



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT EMBU

(MISC JR) E.L.C. CASE NO. 12 OF 2014

(FORMERLY KERUGOYA JR 23 OF 2013)

IN THE MATTER OF AN APPLICATION BY DAUDI NGARI NJIRU

FOR ORDERS OF MANDAMUS

AND

IN THE MATTER OF LAND ADJUDICATION ACT (CAP 284)

AND

IN THE MATTER OF ADJUDICATION OFFICER MBEERE DISTRICT

REPUBLIC OF KENYA.....APPLICANT

DAUDI NGARI NJIRU.....EX PARTE APPLICANT

VERSUS

NGONDI NJERU.....1ST RESPONDENT

GACHOKA LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

AND

AMBROSE KITHAKA NJIRU.....APPLICANT

RULING

1. By a notice of motion dated 20th November 2018, brought under **Order 11 Rule 3 (H) of the Civil Procedure Rules**, the 1st Respondent sought an order for consolidation of the instant suit with *Embu High Court Misc. Application No. 34 of 2009 (JR)*, *Embu High Court Misc. Application No. 68 of 2010* and *Embu ELC No. 336 of 2015*.

2. The 1st Respondent contended that the parties to all those proceedings were the same and the subject matter was the same namely, *Block No. 109* in Gichiche Adjudication Section. It was further contended that consolidation should be ordered in order to avoid conflicting decisions on the same issues. The said application was supported by an affidavit sworn by the 1st Respondent on 19th November 2019 in which he reiterated the grounds set out in his said application. The 1st Respondent did not exhibit copies of the pleadings in the other proceedings which were said to be similar to the instant suit. There was no disclosure if there were any common issues of law and fact which would arise amongst all those proceedings.

3. When said application was first listed for hearing on 21st May 2019 the court directed the 1st Respondent to file a further affidavit exhibiting copies of the pleadings of the suits sought to be consolidated within 21 days. The record shows that the said affidavit was filed on

11th June 2019 in which only skeleton pleadings were annexed. The further affidavit exhibited only the chamber summons for leave under **Order 53 of the Civil Procedure Rules** in *Misc. Civil Application No. 68 of 2010*. No pleadings were filed with respect to *Misc. Application No. 34 of 2009 (J.R.)*. The 1st Respondent simply filed uncertified copies of proceedings which indicated that the said application was concluded way back on 24th May 2010.

4. The *ex parte* Applicant filed a replying affidavit sworn on 10th July 2019 in opposition to the said application for consolidation. It was contended that *J.R. Misc. Application No. 34 of 2009* was concluded about 10 years ago hence it could not be subject of consolidation. It was further contended that the parties and issues in the various suits sought to be consolidated were not the same hence not suitable for consolidation.

5. It would appear that the rest of the parties to the various suits sought to be consolidated did not file their responses to the 1st Respondent's application. The record further shows that the 1st Respondent filed a further affidavit sworn on 28th October 2019 in response to the *ex-parte* Applicant's replying affidavit. It was claimed for the first time that there were common issues of law and fact arising from the suits sought to be consolidated.

6. When the said application was last listed for hearing on 3rd October 2019 it was directed that the same be canvassed through written submissions. All the concerned parties were granted 60 days within which to file and exchange their written submissions. The record shows that the 1st Respondent filed his submissions on 5th November 2019 whereas the *ex-Parte* Applicant filed his on 23rd December 2019.

7. The court has considered the 1st Respondent's said application, the replying affidavit in opposition thereto, the 1st Respondent's further and supplementary affidavits, and the written submissions on record. The main question for consideration herein is whether or not the 1st Respondent has made out a case for consolidation of the various suits cited in his application.

8. The factors to be considered in an application for consolidation of suits were considered in the case of **RMG Vs 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 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.”

9. Similarly, in the case of **Nyati Security Guards & 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 pending in the same court where;

i. Some common questions of law and fact arise in both or all of them; or

ii. The right or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions; or

iii. For some other reason it is desirable to make an order consolidating them.”

10. Bearing the above principles and considerations in mind, the court is of the opinion that it was the responsibility of the 1st Respondent to demonstrate the existence of common questions of law or fact or that the reliefs sought in the various suits arise out of the same transaction or series of transactions. The 1st Respondent only provided scanty material on the nature and status of the said suits despite being accorded an opportunity to file a further affidavit exhibiting copies of pleadings in all the suits sought to be consolidated. It is noteworthy that the 1st Respondent did not furnish pleadings with respect to *Misc. Application No. 34 of 2009 (J.R.)* and *Misc. Application No. 68 of 2010* (where only a chamber summons was supplied). In those circumstances, it would be difficult for the court to undertake a proper assessment of the matters in dispute in all the suits the subject of the application. The 1st Respondent has thus failed to demonstrate to the court that there are common issues of fact or law which would arise in all the concerned suits. The mere fact that the suits concern the same block or that some of the parties appear in more than one suit, without more, cannot justify consolidation.

11. The upshot of the foregoing is that the court finds no merit in the 1st Respondent's notice of motion dated 20th November 2018. Accordingly, the same is hereby dismissed with costs to the *ex-parte* Applicant.

12. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 16TH DAY of JANUARY 2020.

In the presence of Ms. Ndorongo for the Applicant, Mr. Siro for the Attorney General for the 2nd & 3rd Respondents and in the absence of the rest of the parties.

Court Assistant: Mr. Muinde

Y.M. ANGIMA

JUDGE

16.01.2020