



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC CASE NO. 47 OF 2020**

**LEUTINA ATIENO ABOK.....PLAINTIFF**

**-VS-**

**MARGRET WERE ANDEGA & 2 OTHERS.....DEFENDANTS**

**RULING**

**Leutina Atieno Abok** (hereinafter referred to as the applicant) filed the application dated 27<sup>th</sup> October 2020 seeking orders that this suit be consolidated with **KISUMU ELC NO. 33 OF 2020 (O/S) LEUTINA ATIENO ABOK VS MARGARET WERE ANDEGA & 2 OTHERS. He prays that** costs of the Application be in the cause. The application is supported by the grounds on the face of it and a supporting affidavit sworn by the applicant. In a nutshell she contends that the two suits involve the same subject matter that is Plot NO. LR AHERO/44. That further the cause of action is the same, as are the questions of law and facts. She also averred that the reliefs sought arise from the same transaction, as result of which therefore consolidation will avoid inconsistencies and enable expeditious disposal of the suits.

She stated that her main reason for seeking consolidation was that the issue of adverse possession could only be dealt with through originating summons while the issue of trust could only be pleaded by way of plaint. She attached copies of the plaint and defence in OS No 33 of 2020.

The respondents on their part opposed the application by filing grounds of opposition and submissions in which they averred that the questions of law in both suits were totally different. That the plaintiff therefore not being certain of the legal remedy to seek had decided to gamble by filing two suits.

In a nutshell they contended that the two suits were not ripe for consolidation as they raised contradictory questions of law, and attempts to consolidate them amounted to forum shopping which is an abuse of court process. The first issue for determination is whether the suits herein have met the threshold for consolidation. The conditions for consolidation were enumerated in **Mombasa Hccc No. 992 Of 1994 Nyati Security Guards And Services Vs Municipal Council Of Mombasa** an authority relied on by the Respondents as follows;

- a) Some common question of law or fact arises in both or all of them; or**
- b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or transaction or series of transactions, or**
- c) For some other reason it is desirable to make an order for consolidating them.**

From the foregoing it is quite evident that the courts discretion is quite wide and un-fettered. From the outset it is important to note that it is not in dispute that the subject matter in both suits is plot **L.R No. AHERO/44**.

A quick look at the plaint in this suit shows that the plaintiff is seeking a permanent injunction against the Defendants and a declaration that the late George Andega Milaw and his successors are holding the lease in trust for all the three families involved in the purchase, together with general damages for breach of trust.

While in **KISUMU ELC NO. 33 OF 2020 (O/S) LEUTINA ATIENO ABOK VS MARGARET WERE ANDEGA & 2 OTHERS** the Applicant is pleading adverse possession.

From the foregoing it is easily deducible that indeed the question of law arising from both cases are different however the cause of action in both suits arises from the same property further the parties are the same.

The court also contended in **Mombasa hccc no. 992 of 1994** (SUPRA) THAT the main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.

The respondents herein argue that these suits raise contradictory questions of law hence they should not be consolidated. They have however not demonstrated what prejudice they will suffer if the suits are consolidated. Further it is apparent that counsel acting for the parties in both suits are the same hence the issue of wastage of time is unlikely to arise.

On the contrary it would be more beneficial if these matters were consolidated to save the courts time and costs, and given the fact that the matters have not taken off it would even be better to allow the court to adjudicate the matters in one forum. To buttress this point, I rely on the case of; **Law Society Of Kenya Vs The Centre for Human Rights and Democracy, Supreme Court of Kenya, Petition No. 14 Of 2013**, where the Supreme Court of Kenya had this to say about consolidation of suit: -

*“The essence of consolidation 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 intended to occasion any disadvantage towards the party that opposes it”*

The upshot of the above is that the application is allowed thus this suit is hereby consolidated with **Kisumu EIC No. 33 of 2020 (O/S) Leutina Atieno Abok Vs Margaret Were Andega & 2 Others**. Costs in the cause.

**DATED AT KISUMU THIS 18<sup>th</sup> DAY OF MARCH, 2021**

**ANTONY OMBWAYO**

**JUDGE**

**This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2019.**

**ANTONY OMBWAYO**

**JUDGE**