



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC 770 OF 2017

SACHE FARM LIMITED.....1ST PLAINTIFF/APPLICANT

SAMSON WACHIRA NJOROGE..2ND PLAINTIFF/APPLICANT

BETTY CHEBET WACHIRA.....3RD PLAINTIFF/APPLICANT

VERSUS

HON. FERDINAND WAITITU

BABA YAO.....1ST DEFENDANT/RESPONDENT

COUNTY GOVERNMENT OF

KIAMBU.....2ND DEFENDANT/RESPONDENT

RULING

The matter for determination is the Notice of Motion Application dated **24th August 2018**, brought by the Plaintiffs/ Applicants seeking for the following orders;

1. THAT the suit be consolidated with:

a) Thika ELC cause No. 53 of 2018 and

b) Thika ELC Cause No. 144 of 2018

2. THAT proceedings of the consolidated suits be recorded in this matter.

3. THAT this honourable court be pleased to give any other or further directions as may be necessary for the expeditious hearing and disposal of these disputes.

4. THAT costs of this Application be costs in the cause.

The Application is based on the following grounds; that the three suits involve similar questions of law and facts being the legal ownership and possession of **LR No. Ndeiya/Ndiuni T.481.482.483 and 485** and the Plaintiffs in this suit are named as the 1st, 2nd and 3rd Defendants in **ELC No. 53 of 2018**, while the 2nd Defendant herein is the 4th defendant in the suit said suit and **National Land Commission** is the 6th Defendant. Further that the 1st Plaintiff is the named 1st Defendant in and **National Land Commission** is the 2nd Defendant in a suit filed by **Micheal Gichuhi Muiru**, concerning ownership of the suit properties and as such it is expedient to have all these suits consolidated and heard together and one final decision made.

The Application is supported by the Affidavit of the 2nd Plaintiff **Samson Wachira Njoroje**, who averred that he and the 3rd Defendant are Directors and shareholders of the 1st Defendant. He then reiterated the contents of the averments made on the grounds in support of the Application and averred that it is judicially proper that the three suits be consolidated.

The application was opposed by the Plaintiff in **ELC No. 144 of 2018**, one **Micheal Gichuhi Muiru**, who averred that he has a disease which is complicating matters for him in his old age and therefore his matter should not be consolidated with any other matter and as such his

matter should be heard on priority basis without any consolidation.

The Application was canvassed by way of written submissions which the court has now carefully read and considered. It is this court's opinion that the only issue for determination is whether or not the matters should be considered.

Consolidation of suits is ordinarily done in order to save judicial time and allow parties to conduct the matters in an expeditious way. What the court ought to be looking at in an Application for consolidation is whether the matter involves the same parties, whether the cause of action relates to the same subject matter and whether there are similar questions of facts and law. In the case of **Benson G Mutathi V Raphael Gichovi Munene Kabutu & 4 others (2014) eKLR**, the court relied on the case of **Law Society of Kenya ...Vs... the Centre for Human Rights, Supreme Court Petition No. 14 of 2013** where the Supreme Court held as that;

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it”

It therefore becomes clear that in considering whether or not to consolidate the suits herein, the court should be guided in the above criteria of whether the suits relate to the same facts and same questions of law are arising. There also ought to be consideration on whether a party will suffer prejudice if the matters are consolidated. See the case of **Chesinende Farmers Cooperative Society Limited ...Vs... Joel K. Bett (being sued on his own behalf and on behalf of Chesinende Rurl Craft) & 25 others) & another [2018] eKLR** where the court held that;

“it is my finding that there are common questions of fact and law arising in the two suits and the reliefs claimed arise out of the same transaction. A strong case has therefore been made out for consolidation of the two suits. In arriving at this conclusion I am guided by the case of Joseph Okoyo ...Vs...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.”

The Applicants have submitted that the suit involves ownership and possession of. **LR No. Ndeiya/Ndiuni T.481.482.483 and 485** and that the same ought to be consolidated with **Suit 53 of 2018 and 144 of 2018**. Having carefully gone through the prayers sought in **suit 144 of 2018** it is clear that the prayers sought are in relation with trespass and ownership regarding the suit number **L.R Ndeiya/Ndiuni/T.983 and Ndeiya/Ndiuni/T.984**, that is completely different from the suit property that is in the instant suit. Though the parties are the same in the two suits the questions of both facts and law that have been raised are completely different. While this Court acknowledges that there is the mention of the suit property in this instant suit in **suit 144 of 2018**, the same remains a mere mention. Though the plaintiff has reservations in the manner in which the instant Plaintiffs acquired the suit lands being **LR No. Ndeiya/Ndiuni T.481.482.483 and 485**, there is no claim of ownership nor is there any prayer sought in relation to this suit land.

It is this Court opinion therefore that there are no similar questions of either facts of law that arise from the two transactions and therefore consolidating the two cases in this Court's opinion will not serve any purpose as there will be other parties involved that do not have any interest or claims as against **L.R Ndeiya/Ndiuni/T.983 and Ndeiya/Ndiuni/T.984** the suit lands in **ELC 144 OF 2018**. The essence of consolidating matter is that no party should be prejudiced or overburdened. While this Court do not agree that the Plaintiff in **ELC suit No. 144 of 2018**, being elderly and sick would be a basis for refusal to consolidate a matter, am satisfied that having several Advocates and parties in the matter while they have no interest in the said matter and can bring no meaningful evidence as the same involves a completely different suit land and seeks different remedies in law and that would be prejudicial to the Plaintiff in **ELC Suit No. 144 of 2018**, and therefore causing him a burden which is in contrast to the essence of consolidation.

However, this Court is in agreement that **Suit No. 53 of 2018**, can be consolidated with the current suit as the two involve the same suit properties and the same questions of facts and law arises. Further the parties in **ELC suit 53 of 2018** are not opposed to the said consolidation. This Court finds that there is no basis upon which **suit No. 144 of 2018** should be consolidated with the current suit being **ELC 770 of 2017**.

Consequently this Court finds that the Applicant's Application dated **24th August 2018** is partially merited and is allowed in terms of prayers **1(a)** and **2** and consequently this matter is consolidated with **ELC 53 of 2018** with costs being in the cause.

However the Court finds that the prayer for consolidation of this suit with **ELC 144 OF 2018**, is not merited and prayer **1(b)** of the Application is dismissed with costs to the Plaintiff in **ELC Suit 144 of 2018**.

It is so ordered.

Dated, Signed and Delivered at Thika this 14th day of June 2019

L. GACHERU

JUDGE

14/6/2019

In the Presence of

.....for the Plaintiffs/Applicants

.....for the Defendants/Respondents

.....Court Assistant