



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT MILIMANI**

**ELC NO. 622 OF 2015**

**JOHN MAINA MBURU.....PLAINTIFF**

**VERSUS**

**EVANS KAGECHE BORO.....DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> Defendant/Applicant filed a Notice of Motion dated 26<sup>th</sup> November, 2018 in which he seeks consolidation of this case with Nakuru ELC Case No. 213 of 2013 ***Alexander Kaburu Mungai Vs Evans Kageche Boro***. The Applicant contends that Alexander Kaburu Mungai filed the Nakuru case against him. He filed a defence and raised a counter-claim in that suit. He therefore argues that the Nakuru suit should be transferred to Nairobi for consolidation with this suit to avoid the possibility of two conflicting decisions coming from the two cases.

2. The Applicant argues that the subject matter in the Nakuru case and this case is LR No. 398/18. The Plaintiff in this case states that he bought the suit property from the wife of Alexander Kaburu Mungai. The Applicant on the other hand is claiming that the suit property belongs to him.

3. The Plaintiff/Respondent opposed the Applicant's application based on grounds of opposition dated 31<sup>st</sup> January, 2019 and filed in Court on 1<sup>st</sup> February, 2019. The Respondent argues that the Plaintiff in the Nakuru suit died on 21<sup>st</sup> April, 2013 and there has been no substitution carried out and therefore the suit abated one year from the death of the Plaintiff. The Respondent therefore states that there is no suit to be consolidated with this one. The Respondent further argues as the registered owner of the suit property, he has an independent cause of action and that the Applicant's application is only meant to delay the finalisation of this suit.

4. I have considered the Application by the Applicant as well as the opposition to the same by the Respondent. The only issue for determination is whether this suit should be consolidated with Nakuru ELC Suit No. 213 of 2013. The Applicant does not deny the fact that the Plaintiff in the Nakuru suit died in 2013 and that there has been no substitution. This being the case, the Nakuru suit abated one year after the demise of the Plaintiff as no application for substitution was done. There is also no evidence of any application to revive the Nakuru suit. The Court cannot therefore order consolidation of a suit which has already abated. I find no merit in the Applicant's application which is dismissed with costs to the Respondent.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 26<sup>th</sup> day of August, 2019.**

**E.O OBAGA**

**JUDGE**

In the presence of Mr Wachakana for Mr Onindo for applicant and

Mr Mirie for Mr King'ara for Respondents.

Court Clerk : Hilda

**E.O.OBAGA**

**JUDGE**