



REPUBLIC OF KENYA



KENYA LAW
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**Gunyama v Musambayi (Environment & Land Case 364 of 2014)
[2022] KEELC 15652 (KLR) (22 March 2022) (Ruling)**

Neutral citation: [2022] KEELC 15652 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 364 OF 2014**

DO OHUNGO, J

MARCH 22, 2022

BETWEEN

GUNYAMA ANDREW GUNYAMA PLAINTIFF

AND

MICHAEL LULUMBI MUSAMBAYI DEFENDANT

RULING

1. By notice of motion dated September 15, 2021, the plaintiff seeks the following orders:
 - a. This honourable court be pleased to order for the reconstruction of the court file for this suit.
 - b. An order for the consolidation of the newly reconstructed file with Kakamega Elc No 112 of 2019 (OS) be issued.
 - c. Costs of this application be in the cause.
2. The application is supported by an affidavit sworn by Daniel Akwala, advocate. He deposed that he is in conduct of the matter on behalf of the plaintiff/applicant and that the file went missing soon after mention on July 9, 2018. That all efforts to locate the file have been unfruitful. He annexed copies of pleadings and orders made in the matter and added that the parties, issues and suit property in this matter LR No Isukha/ Shirere 2725 and those in Kakamega Elc No 112 of 2019 (OS) are similar.
3. The defendant responded through a replying affidavit in which he deposed that Kakamega Elc case No 364 of 2014 emanated from Kakamega HCC No 84 of 2008 wherein the applicant herein obtained the orders of eviction against him from LR No Isukha/ Shirere/2725. He added that he is pursuing his father's share of the suit property in this case and that the consolidation is aimed at silencing his grievances. He therefore urged the court to hear and determine the cases separately.
4. The application was canvassed through written submissions. The applicant essentially reiterated what is stated in the supporting affidavit and urged the court to allow the application. The defendant cited



the case of *Law Society of Kenya v Centre for Human Rights & Democracy & 12 others* [2014] eKLR and submitted that there are no common issues between the two matters. Further, that the application has not met the criteria for consolidation.

5. I have considered the application, the affidavits and the submissions. The allegations that the original file in Kakamega ELCC No 364 of 2014 is missing and that it has not been traced have remained unchallenged. I enquired from Mr Joseph Karakacha who is in charge of the Kakamega Elc registry and he has confirmed to me that the file is indeed missing and that all efforts to retrieve it have been unsuccessful. I will therefore allow that aspect of the application.
6. Consolidation can be ordered whenever there are two or more suits pending in the same court where common question(s) of law or fact arise, or where reliefs claimed are in respect of the same transaction or where it is desirable to make an order for consolidation. The whole idea is to facilitate efficient, expeditious, fair and impartial disposal of disputes. See *Law Society of Kenya v Center for Human Rights and Democracy and 12 others* [2014] eKLR and Mombasa in HCC No 992 of 1994 *Nyati Security Guards and Services v Municipal Council of Mombasa* (unreported).
7. I have perused the plaint in Kakamega ELCC No 364 of 2014 and the originating summons in Kakamega Elc No 112 of 2019 (OS) and the record in both matters. I note that the parties in the former suit are also parties in the latter suit. Additionally, there are 3 other parties in Kakamega Elc No 112 of 2019 (OS) but who don't appear to have been actively participating in the proceedings lately. The plaintiffs in Kakamega Elc No 112 of 2019 (OS) claim entitlement to LR No Isukha/ Shirere/2725 as well as two other parcels by adverse possession while ownership of LR No Isukha/ Shirere/2725 is equally in issue in Kakamega ELCC No 364 of 2014. I am persuaded that common questions of law and fact arise in the matters and that it is desirable to make an order for consolidation.
8. In view of the foregoing discourse, I find merit in notice of motion dated September 15, 2021. I therefore make the following orders:
 - a. The court file in Kakamega ELCC No 364 of 2014 is hereby reconstructed based on the documents annexed to the affidavit in support of notice of motion dated September 15, 2021.
 - b. Kakamega ELCC No 364 of 2014 and Kakamega Elc No 112 of 2019 (OS) are hereby consolidated.
 - c. The lead file shall be Kakamega ELCC No 364 of 2014.
 - d. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF MARCH 2022.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

Mr Akwala for the plaintiff

No appearance for the defendant

Court Assistant: E. Juma

