



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C NO. 23 OF 2019

WAMBUI KIHARA MBURU.....PLAINTIFF

VBERSUS

DAVID WAHUGA KUBORIGA.....1ST DEFENDANT

ALEXANDER MWANGI KIHARA.....2ND DEFENDANT /APPLICANT

RULING

1. The Applicant filed the application dated the 25/6/19 seeking orders for the consolidation of the ELC No 23 of 2019 and ELC 395 of 2017 on the grounds that the subject matter is the same, that is to say LOC3/GITURU/223; the two suits involve the same questions of law and fact; the consolidation will facilitate the efficient and expedient disposal of the dispute and finally that no prejudice will be occasioned to the parties.

2. The application is supported by the affidavit of the Applicant where he reiterates the grounds as stated above.

3. The application is opposed by the Plaintiff/Respondent through a Replying Affidavit dated the 29/7/19 where she deponed that the application is made in bad faith and is intended to stop her from accessing justice. That the issue between the Plaintiff and the 1st Defendant was settled vide a consent order dated the 20/2/17 but the same could not be executed because the Applicant's caution remained on the register. That ELC 395/17 was stayed vide the ruling of the Court issued on the 31/10/18. That consolidation will delay the disposal of the suits because no summons have been issued in 395/17 and therefore any consolidation will be totally untenable.

4. The 1st Respondent /Defendant did not oppose the application.

5. I have perused the suits and I find that the parties in ELC 23 of 2017 are Wambui Kihara Mburu against David Wahuga Kuboriga and Alexander Mwangi Kihara. In ELC 395 of 2017 the parties are Alexander Mwangi Kihara and Wambui Kihara Mburu.

6. The subject matter of the dispute is LOC 3/GITURU/223 in both suits.

7. In ELC 395/17 the claim is based on customary trust whilst in ELC 23/19 is the removal of caution.

8. The suit between the Plaintiff and the 1st Defendant in ELC 23 of 2019 was settled vide a consent order dated the 20/2/17 wherein the 1.5 acres was awarded to the 1st Defendant in exchange for the removal of the caution that was lodged by him on the suit land.

9. In the case of **Law Society of Kenya vs The Centre for Human Rights and Democracy, Supreme Court of Kenya, Petition no. 14 of 2013**, the Supreme Court of Kenya had this to say about consolidation of suits:-

“The essence of consolidation 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”

10. The principles of consolidation of suits was re-stated in **Stumberg and Another vs Potgeiter 1970 E.A. 323** as follows:-

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered”

11. In the Indian case of **Brij Kishore vs Bir Singh & Others at the High Court of Punjab and Harana (L.R 5922 of 2013** Justice

Paramjeat Singh quotes the following from the Supreme Court Case of **Prem Lala Nahata & Another vs Chandi Prasad Sikaria, (2007) 2, Supreme Court Cases 551 at paragraph 18:-**

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits”

12. Order 11 Rule 3(1) (h) of the Civil Procedure Rules mandates the Court to interalia during pretrial conference consider the consolidation of suits and in so doing, be guided by the following :-

- a. Do the same question of law or fact arise in both cases?
- b. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction.
- c. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party.

13. The Respondent has argued that the consolidation is not tenable because no summons have been issued in ELC 395/17. My perusal of the file reveals that the Respondent did file her defence and counterclaim to the Applicants claim and it is not true that summons have not been issued.

14. Guided by the overriding objectives of section 1A of the Civil Procedure Act which is to facilitate the just expeditious proportionate and affordable resolution of disputes and to save judicial resources and time, I consider this case to qualify for consolidation on grounds that the subject matter is the same, the parties are the same and none of the parties will suffer any prejudice if the orders are granted. The consent entered into between the Plaintiff and the 1st Defendant is dependent on the removal of the caution by the 2nd Defendant which in my view will only be achieved upon the hearing of the suit.

15. In the end I allow the application and make the following specific orders;

- a. ELC 23/19 and ELC 395/17 be and are hereby consolidated.
- b. The lead file shall be ELC 395/17.
- c. The parties to appear before for directions on the 27/2/2020 for further directions after consolidation.
- d. Costs shall be in the cause.

16. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 27TH DAY OF FEBRUARY 2020.

J G KEMEI

JUDGE

Delivered in open Court in the presence of;

Wangari HB for Mbaabu for the Plaintiff

Wangari HB for Nyakeriga for the 1st Defendant

Gacheru HB for Ms Mokaya for the Applicant

Irene and Njeri, Court Assistants