



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**HIGH COURT SUCC.CAUSE NO. 512 OF 2008**

***IN THE MATTER OF THE ESTATE OF JOSPHATMUTEAM'ARITHI***

**CECILIA KIAJIMBAE..... 1<sup>ST</sup> APPLICANT**

**ANDREW RIUNGU B. M'ARITHI ..... 2<sup>ND</sup> APPLICANT**

**VERSUS**

**EVANGELINE TIRINDI JOSPHAT..... 1<sup>ST</sup> RESPONDENT**

**MAURICE BUNDIGITONGA..... INTERESTED PARTY**

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**RULING**

**Consolidation of succession causes**

[1] In their application for revocation dated 3<sup>rd</sup> July 2015, the Applicants applied for, inter alia, consolidation of this cause and Meru HC Succession Cause No 274 of 2012. Parties agreed that the request for consolidation of the two causes to be decided first, thus, on 6.10.2012, this court directed parties to file submissions on that aspect only. Parties obliged.

**Applicant's submissions**

[2] The Applicants submitted that this cause relates to the estate of Josphat Mutea M'arithi, the deceased herein and who was the son of Barbana M'Arithi M'Rubucha, again deceased and in respect of whom Succession Cause No 274 of 2012 relates. Secondly, the Applicant herein is the administrator in cause No 274 of 2012 and the Respondent is the objector in the same cause. He contended that issues on common trust and entitlement arise in both causes; both relate to same family and one cannot talk of one cause without reference to the other. He stated further that resolution of one of the causes will affect the other and that if they are heard separately, the Respondent is likely to conceal her entitlements in the other cause in order to get more land. He averred that the key player in all these matters is the Interested Party; who discreetly fabricated documents in order to get the entire estate yet he is not even the son of the deceased. The Applicants also stated that the Applicant and the Respondent are both witnesses in both causes and the evidence will revolve around same issues. Therefore, the parties, legal and factual issues in both causes are perfectly the same. In such circumstances, the Applicant argued, the law is that

these causes should be consolidated. They cited the case of **Joseph Okoyo vs. Edwin Dickson Wasonna [2014] eKLR, Kenya Armed Forces Old Comrades Association Registered Trustee vs. Registered Trustees of Agape Fellowship Centre [2014] e KLR** and **Re Estate of Walter Karanja (Deceased) [2008] eKLR**. The Applicants concluded that in the interest of substantive justice these causes should be consolidated.

### **Respondent's Submissions**

[3] The Respondents were of a different view. They stated that the deceased in the two causes are different; the Respondent merely represents her late husband in cause No 274 of 2012 whilst in this cause she is the wife of the deceased and with power to administer her late husband's estate. Thus, the Applicant is merely intruding in the administration of his brother's estate when he is not even a beneficiary. According to the Respondent, the Applicant is trying to use and has involved the 1<sup>st</sup> Applicant in these proceedings even after the 1<sup>st</sup> Applicant stated that she has no interest in this estate. The Respondent urged further that in cause No 274 of 2012 it is alleged that a Will exists which makes it imprudent to consolidate such cause with intestate one and such course would only create unnecessary complications and difficulties. In any event, the two causes relate to distinct properties i.e. No 274 of 2012 and this one relate to L.R NO. ABOGETA/U-KIRINGA/54 and L.R NO ABOGETA/U-KIRINGA/167 respectively. Similarly, the beneficiaries and their interests in the two causes are varied. And the mere fact that the Respondent is a beneficiary in both causes does not make her interest in both causes similar. There is no nexus between her interest in the estate of her father-in-law and her interest in the estate of her husband. The Applicant should pursue his purported entitlement in his brother's estate, if any, independent of his father's estate. She was of the view that consolidation herein is only aimed at compounding the issues in this matter thereby force the Respondent to get a lesser share on behalf of her late husband. Again, the deceased in cause No 274 of 2012 died in 1991 while the deceased in this cause died in 1970 before the Law of Succession Act and so the latter will be governed by Customary law whereas the former will be governed by the Law of Succession Act. Therefore, combining the two causes will only introduce legal complexities which should be avoided. These complexities will prejudice the parties involved.

[4] The Respondent submitted further that the basis for the Applicant's claim herein is an alleged trust; that the deceased held in trust the share of his late brother Pangrasio Mbae. Such trust matters are better litigated in civil suit rather than in succession causes. They relied on **Eunice Wainoi Muriithi vs. Mary Miringo Karimi**. In any case, the person for whom the Applicant seeks to intervene has said in no uncertain terms that she has no interest in this estate and that the deceased did not hold any land in trust for her late husband. The Applicant will therefore lack capacity even to litigate in this matter. According to the Respondent, the sole purpose of seeking to consolidate these two causes was to enable the Applicant have more share than the wife of the deceased.

### **DETERMINATION**

[5] I have keenly and meticulously considered all matters and arguments that each party has presented in a rather forceful manner. The law on consolidation is now settled by a long line of judicial authorities as well as eminent literary works. According to the **Black's Law Dictionary** (8th Edition), a consolidation of suits means;

**“...to combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment or, sometimes, separate judgments....”**

A consolidation of suits does not necessarily result into a single judgment; it may lead to separate judgments. But the important thing to note is that, consolidation will be ordered:-

- a. **Where there are two or more suits or matters pending in the same court;**

- b. **Some common question of law or fact arises in both or all of them; or**
- c. **The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or**
- d. **For some other reason it is desirable to make an order for consolidating the suits.**

See the case of **Nyati Security Guards & Services Ltd vs - Municipal Council of Mombasa [2004] eKLR**. **But even in making an order for consolidation of suits, the court is minded to ensure that the course taken will serve the overriding objective of the law to attain efficient and expeditious disposal of disputes as an enabler of fair hearing in the suits.** Therefore, a consolidation should not lead into injustice or prejudice or unnecessary hardships to any party. See **Korean United Church of Kenya & 3 others vs. Seng Ha Sang (2014) eKLR**. Looking at both suits, there are no common issues of law and fact except that the deceased are father and son, and the two disputants are common in both causes. The estates are distinct and relate to different properties. It has not been claimed that the two deceased persons had properties in common ownership. Accordingly, care should be taken not to consolidate causes in respect of different estates, except in only very clear cases. As a matter of law and fact, a careless intermingling of two distinct estates through consolidation may result into; a distortion of entitlement of heirs as well as the distribution of the estates in question; or injustice or prejudice to one or more of the beneficiaries thereof. Such distortion is likely to occur in these causes if they are consolidated especially given the arguments being preferred by the Applicant. Similarly, such arguments by the Respondent that these two estates are governed by different laws as one of them the deceased died in 1970 before the enactment of the Law of Succession Act while the other died in 1991 are not trivial or inflated trivial matters; they are real and substantial legal matters which make a lot of legal sense. Therefore, combining the two estates will introduce legal as well as factual complexities around the forgoing issues- a path which will just convolute the two causes for nothing. I do not also wish to brush aside the Respondent's arguments that the Applicant lacks capacity to litigate in these proceedings; it has been claimed that (1) he is not a beneficiary in this estate or in the alleged trust; (2) the person he is pretending intervene for has denied the alleged trust; and (3) his intention in asking for consolidation is to get more share than the Respondent. These issues and that of capacity are important and will be properly canvassed by keeping these causes separate. If the children of the Respondent or the beneficiaries of the alleged trust have any objections, such should be properly raised by them and determined in each cause. I also do not see the basis of the Applicant's fear that the Respondent will conceal the facts of cause No 274 of 2012 when such judicial proceedings may be tendered in evidence in another judicial proceeding. In fact the Applicant is already pleading the facts of those proceedings in this cause and nothing will prevent him from relying on the said cause in evidence herein to prove his claims. The fears expressed and points being raised by the Applicant in his arguments will be best and conclusively resolved when these causes are kept separate, except, however, there is nothing wrong to have the two matters heard back to back so that anything useful may be drawn from one to the other as a matter of evidentiary diffusion, if at all. In the premises, there is absolutely no **reason or anything which makes it desirable to make an order for consolidation of the two causes**. Accordingly, I dismiss the request for a consolidation of and the two causes shall remain distinct and separate, and be so heard and determined. **The course I have taken will allow the suits to be dealt with separately and in a more efficient manner. It is so ordered.**

**Dated, signed and delivered in court at Meru this 1<sup>st</sup> day of December 2015**

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**F. GIKONYO**

**JUDGE**

**In the presence of:**

**Mr. Murithi advocate for respondent/interested party**

**No appearance for applicant**

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**F. GIKONYO**

**JUDGE**