while the 3rd Defendant is not opposed to the application.
6. In ELC suit No. E359 of 2021, only the 1st Defendant is opposed to the application vide the replying affidavit sworn on 14.2.2022 by its director, one Mohamud Mohamed Mohamud. He avers that the 3 suits sought to be consolidated do not meet the criteria of consolidation as they involve different Defendants and different transactions and further that the Plaintiff is represented by 3 different advocates in the said suits.
7. The Defendants in ELC 94 of 2020 did not file a response to the application.
8. The application was canvassed by way of written submissions. The Plaintiff filed submissions dated 19.10.2023 where it is averred that this court has discretionary power under Order 11 Rule 3 of the Civil Procedure Rules to consider consolidation of suits with a view to furthering expeditious disposal of cases.
9. It is further submitted that it shall be convenient and expedient to try all the suits together as it will obviate multiplicity of suits, and allow for determination of all the issues arising in all the 3 suits at the same trial and will save the court precious judicial time.
10. The case of *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* Civil suit No.992 of 1994 [2000] eKLR as well as the case of *Law Society of Kenya v Center for Human Rights & Democracy & 12 others* [2014] eKLR were proffered to buttress the arguments of the plaintiff.
11. In opposition, the 1st Defendant filed submissions dated 7.11.2023. It reiterates its averments in the replying affidavit and relies on the case of *Harbhajan Singh Dhillion & another v Sukhwinder Singh Dhillion* [2006] eKLR, *Gidion Mbuvi Kioko alias Sonko & 6 others v Attorney General & 4 others and Elecon Developers Limited v Kenya Commercial Bank Limited* [2014] eKLR.
12. The issue for determination is whether this suit E360 of 2021 should be consolidated with the other two suits; E359 of 2021 and ELC No. 94 of 2020.
13. In *Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR the court stated that;

“The *Civil Procedure Rules* mandates Courts to consider consolidation of suits and in so doing, to be guided by the following: -1. Do the same question of law or fact arise in both cases? 2. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction? 3. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?”
14. Weighing the issues herein against the threshold above, I opine that this is a proper case for consolidation considering that all the plaintiffs are the same in the three matters. Further, the same questions of law and fact arise in the three matters where the plaintiff avers that they will call similar witnesses. See *Korean United Church of Kenya & 3 Others v Seng Ha Sang* [2014] eKLR.
15. In the circumstances, the application dated 3.11.2021 is found to be merited. The same is allowed with no orders as to costs. This matter shall be the lead file.



**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF DECEMBER, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Litoro holding brief for Kiboge for the Plaintiff

M/s Ndetho for the 3rd Defendant

Court Assistant: Eddel

