



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 118 OF 2013

VINCENT NARISO KROP & 3 OTHER.....PLAINTIFFS

VERSUS

MARTIN SEMERO LIMAKOU & 12 OTHERS.....DEFENDANTS

RULING

1. This ruling is with respect to an order of this court issued on **13/11/2018** in which the court directed that parties do file submissions in respect of consolidation of this suit with **Kitale ELC No. 93 of 2018**.

2. Upon a consideration of the pleadings and the notice of motion filed by the plaintiff in **Kitale ELC No. 93 of 2018**, this court issued the above mentioned order on a preliminary basis before delving into the motion filed on **8/10/2018** which sought the following principal orders:

(1) That while pending *inter partes* hearing of this application an order be made staying the hearing and determination of Kitale ELC No.118 of 2013 between the interested parties herein as the plaintiffs and the plaintiffs herein as the defendants.

(2) That upon *inter partes* hearing, the order staying the hearing and determination of the Kitale ELC No. 118 of 2013 be confirmed while pending the hearing and determination of the suit herein.

(3)That the prevailing status quo regarding land parcel no. West Pokot/Chepareria/716 be maintained while pending the hearing and determination of this suit.

3. The principal prayers in the suit mentioned in those prayers, to wit, **Kitale ELC No. 118 of 2013** read as follows:-

(a) An eviction order against the defendants their agents and/or servants from the said parcel of land known as part of LR No. West Pokot/Chepareria/ 716 measuring 69.37 Hectares which belongs to the plaintiffs herein.

(b) A permanent injunction restraining the defendant, their agents and/or servants from trespassing upon and/or committing any acts upon the plaintiff's said parcel of land known as part of LR No. West Pokot/Chepareria/ 716 measuring 69.37 Hectares.

(c) General damages for trespass to land.

4. The prayers in the Complaint dated **8/10/2018** in **Kitale ELC No. 93 of 2018** read as follows:

(a) A declaration be made by this honourable court that the hearing and determination of the plaintiffs' 13 appeals to the minister and the same being Nos. 426/1997, 427/1997, 396/1997, 67/1995, 137/1996, 384/1996, 385/1996, 444/1997, 360/1996, 383/1996, 423/1997 and 386/1996 and with regard to the land comprised in title No. West Pokot/Chepareria/716 was conducted in a manner contrary to the law and that the decision of 5/4/2012 is a nullity in law.

(b) That hearing of Kitale ELC No. 118/2013 between the interested parties herein and the plaintiffs be stayed pending the hearing and determination of the suit herein.

(c) Costs.

(d) Interest.

(e) Any other relief this court may deem fit to grant.

5. First, the interested parties have contended that the **Kitale ELC No. 118 of 2013** and **Kitale ELC No. 93 of 2018** have a common issue for determination which this Honourable Court can comfortably deal with upon consolidation.

6. On the other hand the plaintiffs herein are of the view that the decision in this suit will have a directly impact on **Kitale ELC No. 118 of 2013**. It is further contended by the plaintiffs herein that **Kitale ELC No. 118 of 2013** is premised on the minister's decision on the **13** appeals which decision the instant suit seeks to challenge and the two suits should not be consolidated.

7. I have perused the two files namely **Kitale ELC No. 118 of 2013** and **Kitale ELC No. 93 of 2018**. I note the two cases relate to the same piece of land and the Plaintiffs in **Kitale ELC No. 118 of 2013** are the interested parties in **Kitale ELC No. 93 of 2018** while the defendants in **Kitale ELC No. 118 of 2013** are the plaintiffs in **ELC No. 93 of 2018**. In **Kitale ELC No. 93 of 2018**, the Attorney General has been brought in as an additional defendant.

8. It would appear that the plaintiffs in **Kitale ELC No. 93 of 2018** are seeking to challenge the minister's decision with regard to the dismissal of the appeals mentioned earlier.

9. I have noted that paragraphs **4A** and **4B** of the amended defence dated **26th April 2018** in **Kitale ELC No 118 of 2013** read as follows:

“4A. Save the 1st, 3rd and 12th defendants all the other defendants had lodged appeals to the Minister challenging the ownership of the suit land on the part of Bartholomew Naliso Mungano and the said appeals were heard and determined the involvement of the appellants and the appeal decision is subject to challenge.

4B. Save the 1st, 3rd and 12th defendants all the other defendants contents the pendency of the appeals did not stop the running of time in their favour, and that upon expiry of the statutory period of 12 for (sic) the date of registration the defendant acquired title to the suit land through adverse possession and later Bartholomew Nasila Mungano or the administrator of his estate held the land in trust for the defendants.”

10. The Plaintiffs filed their submissions on **29/1/2019** while the interested parties filed theirs on **13/2/2019**. I have perused the court record and it seems the defendant in this suit did not file any submissions.

11. I have considered the submissions in support as well as the arguments raised in opposition to the issue of consolidation.

12. The principles for consolidation of suits are set out in the case of **Nyati Security Guards & Services Ltd V 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”.

13. What this means is that consolidation arises where two or more suits under consideration rise similar issues, are against same parties, and are before the same Court hence the court can hear and determine the issues raised in the matters at the same time. In essence, consolidation is aimed at saving the Court's time and resources in hearing and determining the suits.

14. The duty of the court therefore in such a case is to compare the two suits sought to be consolidated in order to 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.

15. I have perused the two suits herein **ELC No. 118 of 2013** and **ELC No. 93 of 2018**. The Plaintiffs in **ELC No 118 of 2013** are the interested parties in **ELC No. 93 of 2018** while the Defendants in **ELC No. 118 of 2013** are the plaintiffs in **ELC No. 93 of 2018**. In **ELC No. 93 of 2018**, while the Attorney General has been brought in as an additional defendant.

16. Although the prayers sought in **Kitale ELC No. 93 of 2018** have been framed differently in order to challenge the ministers decision, a deeper look at those prayers reveals that no matter the angle from which they are viewed, the ultimate issue in the two suits is the determination on who the *bona fide* owner of the suit land known as part of **L.R No. West Pokot/ Chepareria/716** is, for if the decision on the appeal to the minister is effectively set aside then the parties would have to live with the determination that was under challenge before the minister, which granted one of them the ownership of the land. The suits are before the same Court and counsel for the parties in the two suits are the same.

17. I find that the issue of the alleged impropriety of the procedure followed in the appeal has already been raised in both suits. The suits therefore raise common issues of law and fact. Failure to consolidate these two suits will lead to an undesirable situation where a stay sought in the application dated **8/10/2018** in **Kitale ELC No. 93 of 2018** may ensure that the latter suit may proceed before a former suit, a situation

not encouraged by the provisions of **Section 6** of the **Civil Procedure Act Cap 21** of the Laws of Kenya.

18. Section 6 of the **Civil Procedure Act Cap 21** states as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

19. From the foregoing, I find that there are common questions of fact and law arising in the two suits and the reliefs claimed arise out of the same transaction. In arriving at this conclusion I am persuaded by the case of **Joseph Okoyo V Edwin Dickson Wassuna (2014) eKLR** where **Nyamweya J** faced with a situation where the issue of ownership of the suit property was common to the two suits though the parties were seeking different remedies, held that the suits be consolidated.

20. The Court has discretion to consolidate several suits on its own motion or on application by a party or parties. After looking at the suits and considering the issues raised therein, I am of the considered view that the circumstances of the two suits favour a consolidation. This will save the Court’s time in that it will hear the two suits and make a single determination on the issues they raise and thus save valuable judicial time.

21. I hereby order that the two suits herein be consolidated. By this order the application dated **8/10/2018** in **Kitale ELC No. 93 of 2018** is disposed of and is hereby marked as overtaken by events.

Dated, signed and delivered at Kitale on this 9th day of April, 2019.

MWANGI NJOROGE

JUDGE

9/4/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Kiarie for defendants

N/A for the plaintiffs

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

9/04/2019