

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC CASE NO. E009 OF 2021

**DOMINIC NJERU ANTONY.....1ST PLAINTIFF/
RESPONDENT**

**PETER MURIUKI NJIRU.....2ND
PLAINTIFF/RESPONDENT**

**EMILIO NYAGA NJIRU.....3RD
PLAINTIFF/RESPONDENT**

-VERSUS-

**ANTONY NJIRU MBITI.....1ST
DEFENDANT/APPLICANT**

**ANDREW KIURA MBUNGU.....
2NDDEFENDANT/RESPONDENT**

RULING

1. What is before me for determination is the motion on notice dated 24/1/2024 filed by the applicant - **ANTONY NJIRU MBITI** - who is praying for the following orders:

1) *THAT this honourable court be pleased to order the consolidation of this suit with suits.*

-ELC Appeal E006 of 2021 between Peter Muriuki Njiru, Dominic Njeru Anthony and Emilio Nyaaga Njiru vs Njiru Mbiti aka Antony Mbiti.

-ELC E006 OF 2022 between Njiru Mbiti vs Peter Muriuki Njiru, Dominic Njeru Anthony and Emilio Nyaaga Njiru

2) *THAT proceedings in this suit be stayed until further orders.*

3) *THAT costs of this application be provided for.*

2. The Grounds upon which the orders are sought are found on the face of the application and the accompanying supporting affidavit thereto, which was sworn by Applicant. He deposed, *inter alia*, that the substratum of this suit and the suit numbers ELC Appeal E006 of 2021 and ELC E006 of 2022 relate to the same land disputes.

3. He further said that he has been compelled to spend unnecessary expenses and time attending to the suits separately while the three (3) of them relate to a similar transaction and dispute.

4. Further, that the conflicting orders and directions in the other suits create confusion to the other litigants and therefore it is necessary to have the three matters consolidated as they all involve the same questions of fact and/or law.

5. The Applicant added that the Principal Magistrate's Court at Siakago rendered a ruling on 14th December 2023 and the net effect was that the court had allowed the Applicant to proceed and effect the orders of the Land Tribunal as issued in the year 2011. That his view is that the ruling of the lower court renders these proceedings superfluous and academic.

2nd Defendant/Respondent's Replying Affidavit

6. The 2nd Defendant in the suit who is also a respondent in the application, filed a replying affidavit on 16/4/2024 opposing the instant application. He deposed that the subject claim in this suit relate to the legitimacy of the purchase of the suit property known as MBETI/GACHURIRI/1275 while the subject matter in the other suits concerns a family dispute in respect of other different parcels of land.

7. It is his contention that consolidation of the said suits will confuse the real issues and delay the hearing of this matter. It will also draw him into the family feuds.

8. It is therefore the 2nd Defendant's position that it is imperative to recognize that the legal issues involved and the requirements for proof in each case are unique and each merit separate adjudication. He urged the Court to dismiss the instant application.

Applicant's submissions

9. Counsel for the applicant submitted on the considerations as to whether to consolidate the matters. He relied on Order 11 rule 3 of the Civil Procedure Rules and the pronouncements in the cases of **Nyati Security Guards and Services vs Municipal Council of Mombasa (2004)eKLR** and **Law Society of Kenya vs Center for Human Rights and Democracy & 12 others(2014)eKLR.**

10. It was his submission that in all the suits, the rights and reliefs claimed are in respect of the same transaction and there are common questions of law in all three suits. He averred that the conditions for consolidation have been met and therefore that the application should be allowed as prayed.

2nd Defendant/Respondent's written submissions

11. Counsel for the 2nd Defendant in the suit submitted that the rights and reliefs claimed in the subject suits of the instant application do not originate from the same transaction and that there is no real relation among the three suits. He stated that this is an original suit which involves the purchase of land parcel Mbeti/Gachuriri/1275, whereas ELC Appeal E006 of 2021 and ELC Appeal E006 of 2022 are appeals on cases involving family disputes over the distribution of land parcels Mbeti/Gachuriri/1261 and 1269.

12. His submission is that the 2nd Defendant is not privy to the issues in the other suits and consolidation would therefore gravely prejudice him. It would affect his rights and interests. He relied on the following authorities:

County Council of Nkauru v. Simon Ole Keminta and 3 others (2007) eKLR.

Muchanga Investments Limited v. Safaris Unlimited(Africa) Ltd & 2 others (2009)KLR 229.

Hellen Ogajas v. Mugo Maathai & Another (2007)eKLR.

13. Noting that the essence of consolidation of suits is to facilitate the expeditious disposal of disputes, and also to save costs, time and effort, Counsel submitted that the consolidation

sought will further prolong the disposal of the suits and that it is only just and fair for the Applicant to pursue his suits separately so as not to cloud or confuse issues. He urged the Court to dismiss the instant application.

Analysis & Disposition

14. The instant application seeks an order to consolidate this suit with suit numbers ELC Appeal E006 of 2021 and ELC E006 of 2022. The provision that allows for consolidation of suits is Order 11 rule 3(h) of the Civil Procedure Rules 2010 which provides thus:

“With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall consider consolidation of suits.”

15. Both learned counsel for the Applicant and the 2nd Defendant relied on the holding in the Indian case of **Prem Lala Nahata & anor v Chandi Prasad Sikaria [2007] 2 Supreme Court Cases 551**, in which the Indian Supreme Court held that:

“.....the main purposes of consolidation is therefore to save costs, time and effort and to make the conduct of

several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions; or that for some other reasons it is desirable to make an order consolidating the suit.”

16. Counsels also relied on the holding in the case of Nyati Security Guards and Services vs Municipal Council of Mombasa (2004)eKLR in which the Court outlined what the court can consider to consolidate suits. The court observed:

“The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where: -

- 1. same common question of law or fact arises in both or all of them; or***
- 2. the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or***

3. for some other reason it is desirable to make an order for consolidating them.”

17. This suit was instituted by way of Plaint dated 26th April 2021.

The Plaintiffs state *inter alia*, that pursuant to a family meeting and agreement held in December 1995, the family land Mbeti/Gachuriri/413 was to be partitioned into 17 parcels, with each of the 1st Defendant's sons to receive 10 acres and the two wives of the 1st Defendant to receive 5 acres each. This was in accordance with Mbeere customary law and in accordance also with the mutation form dated 28th May 1995. But the 1st Defendant refused/failed to lodge the Land Control Board consents to transfer the land to 1st -3rd plaintiffs. This was allegedly an intentional omission. He only selectively transferred LRs Mbeti/Gachuriri/1267 and 1268 to the 1st Plaintiff.

18. They aver that they have been in physical possession of 1261 and 1269 and that the 2nd Plaintiff was forcibly evicted from parcel No. 1275 which he had been gifted earlier for paying expenses relating to his mother's hospital bills. The Plaintiffs sought several reliefs against the decision of Land Dispute

Tribunal Claim No. 319 of 2006. They sought declarations that LRs Mbeti/Gachuriri/1261,1267,1268,1269 and 1275 were legally gifted to the them by their father, the first defendant. They also asked for an order to cancel subdivisions of parcel No. 1261 and 1269. They opposed their transfer from the said parcels and the transfer of LRs Mbeti/Gachuriri/1275 to the 2nd defendant. They also claim the parcels of land as adverse possessors.

19.The Applicant wishes to have this suit consolidated with ELC Appeal E006 of 2021 and ELC E006 of 2022 yet the only documents he has attached to show that they are related are the statements of defence in ELC E006 of 2022 and a ruling on a preliminary objection. For ELC Appeal No. E006 of 2021, the Applicant only attached an application dated 25th March 2022 which is for stay of execution and an application dated 14th September 2020 filed at the Siakago Principal Magistrate's Court Land Disputes Tribunal No.18 of 2011 including some ruling thereof. The Applicant has failed to attach the proper pleadings in the suits he wishes to be consolidated. This makes it impossible for this Court to assess whether there are

some common questions of law or fact arising in all the suits or whether the rights or relief claimed in the suits are in respect of or arise out of the same transactions. No Plaintiff or other suit - commencing document has been filed in order for the Court to assess the suitability of consolidation.

20. Further, one of the suits, ELC Appeal E006 of 2021, actually is an appeal case and can only be determined by the appellate Court. Its manner of hearing is different. In fact, most of the times, appeals are canvassed through written submissions or argued orally in court. It is therefore not amenable to go through the usual hearing and trial process. It is unheard of to consolidate an appeal with a suit of first instance. It would be an aberration.

21. My considered view therefore is that the instant application lacks merit for failure by the Applicant to attach enough material for the court to assess whether the suits can be consolidated. It also fails because the nature or genre of the matters sought to be consolidated does not align well for consolidation.

22. The upshot, when all is considered, is that the application herein is for dismissal and I hereby dismiss it with no order as to costs.

RULING DATED, SIGNED and DELIVERED virtually at
KITUI this **10TH** day of **MARCH, 2026**.

In the presence of,

Court Assistant - Joseph Musyoki

Chalianya for 1st defendant/applicant

M/s Chebet for Kamunda for 2nd defendant

Njeru Njage (absent) for plaintiff

A. KANIARU

JUDGE- ENVIRONMENT & LAND COURT, KITUI