



**Wings of Life Gospel Church Int’al v Somo & 4 others (Environment & Land Case E132 of 2021) [2024] KEELC 1755 (KLR) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 1755 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E132 OF 2021**

**AA OMOLLO, J  
APRIL 11, 2024**

**BETWEEN**

**WINGS OF LIFE GOSPEL CHURCH INT’AL ..... PLAINTIFF**

**AND**

**HUSSEIN ADAN SOMO ..... 1<sup>ST</sup> DEFENDANT**

**NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF REGISTRAR, MINISTRY OF LANDS & PHYSICAL  
PLANNING ..... 3<sup>RD</sup> DEFENDANT**

**DIRECTOR OF SURVEY ..... 4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. For determination is the notice of motion application dated the 26th of May 2023 brought by the 1st defendant seeking several orders inter alia;
  - a. That the court be pleased to consolidate these suits to wit; Environment and Land Court Nairobi. ELC E 132 of 2021, Nairobi, ELC. case E115 of 2022, and Nairobi ELC142 of 2021 for trial and disposal together.
  - b. That the lead file be the earliest suit being Environmental Land Court case number E132 of 2021 *Wings of life Gospel Church International versus Hussein Adan Somo and 5 Others*, or such other case file as the court may deem fit to designate as the lead court.
  - c. The applicant also sought the court to give any other reliefs that it deems just and make that's a necessary for the conduct of the said consolidated cases.
  - d. The cost of this suit, including the cost of and incidental to this application be in the cause.



2. The application is premised on the supporting affidavit sworn by the 1<sup>st</sup> Defendant and the grounds listed on the face of it. The grounds include; that all the three cases cited the 1<sup>st</sup> Defendant as the main respondent. Secondly, all the cases relate to the same process of allotment, titling and vacant possession. All the three suits relate to more or less the same subject Land Parcel 209/16780, I.R. number 211484 currently owned and possessed by the 1<sup>st</sup> defendant.
3. The Applicant averred that all the three suits seek determination as to who is the bonafide allottee, title holder and or ownership of the suit parcel. It also questions whether the process of conveyance and documentation is legitimate and we should have vacant possession of the suit property. That consolidation is resourceful, convenient, and will avoid inconsistency, and multiplicity of proceedings, attendance, and any risk of absurd or variant judgments or reasoning. The application has been made in good faith and there's no conceivable prejudice to any party.
4. In the supporting affidavit sworn by Hussein Adan Somo which stated that he has been sued in all the three cases cited. He reiterated that all the suits relate to the same process of allotment, titling and claim for vacant position and proceeded to enclose copies of pleadings in each of the three cases. He urged the court that the application should be allowed as presented.
5. The plaintiff in ELC 142 of 2021 filed the grounds of oppositions dated June 29, 2023 and pleaded as follows;
  - i. That the application is malafides meant for delay, an afterthought and calculated to delay the expeditious disposal of their case ELC E142 of 2021.
  - ii. Both the parties in the cited cases are different, the course of action is different, and different reliefs sought.
  - iii. That consolidation will convolute and obfuscate issues for trial and determination to the detriment of the plaintiff in E142 of 2021.
  - iv. That in the event, of any appeal, the rest of the plaintiffs will be prejudiced as it may have clawed the determination of the appeal. to the detriment of the plaintiff.
6. The plaintiff in this matter (E132) filed a replying affidavit sworn by Gerishon K. Njoroge in opposing the application. He deposed that it is brought in bad faith and will delay the determination of the claim. He also deposed that the plaintiffs in E115 of 2022 is colluding with the 1<sup>st</sup> defendant/Applicant as they only surfaced during the hearing of the contempt application.
7. The parties highlighted their submissions filed in support of and against the application on the 25<sup>th</sup> of January 2024. Miss Waweru learned counsel appearing for the applicant submitted that the application is seeking to consolidate the three suits because all the three suits, the 1<sup>st</sup> defendant is the main party and the subject matter trace their route to land Parcel 209/16780 given by way of allotment by the Nairobi City County. He relied on their submissions dated October 4, 2023 in arguing that the court does award the orders sought.
8. Mr. Kahuthu, Counsel for the Plaintiff in E132 submitted that their properties are different and the plaintiffs in each of those suits are seeking different reliefs. For instance, in their case, they raised issues bordering on fraud against their 2nd to 6th defendants and manipulating title documents. While in E115 of 2022 the plot in question is C that is different from their plot and the plot in dispute in E142 is a neighbouring plot. That it would be unfair and unreasonable to consolidate this case with the other cases. He opposed the consolidation and urged the Court to dismiss the claim.



9. Mr Mbiyu learned counsel for the plaintiff in E142, associated himself with the submissions of Mr. Kahuthu and also relied on the grounds of opposition filed on June 29, 2023. He added that his client was claiming plot E while the 1<sup>st</sup> defendant is claiming plot B and between them is the plot claimed by the Plaintiff in E132. He submitted further that in their case, their allotment letter was issued in 1999, while the first defendant's letter was issued in 1997. Consequently, the evidence to be adduced will be different. He also added that there's no counterclaim where the 1<sup>st</sup> defendant is claiming that 209/16780 encompasses plots B, C and E and there was no survey report to ascertain that the plots are the same.
10. Miss Wangari for the plaintiff in E115 of 2022 also submitted that their clients plot B is adjacent to A and the only reason the application is made is because the first defendant is the same. They contend that in their list of documents filed, there is evidence that a survey was done and the PDP plan given for each of the plots. That the transactions in acquiring the properties are different; and there are forceful evictions with the amounts claimed also different.
11. Further, the time of issuance of the allotments is also different and therefore there is no way that the three cases should be consolidated and which if done it will complicate the determination of the claims. She asserts that if any of the parties that will not be satisfied by the judgment rendered intends to appeal, they will be frustrated.
12. In response to these submissions, Mr. Waweru reiterated his earlier submissions and cited the case of *LSK versus the Centre for Human Rights and Democracy and 12 others* (2014) eKLR. where the Court discussed the purpose of consolidation of suits is not intended to confer unfair advantage. They also relied on the case of *Nyati Security Guards Limited versus Municipal Council of Mombasa* where the Court held that consolidation happens where facts are in respect of the same transaction. It is their view, that the issues for determination herein are the same. These issues are; whose allotment is legitimate and who should have vacant position of the suit properties. That the witnesses to be called will also be the same hence no prejudice will be occasioned if the application is allowed.
13. I have considered the positions taken by each of the respective counsels appearing for the parties. And picking a cue from the submissions of the Applicant's counsel that the issue in question, to be determined by the court, is who is the *bonafide* allottee or whose allotment is legitimate and should have vacant possession of the suit properties. To begin with, the fact that each of the plaintiffs in the three suits hold separate and distinct letters of allotment and or documents of ownership on the face of it means that the courses of action are different. The evidence to be adduced by each of the plaintiffs to protect their plots/prove their case will definitely be different.
14. Although the Applicant may choose to adduce similar evidence in support of their defence in all the cases but that does not make sufficient reason to consolidate. It is clear from the submissions by the parties that the causes of action arose at different times to the three Plaintiffs. Secondly, on dealing with the question of legitimacy or otherwise of the respective allotments, there is no guarantee that the Plaintiffs who are not related will rely on the same witnesses. The questions of law may be the same but the facts to be relied upon will obviously not be the same.
15. It's indeed true that the purpose of consolidation of suits is to save on judicial time as well save parties costs, and in this case, the Applicant who has been sued in all the three cases. However, having found that each of the claims are independent, consolidation will convolute the cases. For this reason, I find the application dated the 26th of May 2023 to be without merits. It is dismissed with costs to the Respondents. This order applies to ELC E142 of 2021 and ELC E115 of 2022.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11<sup>TH</sup> DAY OF APRIL, 2024**



**A. OMOLLO**  
**JUDGE**

