



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**ELC CASE NO. 1331 OF 2014**

- NJOKI CHEGE.....1<sup>ST</sup> PLAINTIFF
- DANSON N. MUKURURO.....2<sup>ND</sup> PLAINTIFF
- RUTH KAREITHI.....3<sup>RD</sup> PLAINTIFF
- ANTHONY MAINA MUHORO.....4<sup>TH</sup> PLAINTIFF
- CHARLES MUHIA.....5<sup>TH</sup> PLAINTIFF
- JOHN N. WAITHAKA.....6<sup>TH</sup> PLAINTIFF
- WHITE SKY INVESTMENT LTD.....7<sup>TH</sup> PLAINTIFF
- MAGI HOLDINGS LTD.....8<sup>TH</sup> PLAINTIFF
- MICRO-DOT ENGINEERING.....9<sup>TH</sup> PLAINTIFF
- FELICITAS GATHONI WARURU.....10<sup>TH</sup> PROPOSED PLAINTIFF
- HILDA WANGI'THI MURITHI.....11<sup>TH</sup> PROPOSED PLAINTIFF
- SAMUEL NG'ANG'A MUNGAL.....12<sup>TH</sup> PROPOSED PLAINTIFF
- ERASTUS KARIMI.....13<sup>TH</sup> PROPOSED PLAINTIFF

=VERSUS=

DAVID MBURU GIBSON  
 NELSON MVWANGI

**Both T/A NEMKA COMMERCIAL AGENCIES....1<sup>ST</sup> DEFENDANT/RESPONDENT**  
**NATIONAL SOCIAL SECURTY FUND (NSSF)..2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 18<sup>th</sup> December 2019 under order 51 of the Civil Procedure Rules, Order 3 Rule 5 (1) and Section 3A of the Civil Procedure Act and all other enabling provisions of the law.
2. It seeks orders that:-

**1. This court be pleased to issue orders that this suit be consolidated with ELC No 543 of 2013, David Mburu Gibson Nelson Mwangi both t/a Nemka Commercial Agencies vs National Social Security Fund (NSSF).**

**2. That costs of this application be provided for.**

3. The grounds are on the face of the application and are:-

**1. That the suit property, LR No 11895/24 is subject to another suit, being ELC No.543 of 2013, David Mburu Gibson Nelson Mwangi Both t/a Nemka Commercial Agencies vs National Social Security Fund (NSSF).**

**2. That the applicant herein are the beneficial owners of the suit property.**

**3. That vide our application of 14<sup>th</sup> October 2018 at prayer number 5, we made this application but the same seems to have been inadvertently not addressed in the ruling on the said application dated 6<sup>th</sup> November 2015.**

**4. That the applicants are apprehensive that they might suffer great economical harm and injustice if they are not allowed to consolidate both matters in order to be able to prosecute the case so as to protect their interest as beneficial owners of the suit property.**

4. The application is supported by the affidavit of Yabesh Nyandoro, Advocate sworn on the 20<sup>th</sup> January 2020. I have gone through the court record and it appears no responses were filed in respect of this application.

5. There is also the chamber summons dated 18<sup>th</sup> December 2019 brought under order 1 rule 1 (1), 14 and rules 25 of the Civil Procedure Rules 2010 and section 3A, 1B, 1A of the Civil Procedure Act.

6. It seeks orders:-

**1. Spent.**

**2. That upon hearing of this application, the honourable court be pleased to grant leave to the Applicants, to be joined as plaintiffs in this suit.**

**3. That costs of the application be provided for.**

7. The grounds are in the face of the application and are set out in paragraph 1 to 4.

8. The application is supported by the affidavit of Antony Muhoro Maina, one of the proposed plaintiffs, sworn on the 18<sup>th</sup> December 2019. It also appears that there are no responses to this application. In essence both applications are not opposed despite the defendants/respondents being granted leave to file responses on 5<sup>th</sup> February 2020.

9. On the 17<sup>th</sup> November 2020 the court directed that the applications be canvassed by way of written submissions.

10. I have considered the applications and the affidavits in support. I have considered the written submissions filed on behalf of the parties. The issue for determination is whether these applications are merited.

11. **Order 1 rule 1** of the Civil Procedure Rules provides that:-

***“ All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.”***

**Order 1 rule 10(2)** of the Civil Procedure Rules provides that:-

***“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”***

12. It is not dispute that the plaintiffs herein entered into various agreements with the 1<sup>st</sup> defendant and made payments. The plaintiffs made further payments to the 2<sup>nd</sup> defendant as shown by the receipts filed.

I am guided by the case by **Joseph Njau Kingori vs Robert Maina Chege [2002] eKLR** in finding that the proposed plaintiffs have shown that they have an interest in the suit property. I allow the application accordingly.

13. I have gone through the pleadings in the two files ELC 534/2013 and ELC 1331 of 2014. The subject matter is the same being LR No.11895/24.

14. By a sale agreement dated 17<sup>th</sup> May 2005 the 2<sup>nd</sup> defendant (NSSF) sold to the 1<sup>st</sup> defendant twenty (20) acres to be excised from LR No. 11895/24. The 1<sup>st</sup> defendant in turn sold portions to the plaintiffs herein. In the case of **Ngati Security Guards & Services Ltd vs Municipal Council of Mombasa [2000] eKLR**. The court held as follows:-

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

*(a) Some common question of law or fact arises in both or all of them;*

*(b) The right and reliefs claimed in them are in respect of or arise out of the same transaction;*

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

15. I am guided by the above authority in finding that these two matters ought to be consolidated in order to achieve the overriding objective. It will also save a lot of judicial time if the two suits are heard together. I find merit in this application and the same is allowed.

16. In essence, the chamber summons dated 18<sup>th</sup> December 2019 is allowed on the following terms:-

*(a) That leave is hereby granted to the applicants to be joined as plaintiffs in this suit.*

*(b) That costs of the application be borne by the applicants.*

17. The Notice of Motion dated 18<sup>th</sup> December 2019 is allowed in the following terms.

*(a) That this suit be consolidated with ELC 543 of 2013, David Mburu Gibson, Nelson Mwangi both t/a NEMKA Commercial Agencies vs NSSF and that the lead file be ELC 534 of 2013.*

*(b) That costs of this application do abide the outcome of the main suit.*

It is so ordered.

**DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 22ND DAY OF APRIL 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Mr. Okeyo for the plaintiffs

Mr. Mwasaru for Nyandoro for the Applicants

Mr. Mwangi for Ms Chebet for the 2<sup>nd</sup> Defendant

Phyllis -Court Assistant