



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO.2291 OF 2007

JAMES MWANGI MAINAPLAINTIFFS

VERSUS

PENINAH NYAMBURA MAINA.....1ST DEFENDANTS

PETSUN LIMITED 2ND DEFENDANTS

RULING

This is an application by way of Chamber Summons under Section 3A of the Civil Procedure Act and Order XI Rules 1 and 2 of the Civil Procedure Rules for the substantive order that this court do order that HCCC No. 454 of 2009 be consolidated with and be heard together with this suit. The reasons for the order sought are set out on the face of the application and also supported by an affidavit sworn by one Didacus Shymwana said to be a director of the second defendant.

The plaintiff in HCCC No. 454 of 2009 does not oppose this application. The plaintiff in this current suit however opposes the application and both counsel have filed submissions and cited some authorities which I have considered.

The Civil Procedure Rules have been amended and the new rules are now in operation. In the old rules either party had the power to apply for consolidation and the court also had the same power provided that the ends of justice will be met by the said order. In the new rules however under Order 11 rule 3(1) (h), the court has been given full power to consider the consolidation of suits. I have gone through the pleadings of the respective parties herein and I believe that the principal issue in both cases is that of ownership of the suit premises. If that be the case, I see no prejudice that may be occasioned to any of the parties in these two suits if the order is granted. There are several advantages of consolidating these cases in that, they relate to similar issues and that a determination of the two at the same time is going to save both time and expenses for the benefit of the parties herein.

There is also some nexus that exists in the pleadings and this will become evident during the main trial. I can only observe that the subject matter is the same and the issues are intertwined. Accordingly the application hereby succeeds and the costs shall be in cause.

Orders accordingly.

Dated, signed and delivered at Nairobi this 31st day of January, 2011.

A. MBOGHOLI MSAGHA

JUDGE