



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO 228 OF 2017**

**NJENENI ESTATES LIMITED.....PLAINTFF**

**VERSUS**

**MIONDWE COMPANY LIMITED.....1<sup>ST</sup> DEFENDANT**

**KIMKAM ENTERPRISES LIMITED.....2<sup>ND</sup> DEFENDANT**

**FRANCIS NGARUIYA NJAMA.....3<sup>RD</sup> DEFENDANT**

**GEORGE GITERE KAHURA.....4<sup>TH</sup> DEFENDANT**

**KENNETH KIMARI GITERE.....5<sup>TH</sup> DEFENDANT**

**VALLEY FRESH LIMITED.....6<sup>TH</sup> DEFENDANT**

**RULING**

***(Application for consolidation of two suits; the two suits involving the same parcels of land; application allowed)***

1. The application before me is that dated 10 December 2018 filed by the plaintiff. The applicant seeks orders to have this suit consolidated with the suit Nakuru HCCC No. 36 of 2018 (formerly Nairobi HCCC No. 275 of 2016). The applicant avers that the two suits relate to the same property and contain similar issues. None of the parties has opposed the application.

2. I have gone through the pleadings in the two suits. The case Nakuru HCCC No. 36 of 2018, was commenced through a plaint which was filed on 12 July 2016. In the plaint, the applicant averred that it owns several parcels of land identified as LR No. 8121, 8069, and 11756. In the year 1986, these properties were charged to Kenya Planters Co-operative Union Limited (KPCU), named as 1<sup>st</sup> defendant in the suit. There was default and the parties entered into a moratorium agreement which inter alia allowed the applicant to subdivide and sell portions of the suit properties so as to settle the money owing to KPCU. The applicant pleaded that it did subdivide the suit properties and remitted the proceeds to a firm of advocates appointed by KPCU in addition to making some direct payments to KPCU. The position of the applicant is that it has paid all monies due but that KPCU appointed M/s Regent Auctioneers, named as the 2<sup>nd</sup> defendant in the said suit, to sell the suit properties. In the suit, the applicant has asked for a permanent injunction to restrain the sale of their properties alongside an order for accounts.

3. The present suit was commenced by the applicant through a plaint which was filed on 31 May 2016 against 4 persons, namely Miondwe Company Limited, Kimkan Enterprises Limited, Francis Ngaruiya Njama, and George Gitere Kahura. The plaint was later amended to accommodate two other parties, namely, Kenneth Kimani Gitere and Valley Fresh Limited. In the amended plaint, the applicant averred that it owns the land parcels LR Nos. 8121, 8069 and 11756. It pleaded that the defendants have trespassed into these parcels of land and have proceeded to cut down trees and coffee. It asked for orders of eviction against them, and a permanent injunction. The defendants in their response to the suit, contended that they purchased portions of the named properties so as to enable the applicant pay its loan with KPCU. They contend that the parcels of land were subdivided and the defendants claim ownership of these portions.

4. It is apparent from the above that the litigation in both suits is over the ownership of the land parcels LR Nos. 8121, 8069 and 11756, and/or their subdivisions. If the two suits are continued independently, there is a risk of there being a conflict of decisions and/or a risk of not appreciating the position of all the parties. It is therefore prudent that the two suits be consolidated and be heard together so that a comprehensive judgment of all the issues, involving all the parties may be made. Given that position, I am persuaded that it is in the interests of justice that this application be allowed. I therefore allow the application and order the consolidation of this case with the suit Nakuru

HCCC No. 36 of 2018.

5. I make no orders as to costs.

6. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 13<sup>th</sup> day of June 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Matu for the applicant.

Court Assistants: Janepher Nelima/Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**