



IN THE HIGH COURT AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION
PETITION NO. 223 OF 2011

BETWEEN

HON GIDION MBUVI KIOKO ALIAS SONKO..... PETITIONER

AND

ATTORNEY GENERAL.....1ST RESPONDENT

NAIROBI COUNTY 2ND RESPONDENT

AND

IN THE MATTER OF AN APPLICATION FOR CONSOLIDATION OF

MILIMANI HCCC NO. 207 OF 2012

BETWEEN

E O (Minor suing through

Father and next friend H O)

D N (Minor suing through

Mother and next friend R M)

GEORGE NJOROGE

NAHASHON KIVUVA

MARION WACKE MBURU

JOSEPH MWAI PLAINTIFFS

AND

KENYA PIPELINE COMPANY LIMITED 1ST DEFENDANT

CITY COUNCIL OF NAIROBI 2ND DEFENDANT

NATIONAL ENVIRONMENTAL MANAGEMENT

AUTHORITY 3RD DEFENDANT

RULING

1. On 12th September 2011, a fire engulfed an area known as Sinai Village within Nairobi where several people died and were injured. As a result of the fire the petitioner, the Member of Parliament, filed a petition on behalf of his constituents seeking relief from the respondents as a result of violation of the rights and fundamental freedoms of his constituents.
2. What is before the court for consideration is a Notice of Motion dated 8th April 2014 filed by the plaintiffs in **Milimani HCCC No. 207 of 2012 E O (Minor) and 5 Others v Kenya Pipeline Corporation, City Council of Nairobi and National Environmental Management Authority**. The plaintiffs claim is that the defendants' negligence and breach of statutory duty of care caused the fire that engulfed the Sinai Village which resulted into loss and damage. They seek general and special damages.
3. Mr Ambani, counsel for the applicants, submits that the justification for consolidation is that the cause of action arose from the same facts, that is, the fire that engulfed the Sinai Village on 12th September 2011. Counsel asserts that consolidating the matter will save on judicial time if the two cases are heard together and the issues determined with finality. The applicant avers that no prejudice will be suffered if the matters are consolidated.
4. Counsel representing the Attorney General and the Nairobi City County did not object to the application for consolidation.
5. Mr Imende, counsel representing the Kenya Pipeline Corporation ("KPC"), opposed the application on the grounds that although the cases arise from the same incidence, the cause of action is materially different as one is grounded on the Constitution and the other is a private law action. He referred to the decision contained in the ruling dated 4th December 2012 where the court struck out KPC. Counsel asserted that the issues in the petition had already been identified and no justification exists to reverse the decision striking out KPC by consolidating the civil suit with the petition.
6. Mr Wabwoto, counsel for National Environment Management Authority ("NEMA"), echoed the submission of learned counsel for KPC. He added that NEMA had already been struck off from the petition and if the matter is consolidated with the petition, NEMA should once again be struck out from the proceedings.
7. **Rule 17** of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* provides that, "The Court may on its own motion or on application by any party consolidate several petitions on such terms as it may deem fit and just." While the rule permits the court to consolidate petitions, in my view, the Court may consolidate the petition with any other form of suit in order to meet the overriding objective of the Rules stated in **Rule 3** which is to facilitate access to justice for all persons.
8. In *David Ojwang' Okebe & 11 Others v South Nyanza Sugar Company Limited & 2 Others CA Kisumu Civil Appeal (Appl) No. 139 of 2008 (2009) eKLR*, the Court of Appeal discussed the main object of consolidation, that is, "to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus, where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or

series of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so.”

9. More recently the Supreme Court dealt with the issue of consolidation of appeal in ***Law Society of Kenya v Centre for Human Rights and Democracy and 12 Others SCK Petition No. 14 of 2013 [2014]eKLR*** where it stated that, “[39] *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. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.*”
10. It is against the background of the broad principles that I have set out that the application for consolidation must be determined. The petition in this matter concerns the issue of State liability for the tragic events that occurred at Sinai Village. It is filed in a representative capacity by the Member of Parliament of the area. On the other hand, **HCCC No. 2017 of 2012** is a private law claim founded on the tort of negligence and breach of statutory duty. The considerations for fixing liability on the defendant or respondents are different in each case and consolidating the matters may obscure the real issues in controversy.
11. I dealt with this dichotomy in my ruling of 4th December 2012 where I struck out Kenya Pipeline Company Limited, Kenya Railways Corporation, Kenya Power and Lighting Company and National Environmental Agency from the petition. I stated as follows; “[23] *I must state that the evidence that has been presented by the petitioner and the witness statements raises two fundamental causes of action and conflates what would be private law actions on behalf of certain persons and public law action to enforce fundamental rights and freedoms under the Bill of Rights. On the one hand, there is claim which is located, as I have stated in **Article 43** where residents of the slum areas in Makadara seek to be provided with housing, sanitation, water and education for their children.*”
12. While it would be attractive to consolidate the two matters, in my view, the defendants in **HCCC No. 2017 of 2012** would be prejudiced as the cause of action against them differs in material particulars and in respect of KPC and NEMA the issue of liability in respect of the petition has been determined.
13. In the circumstances, I decline to consolidate the matters and consequently the Notice of Motion dated 8th April 2014 is dismissed with no order as to costs.

DATED and DELIVERED at NAIROBI this 9th day of May 2014

D.S. MAJANJA

JUDGE