



**Nato v Lomong'in (Environment & Land Case E006 of 2022)
[2022] KEELC 12676 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12676 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E006 OF 2022
EO OBAGA, J
SEPTEMBER 22, 2022**

BETWEEN

SHADRACK NGIMERO NATO APPLICANT

AND

PETER NATO LOMONG'IN RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated March 17, 2022 in which the applicant seeks the following orders: -
 1. This honourable court be pleased to make an order for transfer of Eldoret CMCC E&L cause No 190 of 2019 Peter Nato Lomong'in v Shadrack Ngimero Nato & Rebecca Akuor to this court for purposes of consolidating the same with the present suit for hearing and final determination.
 2. Upon grant of prayer (1) the instant case be taken as the lead file for purposes of further proceedings.
 3. Costs be provided for.
2. The applicant contends that the suit before the lower court and the present suit involve the same subject matter to wit Uasin Gishu/Kimumu settlement scheme/4571; that there are common issues of law and fact; that the issues which are likely to arise from the two cases are substantially the same and that there is a likelihood of duplication of evidence if the two cases are left to run separately.
3. The applicant further contends that consolidation is appropriate in the circumstances as it will facilitate the efficient and expeditious disposal of the dispute between the parties and that there will be no prejudice occasioned to the respondent if the order of consolidation is made.



4. The applicant's application was opposed by the respondent based on a replying affidavit sworn on April 19, 2022. The respondent contends that the present application is an abuse of the process of the court as the applicant has filed a counter-claim in Eldoret CMC ELC No 190 of 2019 which raises the same facts and is based on the same claim.
5. The respondent further contends that the filing of the present case offends the provisions of section 6 of the *Civil Procedure Act*. The respondent further argues that the respondent's mother who is an interested party in Eldoret CMC ELC 190 of 2019 is neither a party to the originating summons nor a party to this motion.
6. The respondent further argues that this case has been filed deliberately to interfere with the case before the lower court. The respondent further states that the two matters sought to be consolidated are not pending before the same court and that in any case, there is a pending appeal from the lower court case which is pending before this court and it will thus not be desirable to consolidate the two cases.
7. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions filed by the parties. The only issue for determination is whether it is desirable to consolidate the two suits.
8. There are a number of decisions from courts which have set out the principles which guide courts when considering applications for consolidation. In the case of *Stumberg and another v Portgeiter* (1970) EA 322, the court stated thus:-

“where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be considered.”
9. In the case of *Law Society of Kenya v The Centre for Human Rights and Democracy* Petition No 14 of 2013, the Supreme Court of Kenya stated as follows:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair 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.”
10. In the case of *Nyati Security Guards & Service Ltd v Municipal Council of Mombasa* (2004) eKLR, the court stated as follows:-

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

 1. Some common question of law or fact arises in both or all of them; or
 2. The rights or reliefs claimed in them are in respect of, or arise out of the same transaction or series of transaction, or
 3. For some other reason it is desirable to make an order for consolidating them.” (our emphasis.)
11. From the above three cases quoted hereinabove, it can be summarized that consolidation is meant for cases which are pending before the same court. It is also meant to facilitate efficient and expeditious disposal of disputes. There must be some common issues of law and fact arising from the two suits.



The consolidation should not benefit the person calling for it or disadvantage the one opposing it and finally, it must be desirable that the two cases be consolidated.

12. It is from the above principles that I will decide whether the two cases should be consolidated. To begin with, the two case are not pending before the same court. The case before this court has been brought by way of originating summons which provides that the same be heard by the Environment and Land Court. There is already an appeal which has been filed before this court arising from an interlocutory application in Eldoret CM E&L court No 190 of 2019. Though the subject matter in both suits is the same, the reliefs sought are different and it will not be desirable that the two cases be consolidated. It will be better that the two suits be heard separately as the final reliefs which will be granted in either case will not affect any of the two cases. There is therefore no danger of conflicting judgments.
13. From the above analysis, it is clear that it will not be desirable to consolidate the two cases. The upshot of this is that the applicant's application is devoid of merit. The same is dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 22ND DAY OF SEPTEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Bornes for Ms. Koech for Applicant.

Ms. Rop for Mr. Wafula for Respondent.

Court Assistant –Albert

E. O. OBAGA

JUDGE

22ND SEPTEMBER, 2022

