



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT OF KENYA AT KAPSABET**

**ELC CASE NUMBER 21 OF 2021**

**(FORMERLY ELDORET ELC CASE NO.102 OF 2014)**

**SARAH JELAGAT MARITIM.....PLAINTIFF/APPLICANT**

**-VERSUS-**

**KIMELI ARAP KOGO.....DEFENDANT**

**RULING**

1. This Ruling relates to the Notice of Motion application dated 25.10.2016 by the Plaintiff/ Applicant. The motion seeks the following orders:

1. Spent.

2. The court be pleased to order or have the Defendant in Environment and Land case no. 612 of 2013 substituted with the Administrators thereof David Kiptoo Melly and Alfred Kibet Tanui

3. That the court be pleased to order and have both suits No. 612 of 2013 and 102 of 2014 consolidated together with Kapsabet PMCC NO.147 OF 2008.

2. As observed from the Title, this suit is formerly Eldoret ELC NO 102 of 2014. It seems the that the Plaintiff herein had filed an earlier suit case no ELD 612 of 2013 before the High Court in Eldoret and that the Defendant herein had filed before the Principal Magistrates Court Kapsabet Case No. 147 of 2008.

3. All the three suits relate to NANDI/KURGUNG/281 and none has been heard, resolved and/or determined the three files had been placed together although no formal order for consolidation had been made.

4. Upon establishment of this court this suit and the two other files were all transferred to this Court for hearing and determination. On 28/9/2021 when the matter come up for mention for directions upon the transfer in the absence of both parties the court noted the multiplicity of the suits and made a note that the best way forward in the matters was to consolidate, the said note was made without the benefit of the knowledge of the present application subject of this ruling.

5. On 7.12.2021 M/s Tum learned Counsel for the Defendant as well as Mr. Kiboi learned counsel for the Plaintiff appeared in Virtual court. Whereas it was Miss Tum position that the matter had been resolved by way of succession after the demise of the Defendant, Mr. Kiboi was of the view that the dispute was still alive and could only be resolved after this matter is heard.

6. Mr. Kiboi Learned Counsel for the Plaintiff pointed out that there was still pending the present application which sought for substitution of the Defendant by the administrators as well as the consolidation of the three suits. Parties were directed to file their respective submissions before 20.12.2021 and a ruling date reserved.

7. The Defendant in the meantime has not filed a response to the application and neither filed the submissions and as such although the application is unopposed the Applicant has filed its submissions which the court has considered and shall determine the application on its merits.

8. Noting that the Defendant passed away and administrators of his Estate were appointed it is prudent that the deceased Defendant thus be substituted with his administrators pursuant to Order 24 Rule 3 of the Civil Procedure Act.

9. The guiding principle in consolidation of matters as stated in the case of **Stumberg & another vs Potgeiter 1970 E. A 323** is “.....***where there are common questions of law and facts having sufficient importance in proportion to the rest of each action to ... render it desirable***

**that the whole of the matters be disposed at the same time... consolidation should be ordered.”**

10. As all the three suits herein relate to the same parties and the suit property, to wit, **NANDI/ KURGUNG/281**, there is merit in the argument for consolidation so as to save judicial resources and avoid conflicting decisions as the matter involve common issues of facts and law in any event.

10. The Application is hereby allowed in terms of prayers 2, 3, and 4 of the application save to add that upon consolidation this file shall be the lead file.

11. Orders accordingly.

**DATED AT KAPSABET THIS 24<sup>TH</sup> DAY OF JANUARY, 2022.**

**M. N. MWANYALE**

**JUDGE**

In the presence of: -

Mr. Kiboi for the plaintiff/Applicant

Miss Tum for Defendant/Respondent