



REPUBLIC OF KENYA



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Komu (Suing Through Estate of Johnson Kamau Komu – Deceased) v Administrators of the Estate of Gerishon K. Kirima Teresia W. Kirima & Ann W. Kirima & another (Environment & Land Petition E342 of 2021) [2023] KEELC 20524 (KLR) (5 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20524 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E342 OF 2021
LN MBUGUA, J
OCTOBER 5, 2023

BETWEEN

LEAH NGENDO KOMU (SUING THROUGH ESTATE OF JOHNSON KAMAU KOMU – DECEASED) PLAINTIFF

AND

ADMINISTRATORS OF THE ESTATE OF GERISHON K. KIRIMA TERESIA W. KIRIMA & ANN W. KIRIMA 1ST RESPONDENT

JOHN GERISHON KIRIMA 2ND RESPONDENT

RULING

1. Before me is the notice of motion application dated 18.9.2021 where the applicant prays for orders that;
 - i. “ That this Honourable Court be pleased to issue order of enjoinder enjoining the matter together with ELC No. 509 of 2014 *Naridai Muoroto Self Help Group –vs- James Gatundu & 6 Others*, ELC No. 850 of 2014 *Paul Ndungu Kioi –vs- Lawrence Kimondo Mutua & Another*, ELC 1318 of 2013 *Teresia Wairimu Kirima –vs-Father Romea & Another and Teresia Wairimu Kirima –vs- Virginia Mwangi & 2 Others*.
 - ii. That the costs of this application be provided for.
2. The applicant avers that she bought the shop no.1 situated within suit parcel L.R No. 5908/8 from Johnson Kamau Komu, Gerishon Kamau and Johnson Kamau way back in 1992, took possession and operates a garage thereon. That the suit parcel is a subject of litigation in various courts, and in the interest of justice, the cases should be heard together.
3. The Respondents opposed the application via a Preliminary Objection dated 6.10.2021 where they contend that the claim is statute barred.



4. I have considered the arguments raised herein including the rival submissions. In, Petition No. 14 of 2013 *Law Society of Kenya vs Center for Human Rights and Democracy and 12 Others* (2014) eKLR, the Supreme Court observed thus:-

“The essence of consolidation of suits 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.”

5. In the case of *Korean Church United Church of Kenya & 3 Others v. Seung Ho Song* [2014] eKLR, the court had this to say on consolidation;

“Consolidation of suits is done under the inherent powers of the Court and for purposes of achieving the overriding objective of the *Civil Procedure Act* that is for expeditious and proportionate disposal of civil disputes. Therefore, the main purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. It is also ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses”.

6. The question I pose is; Will the consolidation of this case with the other mentioned suits achieve the overriding objective set out in the above cited cases?. It is noted that some of the cases are very old and the court has no knowledge as to why the said cases have dragged on for years. The additional weight of another case on these old cases can only delay the cases further.

7. Another issue for consideration is that the cited cases, formerly before Judge Okongo are not the only cases relating to parcel 5908/8. For instance, this very court is also handling case no. E047 OF 2023 where the dispute touches on parcel L.R.5908/8 where other cases namely 1298 of 2011, 585 of 2013, 662 of 2006 and 1257 of 2014 also relating to parcel 5908/8 have been mentioned. This court does not have particulars of the courts handling these other matters! The bottom line is that the consolidation of the matters doesn't appear to be the right route to resolve the disputes.

8. On the Preliminary Objection, I find that the Respondent is yet to file their defence to the suit. In the circumstances, I find it not appropriate to consider the merits of Preliminary Objection without the benefit of a pleading from the Respondent.

9. The end result is that both the application dated 18.9.2021 and the Preliminary Objection dated 6.10.2023 are found to have no merits, and are hereby dismissed. Each party to bear their own costs. The parties are hereby encouraged to finalize the closure of pleadings to facilitate the just and expeditious disposal of the substantive issues.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 5TH DAY OF OCTOBER, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ayugi holding brief for SC Ojienda for the Plaintiff

Onduso for the Defendant

Court Assistant: Eddel

