



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 493 OF 2012

GORVAS HOLDINGS LIMITED PLAINTIFF

- VERSUS -

KENSALT LIMITED1ST DEFENDANT

SUPPLIES & SERVICES LIMITED..... 2ND DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD DEFENDANT

DIRECTOR OF SURVEYS4TH DEFENDANT

TUFFPLAS MANUFACTURERS LIMITED..... 5TH DEFENDANT

TAYLOR WINCH (COFFEE LIMITED)6TH DEFENDANT

RULING

1. The plaintiff, Gorvas Holding Limited, initiated this suit on 10/8/2012 through a plaint dated 8/8/2012. They subsequently amended their pleadings severally. Their claim is now contained in what they have described as “*Amended Re-Amended Plaint*”, dated 28/11/2019. They contend that they are the registered proprietor of **Land Reference Number 209/11278**, measuring 1.907 hectares and comprised in **Grant Number IR 48935**, registered on 19/1/1990. In the year 2012, they moved to the suit property with a view to developing it. The 1st defendant (**Kensalt Limited**) and the 2nd defendant (**Supplies and Services Limited**) similarly moved onto the suit property, laying claim to the suit property. At that point, they discovered that there were parallel titles relating to the suit property, namely: (i) **Grant Number IR 67926** purportedly issued in the name of the plaintiff on 14/12/1995 and comprising of 2.302 hectares surveyed as **Land Reference Number 209/11410** and purportedly transferred by the plaintiff to the 6th defendant [**Taylor Winch (Coffee) Limited**] on 21/1/1997, and subsequently transferred to the 1st defendant (**Kensalt Limited**) on 28/11/2010; and (ii) **Grant Number 68428**, issued on 20/2/1996 in the name of the 2nd defendant (**Supplies and Services Limited**), comprising of 1.2256 hectares surveyed as **Land Reference Number 209/12110**.

2. The plaintiff alleges that a certificate of incorporation was fraudulently procured in their name to facilitate the resurvey/reparcelling of their land and the re-issuance of a parallel grant in their name. The parallel grant issued in their name was fraudulently conveyed to the 6th defendant by persons who had procured the fraudulent parallel certificate of incorporation. The 6th defendant in turn fraudulently conveyed the said fraudulent title to the 1st defendant. The plaintiff further alleges that the grant held by the 5th defendant (**Tuffplas Manufacturers Limited**) relates to land that partially falls within the land comprised in the title they (the plaintiff) hold. Consequently, the plaintiff seeks, among other prayers, orders revoking the grants and or survey/deed plans relating to the two impugned titles held by the 1st, 2nd and 5th defendants.

3. In or about November 2020, the 1st defendant brought a notice of motion dated 12/11/2020 seeking an order consolidating this suit with **Nairobi ELC Case No. 195 of 2019; Tuffplas Manufacturers Limited v Kensalt Limited & 3 others**. The application was supported by an affidavit sworn on 12/11/2020 by *Lawi Kigen Kiplagat*. He deposed that the said suit related to the same subject matter which was the parcel of land surveyed and registered in the name of the plaintiff, **LR No. 209/11278**, comprised in **Grant Number IR 48935**. He added that the issue falling for determination in **ELC 195 of 2019** was substantially the same as the issue falling for determination in this suit. He urged the court to grant a consolidation order to avoid inconsistencies and to ensure an orderly, effective, fair, just, expeditious and proportionate resolution of the dispute.

4. The plaintiff opposed the application though grounds of opposition dated 5/3/2021. They contended that the issues in the two disputes were not the same, hence there was no proper basis for consolidation.

5. The application was canvassed orally in the virtual court on 9/6/2021. Mr Arusei, counsel for the applicant (1st defendant) submitted the two suits related to the same subject matter. He added that the 5th defendant filed ELC Case No. 195/2019 while aware that the present suit subsisted. Counsel added that there was multiplicity of litigations and it would be untidy if the multiple litigations were maintained.

6. Mr Allan Kamau for the Attorney General supported the application for consolidation, contending that the suit property was the same on the ground. Counsel referred the court to paragraph 15 of the plaintiff's pleadings in which the plaintiff had averred that the titles held by the 1st and 2nd defendants were parcels of the plaintiff's title. Ms Akach for the 6th defendant similarly supported the application for consolidation, contending that the court will be looking at the root of the parallel titles and it was ideal to consolidate the two suits.

7. Mr. Kagiri for the 5th defendant opposed the application contending that the 5th defendant believed that the suit properties were distinct although the plaintiff's property appeared to marginally overlap **LR No. 209/11410**. Ms Othieno for the plaintiff opposed the application by contending that the plaintiff in this suit was not a party to ELC Case No. 195/2019. She added that the plaintiff claimed to be the owner of the LR No. 209/11278 which had been wrongfully re-parceled into LR No. 209/11410 and LR No. 209/12110 by the Director of Surveys and the Land Registrar. Lastly, counsel submitted that there was a problem of identification of the properties on the ground.

8. I have considered the application, the response thereto, the parties' respective submissions, and the legal framework and relevant jurisprudence relating to consolidation. The single question falling for determination in this application is whether the applicant (**Kensalt Limited**) has satisfied the criteria upon which an order of consolidation is granted.

9. Order 11 rule 3(1)(h) of the **Civil Procedure Rules** grants trial courts jurisdiction to consolidate suits to achieve the objective of expeditious disposal of cases. In *Law Society of Kenya –v- The Centre for Human Rights and Democracy [2014] eKLR*, the Supreme Court of Kenya summarized the object of consolidation in the following words:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a frame work for trial 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.”

10. Some of the factors to be considered in an application for an order of consolidation are: (i) whether the same question(s) of law or fact arise in the two or more suits; (ii) whether the causes of action or reliefs sought in the suits arise out of the same transaction or series of transactions; and (iii) whether any party will be disadvantaged or prejudiced by the consolidation.

11. I have looked at the pleadings in the two suits. In the present suit, the plaintiff (**Gorvas Holdings Limited**) impugns the title held by the 5th defendant (**Tuffplas Manufacturers Limited**), contending that it relates to land that is partially situated on LR No. 209/11278, belonging to the plaintiff. Further, the plaintiff impugns the title held by the 1st defendant (**Kensalt Limited**), contending that it relates to land that is contained in the plaintiff's title (IR 48935 LR No. 209/11278). In ELC Case No. 195 of 2019, the plaintiff (Tuffplas Manufacturers Limited) impugns the title held by **Kensalt Limited** and seeks nullification of that title on the ground that it was illegally issued because the land had already been surveyed and a title issued in their name. Thirdly, it does emerge that there are allegations of overlap in terms of surveys relating to titles held by **Tuffplas Manufacturers Limited** and **Gorvas Holdings Limited**.

12. From the above facts, it is clear that questions relating to surveys and the correct boundaries relating to the rival titles will fall for determination in both suits. In the circumstances, it would save the court's time and the costs of litigation on part of the parties involved in the two suits if the two suits were consolidated and those questions considered in the same trial forum and determined in the same judgment.

13. Consequently, the court is satisfied that the applicant (**Kensalt Limited**) has satisfied the criteria upon which a consolidation order is issued. I therefore allow the application dated 12/11/2020 in the following terms:-

a. Nairobi ELC Case No. 195 of 2019 is hereby consolidated with this suit (Nairobi ELC Case No. 493 of 2012).

b. Nairobi ELC Case No. 493 of 2012 shall be the lead file.

c. Costs of this application shall be in this cause.

d. A mention date before the Deputy Registrar of Nairobi (Milimani) ELC shall be set at the time of rendering this ruling.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 28TH DAY OF SEPTEMBER, 2021

B M EBOSO

JUDGE

In the Presence of: -

Ms Othieno for the Plaintiff

Mr Kagiri for the 5th Defendant

Court Assistant: Lucy Muthoni

NOTE:

The relevant application was heard and a ruling date fixed when I was stationed at Nairobi (Milimani) Environment and Land Court Station. Subsequent to that, I was transferred to Thika Environment and Land Court

Station. This is why I have delivered the Ruling virtually at Thika.

B M EBOSO

JUDGE