



**Wanyoike v Oola (Miscellaneous Civil Application 26 of 2023)  
[2024] KEELC 517 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 517 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
MISCELLANEOUS CIVIL APPLICATION 26 OF 2023  
LA OMOLLO, J  
FEBRUARY 8, 2024**

**BETWEEN**

**RUTH WANGARI WANYOIKE ..... APPLICANT**

**AND**

**FRANSICAR ONYANGO OOLA ..... RESPONDENT**

**RULING**

**Introduction.**

1. This ruling is in respect of the Applicant's Notice of Motion application dated 17<sup>th</sup> October, 2023 which is expressed to be brought under Section 1A, 1B and 3A of the *Civil Procedure Act* (Cap 21) Laws of Kenya, Order 11 rule 3 (1) (h) and Order 51 Rule 1 of the *Civil Procedure Rules* 2010.
2. The Application seeks the following orders:
  - a. Spent
  - b. That the Honourable Court be pleased to grant an order consolidating Nakuru
  - c. Chief Magistrate's ELC Number 157 of 2021 *Franciscar Onyango Oola v Ruth Wangari Wanyoike* with Nakuru ELCC Number 160 of 2016 *Patrick Nguli Mathei v Peter Kimani Mwangi*.
  - d. That the Honourable Court do make such other and further orders as it may deem fit, necessary and expedient in the interest of justice.
  - e. That the costs of this Application be provided for.
3. The application is based on the grounds on its face and supported by the affidavit sworn on 17<sup>th</sup> October, 2023 by Ruth Wangari Wanyoike, the Applicant.



### **Factual Background.**

4. This application came before the court on 18<sup>th</sup> October, 2023 when ex-parte directions were issued and the application slated for hearing on 16<sup>th</sup> November, 2023.
5. On 16<sup>th</sup> November, 2023, the counsel for the Applicant was present. The Respondent was absent. The Court directed the Applicant to serve the Respondent and the application re-scheduled for hearing on 5<sup>th</sup> December, 2023.
6. On 5<sup>th</sup> December, 2023, counsel for the Applicant informed the court that the Respondent had been served deposed on the Affidavit of service sworn on 30<sup>th</sup> November, 2023.
7. The Court being satisfied that service had properly been effected upon the Respondent, reserved the application for ruling.

### **Applicant's Contention.**

8. The Applicant contends that she is the bona fide and registered owner of the parcel of land known as Kiambogo/Kiambogo Block 2/22974.
9. She contends that the hearing of Nakuru Chief Magistrate's ELC Number 157 of 2021 *Franciscar Onyango Oola v Ruth Wangari Wanyoike* is scheduled for 18<sup>th</sup> October, 2023.
10. It is her contention that the subject matter of the suit in Nakuru Chief Magistrate's ELC Number 157 of 2021 *Franciscar Onyango Oola v Ruth Wangari Wanyoike* is a dispute concerning ownership of a parcel of land whereby both parties possess title deeds for the same parcel of land bearing different registration numbers.
11. The Applicant contends that a similar situation obtains in the suit Nakuru ELCC Number 160 of 2016 *Patrick Nguli Mathei v Peter Kimani Mwangi* where the parties claim ownership of the same parcel of land under different registration numbers.
12. She contends that by a Court Order dated 18<sup>th</sup> May, 2023, in Nakuru ELCC Number 160 of 2016 *Patrick Nguli Mathei v Peter Kimani Mwangi*, the land owners in the area adjoining plots Kiambogo/Kiambogo Block 2/3054 (Mwariki) and Kiambogo/Kiambogo Block 2/22621 (Mwariki) block were ordered to attend a site visit for the Nakuru Regional Surveyor to re-establish and delineate the parcel boundaries.
13. The Applicant contends that the Regional Surveyor, Nakuru, is yet to submit his report pertaining to the historical boundaries of all parcels of land in the said block.
14. She contends that Nakuru ELCC Number 160 of 2016 *Patrick Nguli Mathei v Peter Kimani Mwangi* is coming up for Mention on the 8<sup>th</sup> November, 2023 in ELC Court 1. The Applicant further contends that her parcel of land is contained in the same subdivision as that of the Defendant in Nakuru ELCC Number 160 of 2016 *Patrick Nguli Mathei v Peter Kimani Mwangi*.
15. The Applicant contends that the consolidation of the suits will ensure that there is fairness, just and efficient administration of justice in that it will avert the disparity likely to ensue if the suits are determined separately.
16. She contends that the Respondent shall not be prejudiced if the application herein is granted and that no prejudice will be occasioned by allowing this application, since the suit in Nakuru ELCC 160 of 2016 is yet to be set down for hearing.



17. The Respondent did not file any response.
18. None of the parties filed any submissions.

### **Analysis And Determination.**

19. I have considered the application and the only issue that arises for determination is:

Whether the Honourable Court should grant an order consolidating Nakuru Chief Magistrate's ELC Number 157 of 2021; *Fransicar Onyango Oola v Ruth Wangari Wanyoike* with Nakuru ELCC Number 160 of 2016; *Patrick Nguli Matheiv Peter Kimani Mwangi*.

20. The Application is purported to brought under provisions of Order 11 rule 3 (1) (h) of the *Civil Procedure Rules* 2010. There is no such provision.

21. In the judicial decision of *Law Society of Kenya v the Centre for Human Rights and Democracy*, Supreme Court of Kenya, Petition no. 14 of 2013, the Supreme Court of Kenya had this to say about consolidation of suits:

“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 it intended to occasion any disadvantage towards the party that opposes it”

22. Further in the judicial decision of *Benson G. Mutabi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR, the court acknowledged that the *Civil Procedure Rules* mandate courts to consider consolidation of suits and in so doing, to be guided by the following: -

- a. Do the same question of law or fact arise in both cases?
- b. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction?
- c. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?

23. In order for this court to grant the Applicant the consolidation order sought, it has to interrogate the pleadings and orders sought in the two suits so as to determine whether similar questions of law or fact arise in both suits whether the rights or reliefs claimed in the two suits arise out of the same transaction or series of transaction and whether any party will be disadvantaged or prejudiced by the consolidation.

24. The Applicant has not provided this court with the pleadings in the two suits. As things remain, this court is unable to establish the facts deposed to. I also note that the Applicants title deed as annexed to her application is illegible.

25. My view is that, the Applicant ought to have made this application in either of the suits she wishes to have consolidated.

### **Disposition**

26. In view of the forgoing, I find that the application dated 17<sup>th</sup> October, 2023 lacks merit and is hereby dismissed with no order as to costs.
27. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2024**

**L. A. OMOLLO**

**JUDGE**

In the presence of:

Mr. Mburu for the Applicant.

No appearance for the Respondent.

Court Assistant: Mr. Miruya

