



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU**

**E.L.C. CASE NO. 133B OF 2017**

**ELIZEBA MBOCI TITIMA.....PLAINTIFF**

**VERSUS**

**STEPHEN NJERU TITIMA.....DEFENDANT**

**RULING**

1. By a notice of motion dated 29<sup>th</sup> October 2018 brought under **section 3A of the Civil Procedure Act (Cap. 21) and all other enabling provisions of the law**, the Plaintiff sought an order for consolidation of this suit with *Siakago PMCC No. 109 of 2018 – Stephen Njeru Titima V James Ngari Paul Titima* to facilitate quick trial and disposal.
2. The said application was based upon the grounds set out on the face of the motion and supported by the plaintiff's supporting affidavit sworn on 29<sup>th</sup> October 2018. It was contended that the two suits sought to be consolidated related to the same subject matter, that is, *Title No. Mbeti/Gachoka/183* and the parties thereto were all close relatives.
3. The Defendant filed a replying affidavit sworn on 16<sup>th</sup> April 2019 in opposition to the said application. It was contended that the parties in the instant suit are different from the parties in the suit before Siakago Law Courts. It was also contended that consolidation of the two suits would cause "confusion" in the judgement.
4. The court has considered the Plaintiff's said application as well as the Defendant's replying affidavit in opposition thereto. The court has noted that none of the parties filed their written submissions as directed on 11<sup>th</sup> March 2019. The court shall, nevertheless, proceed to determine the application.
5. The principles to be considered in such an application were summarized in the case of **RMG V NG & ANOTHER [2013] eKLR** as follows:

**“The principle is that consolidation of suits will be ordered where common questions of law or fact arise of such importance as to make it desirable that the whole of the subject matter be disposed of at the same time. This would mean that the suits are brought together for the purpose of disposing of them simultaneously; if the questions of law or fact to be answered in each of them are one or common, and they can conveniently be disposed of simultaneously.”**

6. Similarly, in the case of *Nyati Security Guards and Services Ltd Vs Municipal Council of Mombasa [2004] eKLR*, it was observed, *inter alia*, that:

**“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 questions of law or fact arise 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 reason it is desirable to make an order consolidating them.”**

7. Bearing in mind the above principles, the court is of the view that although there is no uniformity of parties in both suits, there are likely to arise common questions of fact and law in both suits. The subject matter of the two suits is the same. The Defendant herein is the current registered owner thereof. He is seeking to assert his ownership rights in *Siakago PMCC No. 109 of 2018* by seeking removal of the caution lodged by his brother against the suit property claiming a licensee's interest. On the other hand, the Plaintiff, who is Defendant's sister is

seeking to impeach the Defendant's title on account of alleged fraud. The Plaintiff's contention is that the suit property was family land which was left behind by their late father and that the Defendant had obtained title thereto through fraudulent means.

8. The court is thus of the view that the two suits may conveniently be tried and determined together so that all the issues in controversy amongst the three siblings are determined once for all.

9. The court is, however, of the opinion that it is not legally possible to consolidate two suits which are pending before two different courts. The suit pending before Siakago Law Courts would have to be transferred to the ELC before an order for consolidation can become tenable. The court notes that the Plaintiff did not pray for a transfer order in the application. The court does not consider such omission to be fatal to the entire application. The court still retains residual inherent power to make a transfer order for the ends of justice under **section 3A of the Civil Procedure Act**.

10. The upshot of the foregoing is that the court finds merit in the Plaintiff's notice of motion dated 29<sup>th</sup> October 2018 and makes the following **orders**:

- a. That *Siakago PMCC No. 109 of 2018 – Stephen Njeru Titima V James Ngari Paul Titima* be and is hereby transferred to this court for trial and disposal.
- b. That upon such transfer that suit shall be consolidated with the instant suit for trial and disposal.
- c. The matter shall be mentioned on 26<sup>th</sup> September 2019 to confirm availability of the court file from Siakago Law Courts and for directions.
- d. Costs of the application shall be in the cause.

11. Orders accordingly.

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this **11<sup>TH</sup> DAY** of **JULY, 2019**.

In the presence of the Plaintiff in person and Ms. Ndorongo for the Defendant.

Court Assistant Mr. Muinde

**Y.M. ANGIMA**

**JUDGE**

**11.07.19**