



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gathere v Kaburi & 3 others (Cause 664 of 2017)  
[2022] KEELC 3470 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3470 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
CAUSE 664 OF 2017  
MN GICHERU, J  
MAY 19, 2022**

**BETWEEN**

**DR. SAMUEL KAGIMA GATHERE ..... PLAINTIFF**

**AND**

**KENEDDY MONCHERE KABURI ..... 1<sup>ST</sup> DEFENDANT**

**ALLOYS NYAMWARO OSORO ..... 2<sup>ND</sup> DEFENDANT**

**G.H. MEENYE T/A KIRIMA ADVOCATES ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the Notice of Motion dated October 14, 2019. The said motion which is by the defendants is brought under section 3 and 3A of the [Civil Procedure Act](#), Order 50 of Rule 1 [Civil Procedure Rules](#) and all enabling provisions of the law.
2. It seeks that this suit be consolidated with two other cases namely, ELC No 337 of 2017(C-Eleven Ltd v Francis Mureithi) and the three suits be heard and disposed off together.
3. The application is supported by four grounds and an affidavit sworn by the first defendant dated October 14, 2019 whose contents can be summarized as follows;
4. The first and second defendants purchased the suit land which is Kajiado/Kitengela/22531 from one Ibrahim Lei Eleshoda. They then sold it to the Plaintiff who was unable to get vacant possession because one Francis Muriithi claims the suit land.
5. This third party is also a party in the other two suits sought to be consolidated with this one.
6. Given the above facts, it is only fair that all the suits be heard together since the land is the same one being claimed by more than one party.



- 7 The application is opposed by the said Francis Muriithi who has filed eight grounds of opposition which can be summarized as follows;
- 8 He is not a party in this case and he owns land parcel number Kajiado/Ololoitokikosh/Kitengela/122 of which he became registered in the year 1981 and which he occupies to date. The said third party has no interest whatsoever in the suit property in this case and in the other cases and therefore the current application is only meant to scuttle the expeditious hearing and disposal of this suit.
- 9 Although Mr. Mukuna said on March 17, 2022, that the plaintiff had filed a replying affidavit in which he opposes the current application, a perusal of the record does not reveal such an affidavit. I have however seen plaintiffs written submissions dated 22/3/2022 opposing the application.
- 10 Mr. Meenye for the first and second defendants has also filed written submissions dated 30/3/2020.
- 11 I have carefully considered the application in its entirety including the affidavits, the grounds in support, the grounds in opposition as well as the submissions filed by counsel. I find that it has no merit and it is dismissed for the following reasons;
- 12 Firstly, the exact nexus between this case and other two cases has not been demonstrated. Even if it had been so demonstrated, we do not know the stage the two cases have reached.
- 13 Secondly, this case has a hearing date. Hearing dates are not available this year. If there is consolidation, it may result in delay. This is an old matter and should be concluded on the date scheduled.
- 14 Finally, in this suit, one of the prayers is a refund of the purchase price. This relief is available from the defendants without involvement of the third party with whom the plaintiff has no privity of contract.
- 15 For the above stated reasons, I direct that this suit proceeds as scheduled. No order as to costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19<sup>TH</sup> DAY OF MAY, 2022.**

**M.N. GICHERU**

**JUDGE**

