



**Morop Distributors (K) Limited v Chebon (Environment & Land
Case 133 of 2020) [2022] KEELC 2968 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2968 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 133 OF 2020**

**LN MBUGUA, J
MAY 26, 2022**

BETWEEN

MOROP DISTRIBUTORS (K) LIMITED APPLICANT

AND

JOB KIPNANDI CHEBON RESPONDENT

RULING

1. Coming up for determination is a notice of motion application dated June 21, 2021 by the plaintiff where the following orders have been sought;
 - i. Spent.
 - ii. That this suit be consolidated with Milimani ELC No 178 of 2009 – *Morop Distributors (K) Limited, John Gathama Maingi, Regent Automobiles Valuers and Assessors Limited vs Job Kipnandi Chebon, NK Brothers Limited, Attorney General, Step Ahead Limited*, and be heard together and the suit no 178 of 2009 be the lead file.
 - iii. That the costs of this application be in the cause.
2. This application supported by the sworn affidavit of the secretary of the plaintiff Dickson Kipkemboi Boiywo dated June 21, 2021 is premised on the grounds that both suits arise from the same transaction, that the subject matter is the same parcel of land LR No 209/13548 situated in Upperhill area, and that the suits raise similar questions of law, facts and reliefs sought. The applicant avers that consolidation would not prejudice any party but would aid in achieving the overriding objective of expeditious disposal of suits and would similarly save on judicial and parties' time and costs.
3. In their submissions dated April 13, 2022, the applicant reiterates the averments set out in their application adding that in ELC 178/2009, the plaintiff sued the City Council of Nairobi as the



latter had issued an enforcement notice issued to the plaintiff on allegations of development of illegal structures. That thereafter, the 2nd, 3rd, 4th and 5th defendants were enjoined in ELC 178/2009 before the suit proceeded for hearing. It was further submitted that the 1st defendant in ELC 178/2009 (the City Council of Nairobi) had left the suit hence the issue remaining for determination was on ownership. Therefore consolidation of the suits would ensure that the applicant addressed the issues in both suits by avoiding multiplicity of suits.

4. The defendant/respondent in his replying affidavit dated September 1, 2021 while agreeing that this suit and ELC No 178 of 2009 relate to same subject matter where same issues have been raised has contended that the existence of the two suits amounts to an abuse of the court process. Thus consolidation of the suits will not add value hence the current suit should be struck out.
5. The respondent/defendant in his submissions dated December 8, 2021 is in agreement that the facts, issues, prayers and reliefs sought in the current suit are similar to those in ELC No 178 of 2009, and that both the applicant and respondent are in both suits. He however avers that this suit offended the doctrine of sub judice as stipulated under section 6 of the Civil Procedure Act, was an abuse of the court process and should be struck out. It was submitted that the effect of the doctrine was to avoid duplicity of suits and possibility of contradictory verdicts by courts. It was submitted that the defendant stands to be prejudiced by being required to defend the same suit twice, that is if this suit is not struck out.
6. In support of his case, the defendant made Reference to the case of Kenya National Commission on Human Rights vs Attorney General, Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) and Law Society of Kenya v The Centre for Human Rights and Democracy.

Analysis and Determination

7. The issue for determination is: Whether the suit ELC 133 of 2020 should be consolidated with ELC 178 of 2009 or whether the same should be struck out.
8. The parties agree that the two files in question arise from the same cause of action which is land LR No 209/13548 Upper Hill area and that at the core of the dispute is the issue of ownership.
9. On sub judice, the Supreme Court had this to say in the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR:

“(67) ...The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. this means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit.”
10. I find that in ELC 133 of 2020, the suit was filed on November 6, 1998 as Nairobi HCCC 2458 of 1998 whereby the plaintiff claims that it is the beneficial owner of the suit property having been allotted the same in 1996 and issued a deed plan on February 12, 1998. However the property's title deed was never issued despite several attempts at following up on the same. In September 1998 the plaintiff on following up with the commissioner of lands on whether the title was ready for collection discovered that the defendant had fraudulently obtained title to the property in his name. As such, the plaintiff sought for declaration that the transfer of the suit property to the defendant was unlawful, null



and void; nullification of any action concerning the suit property by the defendant; and a permanent injunction restraining the defendant from interfering with the plaintiff's possession and enjoyment of the suit property.

11. This court has perused the court file ELC 178 of 2009 and takes note that the initial plaint was filed on April 22, 2009 by Morop distributors against the City Council of Nairobi where the plaintiff was challenging the issuance of an enforcement notice. *Vide* an application dated July 14, 2009 by the defendant herein (Job Kipnandi) and NK Brothers (the 3rd defendant in ELC 178 of 2009), the applicants sought to be joined in the suit ELC 178 of 2009 on grounds that Job Kipnandi being the legal owner of the suit property had sold the suit land to NK Brothers and affirmed that there was an illegal structure on the suit property that ought to be demolished. That application was allowed *vide* the ruling dated April 7, 2010. As the proceedings progressed, the suit evolved from one for enforcement notice to an issue of ownership of the suit land. In that regard, the plaintiff entered into a consent with the 1st defendant (the city council) to have the case against the city council withdrawn with no orders as to costs on October 22, 2019. The plaint in ELC 178 of 2009 has been amended severally.
12. From the court records it is evident that when ELC 178 of 2009 was filed, this suit, (formerly HCCC 2458 of 1998) was ongoing at the High Court. The suit HCCC 2458 of 1998 was subsequently dismissed on June 30, 2015 for want of prosecution but so was the suit 178 of 2009 (dismissed on April 13, 2017). Both suits were however revived. I find the suit ELC 133 of 2020, having been filed way back on November 6, 1998, and having been active as at the time case no 178 of 2009 was filed cannot be termed as sub judice.
13. On the issue of consolidation of suits, the Supreme Court of *Kenya in Omoke v Kenyatta & 83 others* (Petition 11 (E015) of 2021) [2021] KESC 27 (KLR) (Civ) (9 November 2021) (Ruling) held:

When considering an application for consolidation, this court will bear in mind the guiding principles it pronounced in the case of the *Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others*, SC Petition No. 14 of 2013, [2014] eKLR, that:

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes 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 it intended to occasion any disadvantage towards the party that opposes it.” (Emphasis own)

14. Further in the *Law Society of Kenya* case (supra) the Supreme Court went on to state:

“... In the matter at hand, this court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.” (Emphasis own)
15. In *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR, the court stated that;

“Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process.”
16. This is a case whereby both parties agree that the subject matter is the same, and the hallmark of the dispute is the question of ownership of the suit land. Both parties in 133 of 2020 are also parties in



178 of 2009. The question I pose is; What is the essence of consolidation? Nothing, save to convolute the dispute further. I note that when the plaintiff was filing the suit 178 of 2009, he was advancing a claim that he was allotted the suit land in 1996 (see paragraph 5 of the said plaint). This is the same claim he is advancing in the suit 133 of 2020. And even though the plaintiff had brought the suit 178 of 2009 against the City Council of Nairobi, it is clear that the said City Council of Nairobi is no longer a party. Further, Job Kipnandi came into the picture in 178 of 2009 years ago *vide* the ruling of April 7, 2010. It is quite apparent that the issues arising in the current suit can well be articulated in the suit 178 of 2009. In such a situation, I find that it is not tenable to sustain the current suit even in a consolidated platform.

17. The final disposal order is that this suit 133 of 2020 is hereby struck out. The costs thereof shall abide the outcome of the suit 178 of 2009.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF MAY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

J. Chesaro for the Plaintiff/Applicant

M/s Chetalum holding brief for Mr. Mutai for the defendant

Court Assistant: Eddel

