



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 225 OF 2018

SOLOMON WANYOIKE WANAINA.....PLAINTIFF/APPLICANT

VERSUS

SUNRISE SYNTHETICS LIMITED....DEFENDANT/ RESPONDENT

RULING

The matter for determination is the Notice of Motion Application dated **8th October 2019** by the Plaintiff/ applicant seeking for orders that;

1. That this suit be and is hereby consolidated with ELC Case No. 226 of 2018 (Thika) Mama Millers limited versus Sunrise Synthetics Limited.

2. ELC case no. 226 of 2018 which is scheduled to be head on 14th October 2019 be the lead file.

3. The costs of this application be in the cause.

The Application is premised on the grounds that the causes of action in this suit and in **ELC 226 of 2019**, arise from the same transactions, namely 2 sale agreements each executed on **20th September 2009**, by the defendant and the plaintiff for the sale of land being **2 acres** to the instant plaintiff and **4 acres** to the plaintiff in **ELC 226 of 2018**. That the land was to be subdivided from the defendants property situate in Thika known as **L.R No.4953/1192/1**. Further that the Defendant in each case is the same, the statement of defence and counter claims are different to reflect the different acreages each plaintiff occupies. Further that the issues in dispute in the 2 cases are the same witness are the same in each case and it will therefore be prudent use of judicial time and resources to consolidate the cases and so as to avoid conflicting judgments.

In his supporting Affidavit, **James Karanja Mwangi**, averred that he is the Counsel on record for the Plaintiff in **Suit No. 225 and 226** which was to be heard on **14th October 2019**. It was his contention that he conducted pretrial conference in the two matters and that it emerged that the witnesses in the two cases are the same except the plaintiffs', issue in the cases are the same as they both arise from the same transaction and therefore the best way would be to consolidate the two cases

The Application is opposed and the Defendant/ Respondent through its director **Khilna J. Shah** filed a Replying affidavit and averred that the two pending suits are distinct and separate in various respect. She averred that the Applicant was well aware of the separate suits and made no attempts to seek consolidation and the attempts at this stage are to scuttle and delay the hearing. She contended that although there may be identical questions of law arising from both suits, there are two separate agreements and the circumstances for both are different and handling of the matters separately will enable the court see a clear picture of the dispute as possession was passed in one and the acreages are different. She further averred that the pre-trial conference was not done jointly with the Defendant and that the Counsel has not followed due process as any Application for consolidation should take place within thirty days from the date of pretrial directions.

She contended that the Plaintiff in the instant suit is using delay tactics and is not in possession as the Plaintiff is trying to delay the commencement of the instant hearing. She further averred that there is no possibility of having two conflicting judgments as each matter will be decided on its own merit and the consolidation will prejudice the Defendant/ Respondent as there are other matters being **Misc 47 and 48 of 2018**, pending in court directly in relation to **ELC 225 and 226 of 2018** and it would therefore jeopardize the Defendants position.

The Application was canvassed by way of written submissions to which the Court has now carefully read and considered and it is this Court's opinion that the issue for determination is whether the suit should be consolidated.

The principles for consolidation of suits are 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.

This Court having perused the two files makes the following observation, that with regard to **ELC 225 of 2018**, the agreement in question is dated **20th September 2009**, the consideration was **kshs.8 million**, it involves **2 acres** of the suit land and the Plaintiff alleges that possession was given in **2011**. With regards to **ELC 226 of 2018**, the agreement was dated **20th September 2009**, it involves **4 acres** of the suit land. The Court further observes that the years which each party took possession are different and while the Defence in one of the suit admits it did grant possession in another the Defence denies granting possession.

It is clear that from the prayers sought by both Plaintiffs and the Defence 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 the while there may be some common questions of law that may be arise, there are some questions of facts that are not common in both cases case. Further the rights and reliefs do not arise from the same transactions. The question then begs whether it would be desirable to consolidate the two matters. In this instance, this Court notes that the two Plaintiffs are different and while the agreements were signed and dated on the same date, the agreement involves separate acres of land and the suit land being claimed is not the same. Further that each of the plaintiff claim to be in possession of then suit lands but which of are different acreage. Therefore it is the Court's considered view that the parcels of land being claimed by the Plaintiffs are not the same.

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 different set of facts, do not arise from the same transaction and do not involve the same parcels of land and the only similarities would be that Plaintiffs both bought the suit lands from the same defendant and the sale agreements were signed on the same day. Therefore, the court finds and holds that these are not matters that ought to be consolidated.

The Upshot of the above therefore is that the Notice of Motion Application dated **8th October 2019**, is not merited and the same is dismissed with costs to the Defendant/ Respondent.

It is so ordered.

Dated, Signed and Delivered at Thika this 5th day of March 2020.

L. GACHERU

JUDGE

5/3/2020

In the presence of:-

No appearance for the Plaintiffs/Applicants

No appearance for the Defendant/Respondent

Lucy - Court Assistant.

L. GACHERU

JUDGE

5/3/2020