

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Suit 304 of 2005

HELLEN OGAJAS.....PLAINTIFF

VERSUS

MUGO MAATHAI.....1ST DEFENDANT

JOSHUA K. KANGONGO.....2ND DEFENDANT

RULING

The plaintiff in this suit, Hellen Ogajas filed an application under the provisions of XI Rules 1 and 2 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking an order of this court to order a consolidation of Nakuru HCCC No.304 of 2005 with Nakuru HCCC No.80 of 2006 and Nakuru HCCC No.53 of 2005. The plaintiff contends that the consolidation would enable this court to determine the issues in dispute in an expeditious and cost effective manner. She states that the issues in dispute in the cases sought to be consolidated were similar and involved the same parties. She contends that this court should consolidate the suits so that the claims in all the suits would be heard and determined at the same time and exclude the possibility of fraud being perpetrated against some of the claimants. The application is supported by the annexed affidavit of the plaintiff. The court directed the plaintiff to serve all parties to the suits that she proposed to have consolidated. The parties were duly served. All the parties save for the 1st defendant in this suit Mugo Mathai objected to the consolidation of the said suits.

The 1st defendant filed a replying affidavit in opposition to the application. He swore that there were no relation between the three suits that the plaintiff was proposing to have consolidated. He deponed that the prayers sought in the three suits were different and sought orders against different parties. The 1st defendant explained that the various suits arose from land sale transactions, some of which were fraudulent because the persons who purportedly sold the said parcels of land to the plaintiffs, were not the owners and neither did they have authority to deal with the said parcels of land. He deponed that if this court were to consolidate the various suits, it would result in issues in dispute being clouded and would frustrate the just determination of the suits. He urged this court to dismiss the application with costs.

At the hearing of the application, I heard the submissions made by Mr. Gai, Mr. Mindo, Mr. Ndubi and Mr. Kagucia on behalf of their respective clients. The issue for determination by this court is whether a case has been made for consolidation of the suits as proposed by the plaintiffs in the various suits. **Order XI Rule 1 of the Civil Procedure Rules** provides that:

“Where two or more suits are pending in the same court or similar questions of law or fact are involved the court may either, upon the application of one of the parties, or of its own motion, at its discretion, and upon such terms as may seem fit –

(a) order consolidation of such suits, and

(b) direct that further proceedings in any of such suits be stayed until further notice.”

I have perused the three suits that the applicant is seeking to have consolidated. One of the suits *i.e.* Nakuru HCCC No.80 of 2006 has since withdrawn and is no longer pending. Mr. Mindo for the 1st

defendant informed this court that the said suit was withdrawn on the eve of the hearing of the application for consolidation. Suit No.304 of 2005 was filed by Hellen Ogajas against the defendants. In the said suit the plaintiff sought, *inter alia*, to be declared as the owner of parcel No.Kampi ya Moto/Kampi ya Moto Block 3/158. In Civil Suit No.53 of 2005, Hillary Obino sued the 1st defendant in this case, with two other defendants seeking to be declared to be the owner of parcel No.Kampi ya Moto/Kampi ya Moto Block 3/23. It is evident from the foregoing, that the two suits are different.

Although the plaintiffs in the two cases are seeking to be declared owners of parcels of land within the same area, their complaints are different and are against different defendants. I agree with the 1st defendant that to consolidate the two suits would result in clouding of issues. The two suits are based on agreements for purchase of land. Each plaintiff would be required to prove his or her case on the basis of the agreements that he or she entered with the persons who sold him or her the specific parcel of land.

For the effective adjudication of the matters in dispute, even though the 1st defendant has been sued by both plaintiffs, it would be just and fair for the two plaintiffs to pursue their suits separately. No compelling reason has been advanced by the applicant (*and those who supported her*) that would make this court make an order to consolidate the suits. The plaintiff's application for consolidation of suits lacks merit and is hereby dismissed with costs to the 1st defendant.

DATED at NAKURU this 23rd day of November 2007.

L. KIMARU

JUDGE