



**REPUBLIC OF KENYA**

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

**ELC NO. 301 OF 2014**

**FABIAN ESEMAI ..... 1<sup>ST</sup> PLAINTIFF**

**MARY G. ESEMAI ..... 2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**PRISCILLA JESEREK TELIENY ..... DEFENDANT**

**RULING**

This ruling is in respect of the 1<sup>st</sup> defendant's application dated 19<sup>th</sup> January 2021 seeking for the following orders:

- a) THAT this suit be consolidated with ELDORET ELC NO. 113 of 2020 Priscilla Jeserek Telieny v. Alfred Omondi Mola, Lilian Lagat, Hon. Attorney General and the County Government of Uasin Gishu;
- b) THAT this suit file be designated as the pilot file for purposes of taking evidence and writing judgment; and
- c) THAT this suit (ELC NO. 301 of 2014) be stayed pending the hearing and determination of this Application.
- d) That costs of the application be provided for.

**APPLICANT'S SUBMISSIONS**

Counsel for the applicant argued the application orally and submitted that common questions of law and fact arise in this suit and ELDORET ELC NO. 113 of 2020 and that the rights and reliefs sought in this suit and ELDORET ELC NO. 113 of 2020 arise from a transaction relating to Eldoret Municipality Block 5/558 measuring approximately 0.0740 Hectares

Counsel relied on the case of **BENSON G. MUTAHI V RAPHAEL GICHOVI MUNENE KABUTU & 4 OTHERS [2014] eKLR** where the court was of the view that consolidation will not be ordered where it will prejudice any of the parties. That this application is not intended to delay the finalization of this case. Mr Maina therefore urged the court to allow the application as prayed for consolidation of the suits.

**PLAINTIFF/RESPONDENT'S SUBMISSIONS**

The plaintiff opposed the application vide a replying affidavit sworn by **FABIAN ESEMAI** dated 1<sup>st</sup> February 2021 and stated that the Plaintiffs are not parties to ELDORET ELC NO. 113 of 2020 and that the cause of action in this suit and the aforementioned suit are not the same. He further stated that no common questions of law are raised in this suit and ELDORET ELC NO. 113 of 2020 and the reliefs sought do not arise from the same transaction.

Mr Juma counsel for the plaintiff faulted the supporting affidavit due to the fact that no annexures were attached and that the supporting affidavit refers to documents which have not been annexed. Further that the applicant had made an application for joinder of parties which application was dismissed by the court on 27<sup>th</sup> February 2020 and the same has not been appealed against.

Counsel submitted that this application is an abuse of court process as the applicant had applied for joinder of Alfred Mola and Lilian Lagat which application was dismissed. Mr Juma also relied on the three requirements for consolidation of suits namely:

- a) Whether the same question of law or fact arise from the same transaction.

- b) Whether rights claimed in the two cases arise from the same transaction.
- c) Whether any party will be prejudiced by the consolidation.

Counsel therefore submitted that this application is a delaying tactic to prevent the finalization of this case and that the plaintiff will be prejudiced if the two suits are consolidated. Counsel urged the court to dismiss the application with costs.

## **2<sup>ND</sup> RESPONDENT'S SUBMISSIONS**

Mr. Kuria for the 2<sup>nd</sup> respondent opposed the application and submitted that the 2 matters cannot be consolidated as the causes of action are different as one is on ownership and another on compensation.

Counsel further stated that consolidation is not feasible as the authentication of the transaction of Lilian Lagat and Alfred Mola has not been done and that they are not parties to this suit. Counsel urged the court to dismiss the application for consolidation.

Ms Kebenei for the 3<sup>rd</sup> defendant did not oppose the application as the county government is sued in both files.

## **ANALYSIS AND DETERMINATION.**

This is an application for consolidation of ELC case No 113 of 2012 with the current suit. The principles to consider in an application for consolidation of suits are as was set out in the case of **Nairobi ELC Suit No. 1000 of 2012 Joseph Okoyo vs Edwin Dickson Wasunna (2014) eKLR**, which was cited with approval in the case of **Mombasa HCCC No. 992 of 1994 Nyati Security Guards and Services vs Municipal Council of Mombasa** wherein the factors were enumerated as follows;-

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

*(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 series of transactions, or*

*(c) For some other reason it is desirable to make an order for consolidating them.”*

The applicant must establish that there is a common question of law or facts arising in both suits and that the rights claimed arises from the same transaction or a series of transactions. It was further enumerated in the case of **Brij Kishore vs 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 Nahata & Another vs Chandhi 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.”*

It is trite that the purpose of consolidation of suits is to save courts time and effort in matters that arise from the same transaction with similar issues of law and fact, but the same cannot be applied if the court is of the opinion that consolidation will cause prejudice and will cause delay and not the aim of expeditious disposal of the case. If the issues and the claim is different then, it would not be in the interest of justice to consolidate suits which will obscure the real issues for determination in either case.

From the current application the applicant did not attach the plaint in the case No. 113 of 2020 to enable the court determine whether it is suitable for consolidation. The respondents opposed the application on the ground that one case is on ownership and another on compensation with different parties. These are cases that can be handled separately with differently.

In the case of **CHESINENDE FARMERS COOPERATIVE SOCIETY LIMITED V JOEL K. BETT (BEING SUED ON HIS OWN BEHALF AND ON BEHALF OF CHESINENDE RURL CRAFT) & 25 OTHERS) & ANOTHER [2018] eKLR** the court held that:

*it is my finding that there are common questions of fact and law arising in the two suits and the reliefs claimed arise out of the same transaction. A strong case has therefore been made out for consolidation of the two suits. In arriving at this conclusion I am guided by the case of Joseph Okoyo ...Vs...Edwin Dickson Wassuna (2014) eKLR where Nyamweya J faced with a situation where the issue of ownership of the suit property was common to the two suits though the parties were seeking different remedies, held that the suits be consolidated.”*

Further in the case of **JAN BOLDEN NIELSEN v HERMAN PHILIPUS STEYN & 2 others [2012] eKLR** the Court discussed purpose of consolidation at length in the following terms:

*“Consolidation of suits is done under the inherent powers of the Court and for purposes of achieving the overriding objective of the Civil Procedure Act; that is for expeditious and proportionate disposal of civil disputes. Therefore, the main purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. However, such consolidation can only be ordered within known parameter of the law.”*

The Plaintiffs primary prayer in this suit is that the Certificate of Lease issued to the Defendant be revoked while in ELDORET ELC NO. 113 of 2020 the Plaintiff’s prayer is for compensation of Kshs. 15,000,000/ being the current market value of Eldoret Municipality/ Block 5/558 together with improvements therefrom. These prayers are fundamentally different even though the suit land is Eldoret Municipality/ Block 5/558. It is only after the ownership of Eldoret Municipality/ Block 5/558 is determined in this suit that a determination can be made whether the compensation sought in ELDORET ELC NO. 113 of 2020 is tenable.

In **Court of Appeal Civil Application No. 299 John Gakure & 148 Others vs Dawa Pharmaceuticals Company Limited & 7 Others Civil Application No. 299 of 2007**, where the Court expressed itself as follows:

*“jurisdiction of the Court has been enhanced and its latitude expanded in order for the Court to drive the civil process and to hold firmly the steering wheel of the process in order to attain the overriding objective and its principle aims. In the Court’s view, dealing with a case justly includes inter-alia, reducing delay, and costs, expenses at the same time acting expeditiously and fairly. To operationalize or implement the overriding objective calls for a new thinking and innovation and actively including the granting of appropriate interim relief in deserving cases.”*

It is trite that the court has jurisdiction to order for consolidation in order to expeditiously handle matters to reduce costs and time, in this particular case I find that there would be no need to consolidate the two suits and order that the application herein is dismissed with costs to the plaintiff/respondent.

**DATED AND DELIVERED AT ELDORET THIS 9TH DAY OF MARCH, 2021**

**M. A. ODENY**

**JUDGE**