



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC CASE NO. 7 OF 2019

JAPHET MUTHEE NAMAN.....PLAINTIFF

VERSUS

EVERLYN NGUTA NAITORE MUTHURI.....1ST DEFENDANT

DAVID MWITI MWARANIA.....2ND DEFENDANT

ISIOLO COUNTY GOVERNMENT.....3RD DEFENDANT

RULING

1. By a notice of motion dated 8.4.2021 the 3rd defendant seeks the matter be transferred to Isiolo Law Courts for disposal and consolidation with Isiolo CMC ELC No. 5 of 2020. The application is supported by an affidavit sworn on 8.4.2021.

2. The grounds are that the cause of action arose in Isiolo, parties reside and are relatives siblings of the late Naaman Mwarania and it is in the interest of justice the matter be transferred.

3. The plaintiff has opposed the application through a replying affidavit sworn on 3.5.2021. The reasons are that the two matters are different, it is a waste of court's time and hence the application lacks merits.

4. As regards the 3rd defendant, they opposed the application through grounds of opposition dated 25.5.2021. The grounds are:

- a) **The application does not meet the threshold of consolidation of suits.**
- b) **Causes of action are different.**
- c) **No valuation report has been availed to indicate the Chief Magistrates Court has jurisdiction.**
- d) **It will delay the finalization of the matter.**

5. With leave, parties agreed to canvass the application through written submissions dated 5.11.2021 and 8.11.2021 respectively.

6. The respondents rely on *Benson H. Mutahi –vs- Raphael G. Gichovi Munene Kabutu & Others [2014] eKLR* on the proposition that consolidation should be ordered where there are common questions of law and facts, *Nyati Security Guards & Services LTD. –vs- Municipal Council Of Mombasa (2004) eKLR* on the proposition that the main purpose for consolidation is to save costs, time and efforts for both parties and the court.

7. On the part of the 1st and 2nd defendants/applicants, it is submitted the subject matter and parties reside in Isiolo hence the court guided by *John Mwangi Karanja –vs- Alfred Ndiangui 920110 eKLR* should allow the application. They also rely on *Kathita Ngeen –vs- Mwaniki Kisume [2018] eKLR*, *Rapid Kate Services Ltd –vs- Freight Forwarders Kenya Ltd & 2 Others [2005] 1 KLR 292*.

8. As regards consolidation, the applicants rely on *Law Society of Kenya –vs- The Centre for Human Rights and Democracy and Korean United Church of Kenya & 3 Others –vs- Seng Ha Sang [2014] eKLR*.

9. On the issue of the transfer, the Hon. Chief Justice has designed an ELC court at Isiolo Law Courts for purposes of bringing justice closer

to Kenyans in general and the parties herein in particular.

10. Since the subject matter is in Isiolo County and the parties reside there in Isiolo County and given the matter is yet to commence in this court, I find no prejudice at all to be occasioned to the parties. **See John Mwangi Karanja –vs- Alfred Ndiangui [2011] eKLR.**

11. There being no valuation over the subject matter, the court shall only transfer the matter to the ELC court for the appropriate orders and disposal.

12. Coming to the request for stay and or consolidation of the suit with the **Isiolo CMCC Case No. 5 of 2020**, my findings are that the parties are not the same, the subject property is different and the advocates on record are different. The 3rd defendant is also not a party to the lower court case.

13. Consequently the two cases do not raise common questions of law and fact as held in **Benson G. Mutahi –vs- Raphael Gichovi Munene Kabutu & 4 Others.**

14. I therefore decline to order for either the consolidation and or stay of the lower court case.

15. In the circumstances, prayer 1 is allowed but prayers No. 2 and 3 of the application are disallowed.

16. There will be no order as to costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF JANUARY, 2022

In presence of:

Miss Otieno for respondent

Miss Murithi for applicant

Muriuki for 3rd defendant/respondent

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE