



Mulama & another ((Both suing on behalf of themselves and on behalf of members of PEMBENI SQUATTERS SELF HELP GROUP)) v Choge & 3 others; Mumbai Multi-purpose (Interested Party) (Environment & Land Case 52 of 2011) [2022] KEELC 13389 (KLR) (4 October 2022) (Ruling)

Neutral citation: [2022] KEELC 13389 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 52 OF 2011
FO NYAGAKA, J
OCTOBER 4, 2022**

BETWEEN

**ABDUL MUTHEE MULAMA 1ST PLAINTIFF
ERNEST SIKUKU 2ND PLAINTIFF
(BOTH SUING ON BEHALF OF THEMSELVES AND ON BEHALF OF
MEMBERS OF PEMBENI SQUATTERS SELF HELP GROUP)**

AND

**EGLYN CHEPCHIRCHIR CHOGE 1ST DEFENDANT
BENJAMIN KICHWE 2ND DEFENDANT
CHRISTIAN CHOGE 3RD DEFENDANT
JOSEPH ANG'ANG'A 4TH DEFENDANT**

AND

**SIRIKWA MUMBAI MULTI-PURPOSE COOPERATIVE
LIMITED INTERESTED PARTY**

RULING

1. The proposed interested party, a registered entity in the Republic of Kenya, stated through its Chairman, Harryson Opana Murindah, that it owns all those parcels of land, namely, LR No 8915/2 Uasin Gishu County and LR No 2187 Trans Nzoia County. It is on the strength of those stated facts that on May 31, 2022 it filed the instant application. The application was dated May 19, 2022. It sought the following reliefs:



1. ...spent.
 2. That Sirikwa Mumbai Multi-Purpose Cooperative Limited, the applicant herein, be granted leave to be enjoined in this suit as an interested party.
 3. Alternatively, this suit be consolidated with Kitale ELC No 57 of 2020.
 4. That the costs of this application be provided for.
2. The application is supported by the grounds on the face of it. It is further supported by the affidavit of its chairman. In support of its claim of ownership of the suit properties, the applicant annexed documents of entitlement, as HOM3 and land rent demand and receipts, HOM4 to the affidavit.
 3. The applicant further stated that Kitale ELC No 57 of 2020 involves the defendants as plaintiffs and the applicant as one of the defendants. To fortify that deposition, copies of the pleadings were attached and marked HOM5. In that regard, if the 2 suits are heard separately, there will be diverse judgments, hence the necessity to consolidate. The applicant urged that it was in the interest of justice that the application be granted as prayed.
 4. The application remains unopposed as there are no responses to the application. Although parties were on June 28, 2022 directed to file and serve their respective submissions, no party complied with those orders. Be that as it may, it does not affect the determination on merits, of the application. I shall now analyze and determine whether it is merited.

Analysis and Disposition

5. This court is of the considered view that a determination on whether the prayer for consolidation is merited be catechized first. I say so for two reasons; firstly, if the prayer for consolidation is with merit, it will automatically collapse the prayer for joinder. Secondly, a similar application for consolidation in this matter had been previously sought before my brother Mwangi J. However, in his ruling dated July 8, 2019, the learned judge could not analyze and determine the said prayer on merits, having found the application premature as Kitale ELC No 57 of 2020 (formerly Eldoret ELC No 306 of 2016) had not been transferred to Kitale. It is apparent that both files are now within the preserve of the Environment and Land Court at Kitale. I shall proceed to address the issue of consolidation as hereunder.
6. The Supreme Court of India in *Prem Lala Nabata & Another vs Chandni Prasad Sikaria*, (2007) 2, Supreme Court Cases 551 at paragraph 18, was called upon to adjudicate on consolidation and its general objective. The court observed:

“Consolidation is a process by which two or more causes or matters are by order of the court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action...”

7. In our Kenyan apex court, the Supreme Court pronounced itself as follows in *Law Society of Kenya vs Center for Human Rights and Democracy and 12 others* [2014] eKLR:

“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.”



8. This court remains bound by the objectives as set out in the authorities cited above herein. Thus, what then are the guiding principles constituent to determining whether the prayer of consolidation is expedient in the circumstances presented before a court?

9. The Supreme Court of Kenya in *Law Society of Kenya vs Center for Human Rights and Democracy and 12 others* (supra) held:

“The jurisdiction to consolidate arises where there are two or more matters or cause pending in the court and it appears to the court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason, it is desirable to make an order consolidating the suits.”

10. The court, in *Stumberg and another v Potgeiter* 1970 EA 323, held as follows:-

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered.”

11. From the above authorities, a consolidation order is likely apparent where there are common questions of law or fact, the reliefs sought arises out of the same transaction or a series thereof or for some other reason, it is desirable to make that order. I will now interrogate closely the issues, alleged facts and law in the two (2) matters before me.

12. Looking at the totality of the two (2) matters, and more particularly the pleadings that instituted the suits, I find that the kernel of the dispute is on ownership of plots LR Nos 8915/2 and 2187. I also observe that the defendants in this matter are the plaintiffs in Kitale ELC No 57 of 2020 (formerly Eldoret ELC No 306 of 2016). In the same vein, the proposed interested party, is the 1st defendant in the other matter. Looking at the reliefs holistically, it appears that the plaintiffs in both matters lay credence of their contention to ownership thus asking the court to make a declaration in their favor.

13. My conclusion of the above is that it is apparent that there are common questions of fact for adjudication before this trial court. It would thus not only be in the best interest of the court and the parties but also save on the court’s judicial time if the two (2) matters are consolidated and tried simultaneously; Not forgetting that it would avoid a scenario where 2 conflicting decisions are rendered by the same court.

14. To that extent, I find that the application for consolidation is merited. Consequently, I allow the proposed interested party’s application in the following terms:

1. This suit, that is Kitale ELC No 52 of 2011 be and is hereby consolidated with Kitale ELC No 57 of 2020.
2. This suit, that is Kitale ELC No 52 of 2011, shall be the lead file.
3. Parties shall appear before this court on October 24, 2022 to take further directions following the consolidation order.
4. Costs shall be in the course.

Orders accordingly.



**RULING DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS
4TH DAY OF OCTOBER 2022.**

HON. DR.IU FRED NYAGAKA

JUDGE, ELC KITALE

