



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

MALINDI ELC CASE NO. 207 OF 2015(LEAD CASE)

(CONSOLIDATED WITH ELC NO. 227 OF 2015, 234 OF 2015, 61 OF 2015, 16 OF 2015

AMINA MOHAMED KASINGA & 22 OTHERS.....PLAINTIFFS

1. KIKAMBALA HOUSING ESTATE LIMITED.....1ST DEFENDANT

2. THE DISTRICT LAND REGISTRAR, KILIFI.....2ND DEFENDANT

AND

BANK OF AFRICA KENYA LIMITED.....INTERESTED PARTY

RULING

1. By this Notice of Motion application dated 31st October 2018 and filed herein on 1st November 2018, the 23 Plaintiffs herein prays for Orders:

1. That this suit be consolidated with Malindi ELC No. 128 of 2018; Amina Mohamed Kasinga and 4 Others –vs- Kikambala Housing Estate Ltd & Another, and Malindi ELC No. 147 of 2018; Daniel Mwangangi Kilonzo –vs- Kikambala Housing Estate Ltd & Another; and

2. That the costs of this application be in the cause.

2. The application which is supported by the annexed affidavits of Amina Mohamed Kasinga and Daniel Mwangangi Kilonzo (the 1st and 6th Plaintiffs/Applicants) is premised on the grounds:

a) That the Applicants have filed suits against the Defendants which are pending hearing and determination;

b) That the Applicants are seeking orders similar to those sought in this suit against the Defendants herein;

c) That the suits arise from the same cause of action and any orders made in this Court shall directly affect them.

3. The application is opposed. By its Grounds of Opposition filed herein on 18th July 2019, Bank of Africa Kenya Ltd (the Interested Party) opposes the Motion on the Grounds that:

1. The Applicants have failed to provide evidence to demonstrate that they fully paid for the house units they claim in their pleadings.

2. In any event, the Application is irregular and/or misconceived because some of the units listed in the Applicant's application are already included in the settlement consent which the Applicants have deliberately refused to sign.

3. The delay in bringing the Application is inordinate.

4. The Application is nothing but a ploy to derail the expedient resolution of this case because the Applicants do not have any evidence to support the interest in the house units they claim.

5. The Interested Party stands to suffer great prejudice if the Application is allowed since this suit had already been certified fit for hearing and consolidation will re-open pretrial proceedings afresh.

6. On the other hand, the Applicants have not demonstrated any prejudice they stand to suffer or how this Honourable Court will be impeded from serving justice if this suit is allowed to proceed separately.

7. In light of the above, the Application is bad in law, an abuse of Court process and ought to be dismissed in limine with costs.

4. I have considered the application and the response thereto. I have also taken into account the submissions placed before me by the Learned Advocates for the parties.

5. The core principles for consolidation of suits were long stated in *Stumberg & Another –vs- Potgeiter (1970) EA 323*, where the Court held that:

“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.”

6. Echoing those sentiments in *Law Society of Kenya –vs- Centre for Human Rights and Democracy and 12 Others (2014) eKLR*, the Supreme Court of Kenya observed that:

“The essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes and to provide a frame work 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.”

7. Arising from the foregoing, it follows that in the exercise of its discretion in an application such as this, the Court should compare the suits to be consolidated with a view to determine:

i) Whether the same involve common questions of law or fact;

ii) Whether the reliefs claimed arise out of the same transaction;

iii) Whether it is convenient and efficient to pursue the same in a consolidated suit in fulfilling the overriding objectives of the Court; and

iv) Whether consolidation will cause the Plaintiff undue advantage or prejudice.

8. In the matter before me, the Interested Party is opposed to the consolidation of the three suits mainly on the ground that the Applicants have failed to provide evidence that they paid for the housing units in contention. On the other hand however, the Interested Party states in its ground number 2 that the application is irregular and misconceived in that some of the units listed in the Applicant’s application are already listed in the settlement consent which the parties intended to execute and to settle the matter. The Interested Party Bank further faults the application on the ground that there has been inordinate delay in bringing the same.

9. As it were, the Interested Party does not deny that the suits sought to be consolidated involve common questions of law and fact and that the relief sought arises from the same cause of action. Its main concern appears to me to be the fact that the parties have expended some considerable time negotiating and trying to come to a settlement and that the intended consolidation shall further compound the issues and delay the intended settlement.

10. From a perusal of the pleadings in the suits herein, it was apparent that the same relate to a dispute over various sub-leases created over the same parcel of land by the 1st Defendant which sub-leases were to be issued to a number of Claimants including the Applicants herein. While the Interested Party may have financed the building of the housing units that were to be let to the Claimants, I did not think it is the right party to object to a claim such as the one before me.

11. As was stated in *Korea United Church of Kenya & 3 Others –vs- Seng Ha Sang (2014) eKLR*:

“Consolidation of suits is done for purposes of achieving the overriding objective of the Civil Procedure Act, that is, for expeditious and proportionate disposal of civil disputes. The main purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”

12. Accordingly and in view of the fact that the parties in the suits are basically the same and the transactions that gave rise to the claims arose from the same set of circumstances, I am persuaded that there is merit in the Motion dated 31st October 2018 and I allow the same.

13. The costs of the application shall be in the cause.

Dated, signed and delivered at Malindi this 18th day of September, 2020.

J.O. OLOLA

JUDGE