



**Kahiga & another v Kinuthia (Environment & Land Miscellaneous Case E018 of 2023) [2023] KEELC 20515 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 20515 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E018 OF 2023**

**EK WABWOTO, J**

**OCTOBER 5, 2023**

**BETWEEN**

**ELIJAH KAHIGA ..... 1<sup>ST</sup> PLAINTIFF**

**NANCY GATHONI KAHIGA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**WILLIAM NJENGA KINUTHIA ..... DEFENDANT**

**RULING**

1. The Plaintiffs filed an application dated March 31, 2023 and accompanied by a supporting affidavit sworn by Elijah Kahiga where the Plaintiffs sought the following orders:
  - a. That this Honourable Court be pleased to grant orders to consolidate the case of Elijah Kahiga & Nancy Gathoni Kahiga v William Njenga Kinuthua MC ELC No 9015, High Court Misc Suit No 76 of 2012 (OS), High Court ELC No 2292 of 2007, High Court Case No 1298 of 2006 and High Court Case No 2587 of 1994 and that case Number MC ELC No 951 of 2018 be transferred to this court for hearing and disposal.
  - b. That the costs of this application be in the cause.
2. The Application was grounded upon the averment that the issues raised in the Plaint pertain to the same series of events and it would expedite these matters for them to be heard at the same time.
3. The Applicants filed submission dated July 14, 2023 in which it was argued that all suits related to the question of ownership of Plot Number 31/16/525(R537). It was argued that the property was originally purchased by Lucky Summer Estate Limited and upon sub-division it was allocated to Eston Muraguri Macharia, the 2<sup>nd</sup> Plaintiff's father by Lucky Summer Estate. It was argued that the consolidation would save costs, time and effort of the Court.



4. The Respondent filed submissions dated July 18, 2023 and a Replying affidavit dated April 18, 2023 sworn by Joseph Kinuthia Gathecha in which the Respondent sought for dismissal of the application with costs on the following key grounds:
  - i. The application is void for want of instructions and authority to act. There is no evidence that the 2<sup>nd</sup> defendant has issued instructions to the 1<sup>st</sup> Plaintiff to act.
  - ii. The application for consolidation of suit can only be considered at the case conference as provided procedure for under Order 11 rule 3 of the civil procedure rules, 2010 which is not the case in this matter.
  - iii. The application is in collision with the provisions of the law under which it is purportedly brought in that the provisions of order 1A, 1B, 3A, order 11 rule 3 and order 51 rule. I do not support the application for transfer of suits from subordinate court to this court.
  - iv. The 1<sup>st</sup> plaintiff is guilty of laches in bringing this suit in that he commenced the suit namely MC ELC 951 of 2018 in October 2018 and has to date failed to take action towards its prosecution without any reasonable cause or excuse.
  - v. The prayer sought is vague, ambiguous and mutually exclusive in that this court cannot consolidate MC ELC No 9015 OF 2015 with HC Misc Suit 76 of 2072 (OS), KC ELC 2292 OF 2007, HCCC 1298 of 2006 and HCCC No 2587 of 1994 and thereafter transfer MC ELC 951 of 2018 to this court for hearing and disposal.
5. Having considered the application, the rival affidavits filed and written submissions of the parties, it is clear that the main issue for determination is whether the Application dated March 31, 2023 is merited.
6. The principles for consolidation of suits are set out in the case of *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2000] eKLR, where it was held that the situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same Court; where some common questions of law or fact arise in both or all of them; the rights or reliefs claimed in them are in respect of or arise out of the same transaction; and if for some other reason, it is desirable to make an order consolidating them.
7. The Court has primarily considered that where called upon to consolidate and transfer suits, the issue of jurisdiction must come into play and is of paramount importance. I share in the sentiments of the learned judges in *Kagenyi v. Musiramo & another* [1968] E.A. 43 where it was held that a general power of transfer of all suits may be exercised at any stage of the proceedings even suo motto by the Court in so far as the Court of first instance has jurisdiction.
8. Where the question of jurisdiction is answered to the affirmative, it is imperative that the application is brought in a timeous manner for the expedited administration of justice. In this instance, the Plaintiffs provided very scanty information on the nature and current status of the related suits. On the other hand, the Respondent vehemently opposed the consolidation of the suits on apprehension that it would lead to further delayed justice.
9. In my opinion, the Applicants/Plaintiffs had ample time over the decades to seek consolidation of the suits. In upholding the maxims of equity, this Court finds that the application is brought in bad faith. In view of the foregoing, the Court hereby finds that the Application is unmerited and the same is hereby dismissed in its entirety with an order that each party to bear own costs of the proceedings.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 5<sup>TH</sup> DAY OF OCTOBER 2023.**



**E. K. WABWOTO**

**JUDGE**

\_In the presence of: -

Mr. Wandaka for the Applicants.

Ms. Chepkemoi for the Respondent.

