



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT THIKA**

**ELC CASE NO.130 OF 2019**

**SAMUEL NDUNGU NGUGI,**

**ALICE WANGARI KARIUKI & OTHERS.....PLAINTIFFS/APPLICANTS**

**VERSUS**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**GLADYS WAITHIRA KAMAU.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

Through a Notice of Motion Application dated 23<sup>rd</sup> September 2020, brought under **Order 3 Rule 1(h), Order 51 Rule 1** of the **Civil Procedure Rules and Sections 1A, 1B, 3A & 6** of the **Civil Procedure Act** the Plaintiffs/Applicants have sought for the following orders;-

- 1. That this Honorable Court be pleased to stay proceedings and the entire suit being ELC No. 81 of 2019 Thika pending the hearing and determination of this suit.***
- 2. That the Honorable Court does call for and order that ELC No. 81 of 2019, be consolidated with this instant suit being ELC No. 130 of 2019.***
- 3. Costs be provided for.***

The application is grounded on the annexed affidavit of **Samuel Ndungu Ngugi**. He averred that he has authority to plead on behalf of the other Plaintiffs. That the 1<sup>st</sup> Defendant/Respondent has filed another suit citing all the Plaintiffs as the Defendants in **ELC No. 81 of 2019** which suit was filed on **2<sup>nd</sup> May 2019**, when the Summons to Enter Appearance and the Complaint were only served upon them on **7th August 2019**, almost 2 weeks after the suit was instituted.

He further averred that as it can be read from the Complaint, the parties are all the same. That he is advised by his advocates, which advice he takes to be true that having the two suits consolidated will save the judicial time and resources.

He contended that neither of the suits has been heard and both are at the pretrial stage and that the suit by the Defendants in **ELC No. 81 of 2019**, has an active Application dated **24th July 2020**, which if allowed, is likely to affect the position of the Applications herein and if the Application is determined without consideration of the contents of this instant suit, then the Applicants herein will suffer irreparable loss, but the Defendants/Respondents will not suffer any prejudice if these orders are so granted.

The Application is opposed by **Gladys Waithira Kamau**, through her Replying Affidavit dated **12th October 2020**. She averred that the instant Application is misconceived and an abuse of the Court process as **prayers No. 2 and 3**, cannot be granted at the same time, and hence are fatally defective. She further averred that she is the registered owner of all the parcels of land that the Applicants are occupying. That the Applicants want to preempt her Application dated **24<sup>th</sup> July 2020** in **ELC No. 81/2019**, and the entire suit, since the Applicants know that they have committed wastes to her properties.

She contended that **ELC No. 81/2019**, was filed earlier and it is the one which triggered the present suit, and hence the Applicants are malicious and have acted in bad faith. That it is wrong for the Applicants to file a suit after she has filed her suit to evict them and turn around to claim that they were not aware of the suit.

It was her further contention that the issues for determination in the two suits are different, hence the consolidation will prejudice her and that

consolidation is done when the matters are almost seeking for similar orders but herein the suits are distinct with distinct prayers which are separate and must be determined independently.

The 1<sup>st</sup> Respondent filed Its Grounds of Opposition dated **13th November 2020**, stating that the Application is **frivolous, misconceived, vexatious and an abuse** of the Court process. That the Application ought to have been filed in the suit sought to be stayed and which, the Applicant is also a party. That the suit sought to be stayed was filed prior to the current suit.

Parties were directed to file written submissions for the instant Application. The Plaintiffs/Applicants filed their submissions on **24th November 2020**, through the **Law Firm of Njoroge Kugwa & Co. Advocates**, while the 2<sup>nd</sup> Defendant filed her written submissions on **4th May 2021**, through the **Law Firm of K. Moseti & Co. Advocates**. The 1<sup>st</sup> Respondent did not file written submissions.

The Court has carefully considered the instant Application, Replying Affidavit, Grounds of opposition and the rival written submissions filed herein and finds the issue for determination is ***Whether ELC 81 of 2019 should be consolidated with ELC 130 of 2019.***

The principles for consolidation of suits were set out in the case of ***Nyati Security Guards & Services Ltd ...Vs Municipal Council of Mombasa (2000) eKLR***, where the Court held as follows:

***“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where:-***

- a) Some common question of law or fact arises in both or all of them;***
- b) The rights or reliefs claimed in them are in respect of or arise out of the same transaction;***
- c) For some other reason, it is desirable to make an order for consolidating them;***

*It is therefore incumbent upon this Court to carefully examine the two suits to be consolidated and determine whether the same involve common questions of law or fact, whether the reliefs sought arise out of the same transaction and whether it would be convenient and efficient to consider the same in a consolidated suit.*

The Court takes cognizance of the fact that **ELC No. 81 OF 2019**, was filed earlier by the 2<sup>nd</sup> Defendant/Respondent and raises pertinent issues. The prayers sought among other are orders of eviction; permanent and mandatory injunction against the Defendants to remove or demolish any structures erected on the suit properties and general damages for trespass and unlawful entry into the suit properties.

Whereas, in the present suit i.e. **ELC No. 130 of 2019**, the prayers sought amongst others are that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants acted fraudulently, unlawful and unprocedurally in respect of the suit property; an order directing the 1<sup>st</sup> Defendant to cancel all the leases forming the suit premises and an order of permanent injunction restraining the 2<sup>nd</sup> Defendant from occupying, selling, subdividing or in any way dealing with the suit properties.

It is clear that from the prayers sought in both cases put forth that there are some common questions of both facts and law that will arise when the Court will be determining the issues. However, this Court notes that while there may be some common questions of law that may arise, there are some questions of facts that are also common in both cases.

Further, the rights and reliefs do arise from the same transactions. The question that begs is whether it would be desirable to consolidate the two matters. In this instance, this Court notes that the Plaintiffs in **ELC No. 130 of 2019**, are the same Defendants in **ELC No. 81 of 2019 save for Elizabeth Wanjiru Gichuhi, the 14<sup>th</sup> Defendant** in **ELC No. 81 of 2019**.

After careful considerations of the fact that guide a Court in deciding whether or not to consolidate the two matters, it is this Court's considered view that the two bear same set of facts, with the same parties, they do arise from the same transaction and do substantially involve the same parcels of land and the other similarities would be that the Plaintiff in **ELC 81 of 2019** and the Plaintiffs/Applicants in **ELC No. 130 of 2019**, allegedly bought the suit lands from the **Mwihoko Housing Limited**. Surprisingly enough, in both cases, parties are represented by the same advocates.

Consolidating this instant matter with an already active matter means expeditious disposal of the case. The said consolidation will significantly assist the Court in determining the issues in conflict and the spirit of the overriding objective of sections **1A** and **1B** of **Civil Procedure Act**, which call for expeditious disposal of matters before court as held in the ***Petition No. 14 of 2013 Law Society of Kenya vs Center for Human Rights and Democracy and 12 Others (2014) eKLR***, where the Supreme Court observed as follows: -

***“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.”***

The purpose of consolidation of suits is to save costs, time, speed up trial, eliminate duplicative trials involving the same parties, issues and evidence, for efficient and proper administration of justice, and expeditious disposal of matters, and promote judicial economy, so long as it is not to prejudice any of the Parties and the Court finds that no party will be prejudiced.

This Court finds and holds that since there are common issues of facts and law in both matters which fundamentally involve ownership, then

the two matters ought to be consolidated.

Consequently, the Court directs that **ELC No. 81 OF 2019, be the lead file, and further ELC No. 130 of 2019**, and all its subsequent proceeding be stayed. **ELC 81 OF 2019 should be the lead file noting that it has gone to an advanced stage of pre-trials. Costs shall be in the cause.**

**It is so ordered.**

*Dated, signed and Delivered at Thika this 26<sup>th</sup> day of July 2021.*

**L. GACHERU**

**JUDGE**

**26/7/2021**

**Court Assistant – Lucy**

**ORDER**

In view of the declaration of measures restricting Court operations due to the **COVID-19** Pandemic, and in light of the directions issued by His Lordship, the Chief Justice on **15<sup>th</sup> March 2020**, this **Ruling** has been delivered to the parties online with their consents. They have waived compliance with **Order 21 Rule 1** of the **Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open Court.

**With Consent of and virtual appearance via video conference – Microsoft Teams Platform**

**M/s Njoroge holding brief for Mr. Njoroge Kugwa for the Plaintiffs/ Applicants**

**No appearance for the 1<sup>st</sup> Defendant/Respondent**

**Mr. Momanyi for the 2<sup>nd</sup> Defendant/Respondent**

**L. GACHERU**

**JUDGE**

**26/7/2021**