



REPUBLIC OF KENYA



KENYA LAW
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**In re Estate of Isaac Juma raketo (Deceased) (Succession Cause
115 of 2012) [2023] KEHC 1670 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1670 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
SUCCESSION CAUSE 115 OF 2012
SC CHIRCHIR, J
MARCH 13, 2023**

IN THE MATTER OF THE ESTATE OF ISAAC JUMA RAKETO (DECEASED)

RULING

1. What is before this court is the Notice of Motion dated June 21, 2022. The application is brought by the interested parties. It is supported by the grounds appearing on the face of the application and the affidavit of Charles Were. It seeks for following orders.
 - a. That the honourable court be pleased to issue an order transferring Kakamega ELC case no 26 of 2017 (OS) and Kakamega Med/HC/214 of 2019 to this court and be consolidated with this cause.
 - b. That upon granting the orders sought in paragraph (a) above, the court to proceed to grant orders prayed for in the application dated November 24, 2020 and filed in court on November 25, 2020.
2. The administrators/respondents Catherine Makanda and Mildred Otieno filed a replying affidavit essentially opposing the application, but during the hearing, their counsel told the court that the application is not opposed.
3. I have considered the application and the supporting affidavit. I have also perused the case file in Mediation no 214 of 2019. The purpose of consolidation as it can be seen from various case law is to save costs, time, speed up trial, eliminate duplicity in trial involving the same parties, for efficient and proper administration of justice and expeditious disposal of matters among others (see [Selecta Kenya Co vs Chase Bank ltd & 2 others](#) (2018) eKLR).
4. Bearing in mind the above purposes, do the above 2 suits and mediation no 214 of 2019 meet the conditions for consolidation? I think not.
 - i. Firstly, I have not had the benefit of seeing the proceedings in ELC no 26 of 017. This court is not in a position therefore to ascertain whether the parties and the subject matter are similar to the ones in the present cause. In his ruling dated January 28, 2022, my brother Justice Musyoka had inquired about the proceedings in ELC no 26 of 2017 and the settlement agreement. Even



though the order on the mediation Agreement has been availed, the contestation in respect thereof notwithstanding, the proceedings in ELC 26 of 2017 have not been availed.

- ii. Secondly, the High court and the Environment and Land court are two distinct courts with equally distinct jurisdictions. Indeed, article 165 (5)(b) of the Constitution bars this court from dealing with any matter reserved for the jurisdiction of the courts falling under article 162(2). One of the courts established pursuant to Article 162(2) is the Environment and land Court. If this court was to transfer ELC no 26 of 2017 to this court and continue to determine issues that arose therein, under the umbrella of consolidation, it will be going outside its jurisdiction. As it has been set out in numerous past decisions, jurisdiction is conferred by the Constitution or statute only, a court cannot arrogate to itself jurisdiction
 - iii. Thirdly, a perusal of the mediation order no 214 of 2019 shows that the said order was adopted as an order of the court in ELC no 26 of 2017. It is therefore part and parcel of Kakamega ELC no 26 of 2017. It cannot be treated as a separate “suit” as the applicant is purporting to do, for purposes of consolidation.
 - iv. Curiously, one of the orders arising from mediation no 214 of 2019 and which was adopted as an order of the court before Hon Matheka J, is to the effect that the suit, being ELC no 26 of 2017 has been entirely withdrawn. If the suit has been withdrawn, and assuming this court had jurisdiction to consolidate, it means that there is no suit to be transferred to this court, or consolidated with this cause.
5. Regarding prayer (b) of the application, the application dated November 24, 2020, which this court is being asked to proceed to determine upon consolidation ,is indirectly seeking to reverse the orders of Justice Mwita given on November 30, 2016. Without delving much into the merits of the said application, I need to point out that litigants must move the court in a proper way whenever they want their issues adjudicated by the courts, especially in a case like this where parties are represented.
6. I note with concern that there is an estate whose settlement has been in limbo for a while now, it is advisable for the parties to relook at this matter and move the courts in a way that will exhaustively and conclusively bring this matter to a close.

The present application is however misconceived. It is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 13TH DAY OF MARCH 2023.

S CHIRCHIR

JUDGE

