



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC JR CASE NO. 36 OF 2018

STANLEY KAPTINGEI.....PLAINTIFF

VERSUS

SAMUEL KIBIWOTT KERICH.....DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 23rd July, 2021 in which the Defendant/Applicant seeks to have an order directing that this suit be consolidated with ELC No. 11 of 2018. The Applicant contends that the present suit and ELC No. 11 of 2018 relate to the same property and that it is desirable that the two suits be consolidated so as to save judicial time and to avoid a situation where there may be different decisions reached in the two cases.

2. The Applicant contends that LR No. Kapsaret/Kapsaret Block 1 (Marama) II which is registered in the name of the Plaintiff/Respondent was subdivided and it gave rise to Kapsaret/Kapsaret Block 3 (Marama) 37, 38, 39 and 40 and that Kapsaret/Kapsaret Blocks (Marama) 39 was purchased by Christopher Melly who later on sold the same to Abel Maritim on 3rd March 2010 who finally sold it to the Applicant on 16th January, 2017.

3. The Applicant's application is opposed by the Respondent based on two replying affidavits sworn on 30th August, 2021 and 19th November 2021. The Respondent contends that the suit properties in the two cases are different and that the Defendants are also different and therefore consolidation cannot be ordered. The Respondent also argues that this suit is pending defence hearing and to consolidate the same with ELC No 11 of 2018 will cause confusion and delay the conclusion of the cases.

4. The Respondent contends that this application has been brought with the sole purpose of delaying the conclusion of this case which has remained pending since 2018 due to the inaction on the part of the Applicant. The Respondent further argues that the Applicant has not reached the threshold for grant of an order for consolidation.

5. The parties were directed to file written submissions. The Applicant filed his submissions dated 18th March, 2022. The Respondent filed his submissions dated 20th November, 2021. I have considered the Applicant's applications as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties herein. The only issue for determination is whether the Applicant has demonstrated that there are grounds for ordering this suit to be consolidated with ELC No. 11 of 2018.

6. The principles which should be considered before consolidation is ordered have been set out in a number of cases. In the case of **Joseph Okoyo -VS- Edwin Dickson Wasuna (2014) eKLR**, the Court cited with approval the case of Mombasa HCCC No 992 of 1994 **Nyati Security Guards and Services -Vs- Municipal Council of Mombasa** where it was states as follows:-

“the situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same Court where:-

a) Some common question of law or fact arises in both or all of them;

b) The rights or relief claimed in them are in respect of; or arise out of the same transaction or series of transactions, or

c) For some other reason it is desirable to make an order for consolidating them.

7. In the instant case, the Applicant contends that the two cases relate to the same property. A look at the application by the Applicant show that the Respondent is the registered owner of LR No Kapsaret/Kapsaret Block 1 (Marama) II. The suit in respect of ELC No 11 of 2018 is

LR No Kapsaret/Kapsaret Block 3 (Marama) 39. These are two different properties.

8. It is alleged that LR No. Kapsaret/Kapsaret Block 1 (Marama II is the one which gave rise to Kapsaret Block 3 (Marama) 39. This may be so but there is no evidence to show that the Applicant herein sold the said Kapsaret/Kapsaret Block 3 (Marama) 39 to Christopher Melly for this Court to appreciate that it arises from one transaction. Without this evidence, consolidation cannot be ordered. Besides this, the Plaintiff in ELC 11 of 2018 has sold his interest to the Applicant herein. The relief which was being sought by Abel Maritim is a different one from the relief being sought here. Consolidation cannot therefore be ordered.

9. In the case of Law Society of Kenya -vs- Centre for Human Rights and Democracy & 12 others (2014) eKLR, two Supreme Court Judges stated as follows:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of dispute and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it nor was intended to occasion any disadvantage towards the party that opposes it.”

10. It is clear that the Applicant herein is seeking to have this suit consolidated for his own benefit. The Plaintiff in ELC 11 of 2018 will not get the relief he is claiming as he has already sold his interest to the Applicant herein. Any order for consolidation will therefore add no value in either saving court’s time or for determination of questions which are not common. Consolidation will only cause disadvantage to the Respondent.

I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered at Eldoret on this 20th day of April, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Ms. Kesei for Defendant/Applicant

Court Assistant -Albert

E. OBAGA

JUDGE

20TH APRIL, 2022