



**Imathiu (Suing as the Trustee of Kenya Young Men’s Christian Association) v
Wambua (Suing as a Pastor and Trustee of Kenya Association of God ‘Heaven’s
Gate Worship Center) & 11 others (Environment and Land Miscellaneous
Application E048 of 2022) [2023] KEELC 17166 (KLR) (3 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17166 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E048 OF 2022**

FM NJOROGE, J

MAY 3, 2023

BETWEEN

**BISHOP LAWI IMATHIU (SUING AS THE TRUSTEE OF KENYA YOUNG
MEN’S CHRISTIAN ASSOCIATION) APPLICANT**

AND

**JOSEPH MUTUNE WAMBUA (SUING AS A PASTOR AND TRUSTEE
OF KENYA ASSOCIATION OF GOD ‘HEAVEN’S GATE WORSHIP
CENTER) 1ST RESPONDENT**
BERNARD MUKASI 2ND RESPONDENT
RICHARD MWANGI 3RD RESPONDENT
DANIEL KIMUYA 4TH RESPONDENT
TERESIA WANJIRU 5TH RESPONDENT
NDERITU WANJIRU 6TH RESPONDENT
DANIEL NJUGUNA 7TH RESPONDENT
RICHARD MACHARIA MWANGI 8TH RESPONDENT
PETER MUTUA MUTUNGA 9TH RESPONDENT
SAMUEL GATHII 10TH RESPONDENT
GEORGE OTIENO 11TH RESPONDENT
CHARLES AGWADA 12TH RESPONDENT



RULING

1. This ruling is in respect of the applicant's Notice of Motion application dated 29/11/2022 brought under Sections 1A, 1B, 3A, 15 and 18(1) (a) and (2) of the Civil Procedure Act and Article 159(2) of the Constitution of Kenya which sought the following orders:
 - a. Spent
 - b. spent
 - c. That this honorable court be pleased to remove and transfer Naivasha Chief Magistrate ELCC No. E002 of 2022, Registered Trustee of the Young Men's Christian Association in Kenya vs Richard Mwangi & 3 Others from the Chief Magistrate's court at Naivasha to the High Court Environment and Land Court at Nakuru.
 - d. That following the transfer, this honorable court be pleased to consolidate ELC No. 141 of 2014 Bishop Lawi Imathu vs Joseph Mutune Wambua & 11 others and Naivasha Chief Magistrate ELCC No. E002 of 2022, Registered Trustee of the Young Men's Christian Association in Kenya vs Richard Mwangi & 3 Others for hearing and determination as one suit.
 - e. That the costs of this application be in the cause.
2. This court issued directions that the respondents respond to the Notice of Motion application within seven days with effect from 1/12/2022 but no response has ever been filed to date and the motion remains unopposed. The motion seeks transfer of a suit from a Magistrate's Court to this court for hearing and final disposal and consolidation with another suit pending in this court. The grounds in support of the application are that the suit in the lower court and the suit pending in this court are in respect of the same land LR No. 11669 (Original Number 10854/1).
3. Order 11 Rule 3(1)(h) of the Civil Procedure Rules provides as follows:

“ 3.

 - (1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall—
 - (a) ...
 - (h) consider consolidation of suits;
4. The court in the case of Joseph Okoyo v Edwin Dickson Wasunna [2014] eKLR cited with approval the decision in the case of Nyati Security Guards & Services Ltd v Municipal Council of Mombasa [2004] eKLR which set out the principles the court has to consider in consolidation of suits 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:-

 1. Some common question of law or fact arises in both or all of them; or
 2. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or



3. For some other reason it is desirable to make an order for consolidating them.”
5. This court has to therefore compare the two suits sought to be consolidated in order to determine whether they involve common questions of law and fact, whether the reliefs sought arise out of the same transaction and whether it is efficient to pursue the same in a consolidated suit.
6. I have perused the exhibits to the application at hand and I find that parcel number LR 1169-South Lake Naivasha is the subject of Nakuru ELC 141 of 2014 while parcel No. 11669 (Original No. 10854/1) is the subject of CMCC ELC No. 1 of 2022. It is my view that the suit properties in both matters are different. Further the plaintiff in Nakuru ELC 141 of 2014 is Bishop Lawi Imathiu (Suing as the Trustee of Kenya Young Men’s Christian Association) while the plaintiff in CMCC ELC No. 1 of 2022 is Registered Trustee of the Young Men’s Christian Association in Kenya which indicates that the plaintiffs in both matters also are different. The only party who is defendant in both suits appears to be Richard Mwangi and who is the 3rd in Nakuru ELC 141 of 2014 and the 1st and 4th defendants in CMCC ELC No. 1 of 2022.
7. It is my view that the applicant has not made a case for consolidation of Nakuru ELC 141 of 2014 and CMCC ELC No. 1 of 2022 because as per the record the parties in both suits are substantially different and the suit properties are also different. The applicant has quite some homework to do before consolidation can be considered.

Consequently, the applicant’s application dated 29/11/2022 lacks merit and it is hereby struck out with no order as to costs. This file shall be marked as closed.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 3RD DAY OF MAY 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

