



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**ENVIRONMENT AND LAND DIVISION**

**CIVIL SUIT NO.51 OF 2013**

**CICILIA CHEPKIRUI KOSKE & ANOR.....PLAINTIFFS**

**VERSUS**

**ERICK KITUR & 19 OTHERS.....DEFENDANTS**

*(Consolidated with Civil Case No.9 of 2011)*

**DAVID KIBET LANGAT.....PLAINTIFF**

**VERSUS**

**LYDIA BUSES & 3 OTHERS.....DEFENDANTS**

**R U L I N G**

***(Application to include parties as defendants and for consolidation of two suits; the parties sought to be included being defendants in a related matter; the claims being similar; application allowed)***

The application before me is that dated 23rd October, 2014 filed by the defendants. It seeks the following orders :-

1. That this Honourable Court do grant leave to Lydia Buses, Joseph Chepkwony, Reuben Chepkwony and Joel Chepkwony to be enjoined as defendants in this suit.
2. That upon the grant of the order prayed in (1) above, this Honourable Court be pleased to order a consolidation of this suit with Kericho HCCC No. 9 of 2011.
3. That this Honourable Court do give necessary directions as shall be necessary for the conduct of the said consolidated suits.
4. That costs of this application be provided for.

It will be noted at the outset that there is mention of two suits and I think that it is imperative that I straight away give a background to these two cases.

The first of the two suits is the suit Kericho HCCC No. 9 of 2011. The plaintiff in that case is one Kiplangt Kogetke who has filed suit as legal representative of the estate of Kiplangat Kogetke (deceased). His case is over the land described as Kericho/Chemoiben/24. It is his case that this land is owned by four

persons, namely David Kibet Langat, Dickson Kirui, Kipkoech Nyige and Kibomet Munai. These four persons are all deceased. It is the case of the plaintiff that the defendants, namely Lydia Buses, Joseph Chepkwony, Reuben Chepkwony and Joel Chepkwony, have illegally occupied the said land and have erected structures and rented them out to other persons. In the suit, the plaintiff wants a declaration that the land parcel Kericho/Chemoiben/24 belongs to Kiplangat Kogetke, Dickson Kirui, Kipkoech Nyige and Kibomet Munai. He also wants orders of eviction and permanent injunction against the defendants.

The defendants filed defence in which they averred inter alia, that the land parcel Kericho/Chemoiben/24 does not exist and that they (the defendants) are in occupation of land which is comprised in the land parcel 8839/1 (Grant I.R No. 4758) measuring 0.0575 hectares and situated in Litein Trading Centre. They averred that the said land has been under the exclusive possession of one Joshua Chepkwony Buses (deceased) who is father to the defendants, from the year 1988, and that upon his demise, they took over possession of the land. It is pleaded that the deceased became registered as proprietor in the year 1991. In the alternative, the defendants pleaded that the title to Kericho/Chemoiben/24 was extinguished in the year 1973, when the Government acquired it for purposes of constructing the Kericho-Sotik road, and that the registered proprietors were duly compensated. They have also pleaded that the claim of the plaintiff is extinguished by effluxion of time as they have been in occupation for over twenty (20) years since 1991.

The other suit, which is this one, was filed on 1st August 2013, by Cecilia Chepkirui Koske and Sammy Kipyegon Koech as the two plaintiffs. The defendants are twenty in number. The case of the plaintiffs is that the 1st plaintiff is the registered owner of the land parcel Kericho/Chemoiben/20 within Litein town. The 2nd plaintiff on his part has pleaded that he is a duly appointed legal administrator of the estate of Kipkoech Nyige (deceased), who is said to be the proprietor of the land parcel Kericho/Chemoiben/24. It will be noted at this stage, that this land, is the same land claimed in the suit Kericho HCCC No. 9 of 2011. The two properties are said to adjoin and share a common boundary. It is pleaded that in July 2012, the defendants invaded the said land and constructed structures and that despite being asked to vacate, the defendants have failed to do so. In the case, the plaintiffs want the defendants evicted from the two land parcels, a permanent injunction and mesne profits.

The defendants filed a joint statement of defence through M/s Bett & Company Advocates, the same advocates appearing for the defendants in the case Kericho HCCC No. 9 of 2012. In the defence, it was denied that the plaintiffs are registered owners of the land parcels Kericho/Chemagel/20 and 24. They denied invading the land and pleaded that they are tenants of the registered proprietor. It is not pleaded in the defence, but I have seen in one of the affidavits filed on behalf of the defendants, that they are in occupation of land which they consider to be LR No. 8869/1 and not the land parcels Kericho/Chemagel/20 and 24. They have stated that they are tenants of the estate of Joshua Buses (deceased). There is also an affidavit (filed in respect of an interlocutory application) of Ezekiel Kibet Chepkwony, one of the administrators of the late Joshua Buses where he has averred that he will at a later time seek joinder of the estate of the late Joshua Buses, to the proceedings, as the suit land is owned by the said estate. While dealing with an application for injunction filed in this suit, Waitthaka L. J, through a ruling dated 27th November 2013, directed the plaintiffs to amend their pleadings to include the administrators of the estate of the late Joshua Buses and the registered owners of the land parcel Kericho/Chemoiben/24 and further directed that this matter be mentioned alongside the suit Kericho HCCC No. 9 of 2011. I have not seen any application filed by the plaintiff to amend pleadings as directed. Probably that is the reason that the defendants have now filed this application seeking inclusion of the four named persons as defendants and for consolidation of the two suits.

In their replying affidavit, the plaintiffs herein have deposed that they are strangers to the claim in Kericho HCCC No. 9 of 2011. They have further averred that this claim is totally distinct from the claim in Kericho HCCC No. 9 of 2011. It is their position that the consolidation will deviate the real issues and delay hearing of this matter.

I allowed Mr. Koko, for the plaintiff in the suit Kericho HCCC No. 9 of 2011, to give an input to this application. His client filed a replying affidavit objecting to the consolidation of the two suits. It is averred that the two claims are different and that the claim herein is one that is the subject of proceedings at the Business Premises Rent Tribunal. It is their position that the applicants want to confuse issues.

I took the submissions of Mr. Koech for the applicant, Mr. Miruka for the respondents and Mr. Koko. I have taken note of these submissions.

My view of the matter is as follows. It will be observed that there are two limbs to the subject application. The first limb seeks the joinder of four persons as defendants in this suit. The second limb seeks the consolidation of this suit with Kericho HCCC No. 9 of 2011.

The plaintiff's claim in the case Kericho HCCC No. 9 of 2011 is over the land parcel Kericho/Chemagel/24. As noted earlier, that claimant contends that the said land is owned by four deceased persons. One of the plaintiffs in this suit (2nd plaintiff) is administrator of the estate of one of these four deceased persons (Kipkoech Nyige) and has filed this suit claiming an interest in the same land parcel Kericho/Chemagel/24. To me, it is the same claim pursued by the plaintiff in the suit Kericho HCCC No. 9 of 2011, only that in this case, the 2nd plaintiff has sued the occupants of the said premises, who happen to be tenants of the defendants in the case Kericho HCCC NO. 9 of 2011. It is unfortunate that counsel for the plaintiffs in this case, did not follow the directions of Waithaka LJ, and did not proceed to amend the plaint, to have the persons claiming ownership of the suit parcel of land enjoined as defendants. Instead, there is insistence on pursuing the occupants, who are merely assigns/tenants of the defendants in the suit Kericho HCCC No. 9 of 2011.

In my view, the claim of the 2nd plaintiff in this case and the claim of the plaintiff in Kericho HCCC No. 9 of 2011 is the same. The claim of the 2nd plaintiff herein can only be fully addressed by the inclusion of the 4 defendants in Kericho HCCC No. 9 of 2011. That is in fact what Waithaka LJ, directed the plaintiffs to do. The first limb of this application, that which seeks the joinder of the 4 persons as defendants in this suit, is nothing more than giving effect to the order of Waithaka L J. I see no reason why I should refuse the joinder of the 4 named persons as defendants. They are in fact the rightful defendants in this suit.

On the issue of consolidation, as I have stated above, the claim of the 2nd plaintiff is the same as the claim of the plaintiff in the suit Kericho HCCC No. 9 of 2011, only that in this suit, the 2nd plaintiff claims for the benefit of a different estate. Those two claims need to be consolidated and heard together, or else, there stands the risk of a conflict of decisions. What if in one case, it is held that the land parcel Kericho/Chemagel/24 belongs to the 4 deceased persons and in the other case, it is held that it does not? That will cause embarrassment, and so as to avoid such a scenario, it is best that these two claims be consolidated.

I have not forgotten that the claim herein also included a claimant (1st plaintiff) seeking ownership of the land parcel Kericho/Chemagel/20. However, from the pleadings, it seems to me that there is confusion as to whether this land parcel Kericho/Chemagel/20, and even Kericho/Chemagel/24, exist as claimed, whether they are distinct parcels of land, or whether they are part and parcel of the land described as LR No. 8839/61. Again, what if in one case it is held that the suit land is part and parcel of LR No. 8839/61 and in another it is held that it is not? I need not repeat that this will again bring forth a conflict. It is best that the issue of the existence of the land parcels Kericho/Chemagel/20 and 24 be heard together, since it is claimed that both are part of the land parcel LR No. 8839/61.

From the above reasons, I think the application herein is merited. I now make the following orders :-

- 1. That Lydia Buses, Joseph Chepkwony, Reuben Chepkony and Joel Chepkwony, be enjoined to these proceedings as defendants, and whether or not the plaintiffs amend their plaint, the suit herein do proceed as if the claim herein is also a claim against these four persons, and the four persons be at liberty to file defence and/or counterclaim to this suit.*
- 2. That this suit be consolidated with the suit Kericho HCCC No. 9 of 2011 for purposes of having a consolidated hearing and for writing a consolidated judgment.*
- 3. The costs of this application shall be costs in the cause.*

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 27TH DAY OF MARCH, 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**In the presence of**

Mr. Charles Koech for defendants/applicants

Mr. Miruka for Plaintiffs/Respondents

Ms. Maritim h/b for Mr. Koko for Plaintiffs in Kericho HCCC No.9 of 2011

Court assistant- Ruth