



**Kibor v Board of Governors -Technical Training Institute, Kipkabus & 3 others  
(Environment & Land Case 119 of 2014) [2022] KEELC 74 (KLR) (18 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 74 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 119 OF 2014**

**SM KIBUNJA, J  
MAY 18, 2022**

**BETWEEN**

**JACKSON KIPROTICH KIBOR ..... PLAINTIFF**

**AND**

**BOARD OF GOVERNORS -TECHNICAL TRAINING INSTITUTE,  
KIPKABUS ..... 1<sup>ST</sup> DEFENDANT**

**BOARD OF TRUSTEES - SEVENTH DAY ADVENTIST CHURCH- ELDORET  
REGION (EAST AFRICA) LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**UASIN GISHU DISTRICT/COUNTY LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff filed the notice of motion dated the 21<sup>st</sup> May, 2018 that was brought under the provisions of “section 1A, 1B, 3, 3A of the *Civil Procedure Act* and Order 40 Rule 1, 2 and (3) of the *Civil Procedure Rules*” and “Article 159 of the *Constitution*” seeking for orders that;
  - a. “THAT there be a stay of proceedings in Eldoret Environment and Land Court cases numbers: Eldoret E&L No. 235 of 1998, Eldoret E&L No.95 of 1998, Eldoret E&L No.480 of 2013, Eldoret E&L No.94 of 2014, Eldoret E&L No. 93 of 2014, Eldoret E&L No. 76 of 2014, Eldoret E&L No. 137 of 2014, Eldoret E&L No. 138 of 2014 and Eldoret E&L No. 91 of 2014.
  - b. THAT pursuant to granting of prayer (a) Honourable Court be pleased to consolidate this matters with; Eldoret E&L No. 235 of 1998, Eldoret E&L No.95 of 1998, Eldoret E&L No.480 of 2013, Eldoret E&L No.94 of 2014, Eldoret E&L No. 93 of 2014, Eldoret E&L No. 76 of 2014, Eldoret E&L No. 137 of 2014, Eldoret E&L No. 138 of 2014 and Eldoret E&L No. 91 of 2014.



c. THAT costs of this application be in the cause.”

The application is based on the twelve (12) grounds on its face, and supported by the affidavit sworn by Jackson Kiprotich Kibor, the plaintiff, on the 21<sup>st</sup> May, 2018.

2. In response, Susan Sambai Choge, the plaintiff in Eldoret ELC No. 76 of 2014, filed her replying affidavit sworn on the 23<sup>rd</sup> November, 2018 and a further affidavit sworn on the 30<sup>th</sup> November, 2018 in opposition to the application.
3. That following directions issued on filing and exchanging replies and submissions, only the learned counsel for the plaintiff and 1<sup>st</sup> defendant filed their submissions dated the 1<sup>st</sup> June, 2021 and 28<sup>th</sup> September, 2021 respectively.
4. The Plaintiff submitted that it is in the interest of justice, fairness, and equity that this Court grants the consolidation order sought. The plaintiff submitted that the underlying principles to be considered by the court in consolidation of suits are as set out in the Supreme Court case of *Prem Lala Nabata & another v Chandi Prasad Sikaria*, [2007] 2, where the Court held as follows:

“it cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or cause pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason, it is desirable to make an order consolidating the suits.”

The learned counsel also referred the court to Petition No. 14 of 2013 *Law Society of Kenya v Center for Human Rights and Democracy and 12 others* [2014] eKLR, where the Court held thus:

“the essence of consolidation of suits 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.”

The plaintiff also cited the case of *Selecta Kenya Gmbh & Co. Kg v Chase Bank Kenya Limited & 2 others* [2018] eKLR in which the Court observed that the following issues must be determined in an application for consolidation:

- i. Whether the same involves common questions of law or fact;
- ii. Whether the reliefs claimed arise out of the same transaction;
- iii. Whether it is convenient and efficient to pursue the same in a consolidated suit in fulfilling the overriding objections(sic);
- iv. Whether consolidation will cause any party any undue advantage/prejudice.

And submitted that considering the judicial time, effort and costs that would be employed in conducting the various suits separately, it would be more convenient to consolidate the actions



and hear them as one. That in doing so, the court would be dispensing justice, fairness and equity to the plaintiff and parties in the other suits.

5. The 1<sup>st</sup> Defendant submitted that the Plaintiff's application is incompetent and frivolous as the Plaintiff has failed to annex copies of the pleadings and or the particulars of the suits that he seeks to consolidate with the suit herein. In the absence of the pleadings and or sufficient particulars of those suits sought to be consolidated with this matter, the court is not able to make a determination on the application for consolidation. The counsel referred to the case of *Andrew Ireri Njeru & 2 others v Attorney General & 3 others* [2018] eKLR where the Court held as follows:

“In the absence of particulars of the other suits sought to be consolidated with the instant suit, the court is unable to establish commonality of either matters of fact or law. The court is also unable to establish if the reliefs claimed in the various suits arise out of the same transaction or series of transactions. The court is equally unable to determine whether or not it would be desirable for any other reason to consolidate the various suits.

In the circumstances, the court finds that the 1<sup>st</sup> Plaintiff has not placed sufficient material before this court to enable the court make an order for consolidation.”

The 1<sup>st</sup> Defendant therefore submitted that the Plaintiff's application should be dismissed as it has not met the necessary criteria for the consolidation of suits.

6. The following are the issues for the court's determinations;
- a. Whether the plaintiff has made a reasonable case for stay of proceedings in the suits listed in prayer (b).
  - b. Whether the plaintiff has established the existences of reasonable commonalities/similarities on matters of law and facts between this matter and the other suits sought to be consolidated with it.
  - c. Who pays the costs of the application.
7. The court has carefully considered the grounds on the application, affidavit evidence, submissions filed, superior courts decisions cited thereon and come to the following determinations;
- a. That in determining whether to consolidate two or more suits or matters before them, the courts are required to establish the following before considering to issue the order:
    - i. The claims have the same subject matter;
    - ii. The claims raise similar issues of law;
    - iii. The claims arose from the same set of facts or series of facts.

That the court in the case of *Selecta Kenya Gmbh & Co. Kg v Chase Bank Kenya Limited & 2 others* [2018] eKLR, cited with approval the decision in Kerugoya HC ELC 258 of 2013 *Benson G. Mutabi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR, which cited with approval a rendition of the Indian case of *Brij Kishore v Bir Singh & others Harana* L.R. 5922 of 2013, wherein Justice Paramjeet Singh quoted the following from the Indian Supreme Court case of *Prem Lala Nabata & Another v Chandi Prasad Sikaria*, [2007] 2, Supreme Court Cases 551 at paragraph 18 and stated as follows;-

“it cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by



order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or cause pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason, it is desirable to make an order consolidating the suits.”

That though the Plaintiff has made reference to the existence of other suits that he desires to be consolidated with the instant one, that is, Eldoret E&L No. 235 of 1998, Eldoret E&L No.95 of 1998, Eldoret E&L No.480 of 2013, Eldoret E&L No.94 of 2014, Eldoret E&L No. 93 of 2014, Eldoret E&L No. 76 of 2014, Eldoret E&L No. 137 of 2014, Eldoret E&L No. 138 of 2014 and Eldoret E&L No. 91 of 2014 (hereinafter the Claims) pending reportedly before this court, he has unfortunately failed to attach copies of the main pleadings in the aforementioned claims to enable the court peruse, so as to establish which of those claims raise some common question of law or facts with the instant matter.

- b. That the deponent of the replying affidavit who described herself as the plaintiff in Eldoret ELC No. 76 of 2014, which is one of the suits the plaintiff herein sought to be consolidated with the instant one, has disputed the existences of any similarities in the suits listed in the application, or any nexus in the subject matters therein. That had the pleadings been availed, the court would have been in a better position to make an independent determination on the commonalities, or lack of it, between the listed suits. From the details provided in the application herein, the court is unable to ascertain whether the rights or reliefs claimed in those other suits are in respect of, or arising from the land parcel number Plateau/kipkabus Block 4 (Lelmokwo), which the Plaintiff in this instant suit has a claim over.
- c. That in the case of *T.S.S Transporters Ltd & 2 others v Pamela Akinyi Lidambiza* [2018] eKLR the Court cited with approval the decision in *Hilton Walter Nabongo Osinya & another v Savings & Loan (K) Limited & another* Nairobi HCCC No. 274 of 1998 in which Ringera, J (as he then was) held that:

“The whole point of consolidating suits is to enable common questions of law and facts to be tried together in the same forum with a view to saving judicial time and avoiding the possibility of conflicting decisions on the same issues by different courts. A consolidated trial of two actions results in one common decree and there is no question of abandoning any of the suits.”

That from the common thread running through the above superior courts’ decisions, which position I am in agreement with, I find that a party that intends to successfully prosecute an application for consolidation must furnish the court, at the very least, with copies of the main pleadings of the suits or matters in issue, to enable the court make a determination whether the claims raises common questions of law or facts, or whether the claims emanated from the same action or series of actions. That further, where some of the parties to the claims that are sought to be consolidated are not parties to the suit in which the application for consolidation has been filed, the applicant must ensure that all the parties in the other suits are duly served with the application, and hearing notices issued thereof, to enable them to file their responses, and participate in its prosecution. The deponent of the replying and further affidavits filed herein,



though not a party in the instant suit was therefore in order, as she is a party in one of the other suits the plaintiff's application sought to be consolidated with this matter.

- d. That having concluded that the application for consolidation has no merit, then the prayer for stay of proceedings in the listed suits has no basis and must fail.
  - e. That the plaintiff having failed in the application is in terms of section 27 of the Civil Procedure Act chapter 21 of Laws of Kenya obligated to pay the costs of those parties that filed responses and participated in the hearing of the application.
8. The court therefore finds that the Plaintiff's application is without merit and is hereby dismissed with costs to the 1<sup>st</sup> Defendant herein and plaintiff in Eldoret ELC No. 76 of 2014.

Orders accordingly.

**DATED AND VIRTUALLY DELIVERED THIS 18<sup>th</sup> DAY OF MAY, 2022**

**S.M.KIBUNJA, J.**

**ENVIRONMENT & LAND COURT - ELDORET.**

**IN THE VIRTUAL PRESENCE OF;**

PLAINTIFF: Absent

DEFENDANTS: Absent

COUNSEL: Mr. Maiga for Mwangi for 1<sup>th</sup> Defendant

Mr. Odongo for 3<sup>rd</sup> and 4<sup>th</sup> Defendants

COURT ASSISTANT: ONIALA

**S.M.KIBUNJA, J.**

**ENVIRONMENT & LAND COURT - ELDORET.**

