



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 120 OF 2017

MERIDINA ALWALA

LIVINGSTONE MWANGU

BELLA ALOSA ALWALA.....PLAINTIFFS/APPLICANTS

VERSUS

PRAJAPATI PRAVINBHAI JIVABHAI

SAMWEL ATSWONG'O ALWALA

AINEA ALWALA ODWOGO.....DEFENDANTS/RESPONDENTS

RULING

The application is dated 6th May 2019 and is brought under Sections 1A, 1B and 3A of the Civil Procedure Act; Order 11 rule 3 (h) and order 51 rule 1 of the Civil Procedure Rules, 2010 seeking the following orders:-

1. That the suit herein namely Kakamega ELC Case No. 120 of 2017 and Kakamega ELC case No. 46 of 2019 be consolidated for purposes of being heard and determined together.
2. That Meridina Alwala, Livingstone Mwangu Alwala, Bellaalosa Alwala and Florah Oripa Alwala (suing as the personal representative of Ainea Alwala) be deemed as the 1st, 2nd, 3rd and 4th plaintiffs respectively in the consolidated suits, while Prajapati Pravingbhai Jivabhai and Samwel Atswong'o Alwala be deemed as the 1st and 2nd defendants respectively in the consolidated suits.
3. That the file relating to Kakamega ELC case No. 120 of 2017 be the lead file for purposes of filing any further pleadings and recording of court proceedings in the consolidated suits.
4. That the costs of this application be in the cause.

It is based upon the following grounds that there are common questions of facts and law arising, or bound to arise, in both Kakamega ELC Case No. 120 of 2017 and Kakamega ELC Case No. 46 of 2019. The parties to both suits are the same. The cause of action in both suits arise out of the same transaction and involve the same subject matter, namely; the impugned transfer of land parcel number Kakamega/Municipality Block 1/220 from the late Ainea Alwala Odwogo to Prajapati Pravinbhai Jivabhai. The primary relief sought by the plaintiff (s) in each of the said suits is essentially an order for the nullification or cancellation of the impugned transfer of the said land parcel and for the reversion on the said land parcel back to Ainea Alwala Odwogo (now deceased). Consolidation of both suits is also necessary for purposes of avoiding the inherent danger of the court making conflicting decisions in the two suits which might precipitate confusion or difficulties in the execution processes if the suits were to be heard and determined separately. It is supported by the supporting affidavit sworn by Abraham Balusi Manyanyi (being counsel for the plaintiffs herein).

The 2nd respondent/defendant opposed the Notice of Motion dated 6th day of May, 2019 and filed on the 7th day of May, 2019 on the following grounds that the application is misconceived, bad in law and an abuse of the court process. That pleadings are yet to close in the said Kakamega ELC Case 46 of 2017. That the application is not supported by any evidence to warrant the orders prayed for. That the application does not meet the requirements upon which it is alleged to be brought. That the affidavit is fatally defective. The 1st respondent/defendant submitted that the two suits are similar and this is a duplicity of suits and an abuse of the court process.

This court has considered the application and the submissions therein. 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;

This court has compared the two suits sought to be consolidated namely Kakamega ELC Case No. 120 of 2017 and Kakamega ELC case No. 46 of 2019 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. I find that the parties are the same, subject matter is the same and the reliefs sought are the same. The cause of action in both suits arise out of the same transaction and involve the same subject matter, namely; the impugned transfer of land parcel number Kakamega/Municipality Block 1/220 from the late Ainea Alwala Odwogo to Prajapati Pravinbhai Jivabhai. I find that this application is frivolous and an abuse of the court process. The suits are the same and not similar. The plaintiff's filed the current suit Kakamega ELC case No. 46 of 2019 knowing very well that the earlier suit Kakamega ELC Case No. 120 of 2017 existed. I find this application is not merited and I dismiss it with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 27TH NOVEMBER 2019.

N.A. MATHEKA

JUDGE