



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT EMBU**

**E.L.C. CASE NO 105 OF 2017**

**SOSPETER KITHUMBI MURANGIRI**

*(suing on his own behalf and on behalf of Ikandu clan)*.....**PLAINTIFF**

**VERSUS**

**ALBERT NJERU**.....**1<sup>ST</sup> DEFENDANT**

**MWANIKI MUGO MACHARIA**.....**2<sup>ND</sup> DEFENDANT**

**MWANIKI MBUGI**.....**3<sup>RD</sup> DEFENDANT**

**ANTONY NYAGA MACHARIA**.....**4<sup>TH</sup> DEFENDANT**

**MUGO ITHIGA**.....**5<sup>TH</sup> DEFENDANT**

**MUTHEE MACHARIA**.....**6<sup>TH</sup> DEFENDANT**

**CHARLES NGARI**.....**7<sup>TH</sup> DEFENDANT**

**MURIITHI MUGO MACHARIA**.....**8<sup>TH</sup> DEFENDANT**

**JOSPHAT NTHIGA**.....**9<sup>TH</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated 25<sup>th</sup> June 2019 brought under **Order 11 Rules 3 (1) (h) Order 51 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all enabling provisions of the Law**, the 1<sup>st</sup>, 4<sup>th</sup> & 9<sup>th</sup> Defendants sought an order for consolidation of the instant suit with *Embu ELC Case No. 24 of 2016 – Josphat Njeru Nthiga Mukabi (suing on behalf of Gekara clan) Vs Jonathan Njeru Mbugi & Mbeere South District Land Adjudication Officer*.

2. The said application was based on the grounds set out on the face of the notice of motion and the supporting affidavit sworn by the 9<sup>th</sup> Defendant on his own behalf and on behalf of the 1<sup>st</sup> and 4<sup>th</sup> Defendants. It was contended that the two suits involved the same subject matter; that consolidation would avoid inconsistent judicial decisions; and that it would save judicial time and facilitate expeditious disposal of the suits.

3. The Plaintiff filed a replying affidavit sworn on 17<sup>th</sup> July 2019 in opposition to the said application. It was contended that the two suits sought to be consolidated did not involve the same subject matter. It was contended that *Embu ELC 24/16* involved an intra-clan dispute amongst members of Gekara clan whereas the instant suit involved a claim by members of Ikandi clan against members of Gekara clan. It was further contended that the issues raised in the two suits were different and distinct from each other hence there was no possibility of inconsistent decisions being rendered. The Plaintiff considered the instant application to be frivolous and an abuse of the court process. He urged the court to dismiss it with costs.

4. On 4 July 2019, it was directed that the said application be canvassed through written submissions. The parties were given 42 days to file and exchange their respective written submissions. The record shows that the Defendants filed their submissions on 8<sup>th</sup> October 2019 but the

Plaintiff had not filed any submissions by the time of preparation of the ruling.

5. The court has considered the said application for consolidation, the replying affidavit in opposition thereto as well as the written submissions on record. The court has also considered the material on record on the nature of the disputes pleaded in the two suits.

6. The principles to be considered in such an application were summarized in the case of **RMG V NG & ANOTHER [2013] eKLR** as follows:

**“The principle is that consolidation of suits will be ordered where common questions of law or fact arise of such importance as to make it desirable that the whole of the subject matter be disposed of at the same time. This would mean that the suits are brought together for the purpose of disposing of them simultaneously; if the questions of law or fact to be answered in each of them are one or common, and they can conveniently be disposed of simultaneously.”**

7. Similarly, in the case of **Nyati Security Guards and Services Ltd Vs Municipal Council of Mombasa [2004] eKLR**, it was observed, *inter alia*, that:

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

**i. Some common questions of law or fact arise in both or all of them; or**

**ii. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions; or**

**iii. For some reason it is desirable to make an order consolidating them.”**

8. The court has perused the plaint in this suit. The suit was instituted by the Plaintiff on his own behalf and on behalf of members of Ikandi clan in order to reclaim *Title Nos. Mbeere/Mbita/2005, 2519 and 2579* from the Defendants who appear to be members of Gekara clan. On the other hand, the Plaintiff in *Embu ELC No. 24 of 2016* filed suit on behalf of members of Gekara clan against their former chairman and the Land Adjudication Officer, Mbeere South District.

9. It was pleaded in the latter suit that the 1<sup>st</sup> Defendant had arbitrarily and without instructions from Gekara clan withdrawn certain appeals relating to the suit properties. The reliefs sought in that suit are as follows:

*a. A declaration that the actions of the 1<sup>st</sup> Defendant of withdrawing Appeal Nos. 314 of 1998 and No. 113 of 1999 was unlawful.*

*b. An order directing the 2<sup>nd</sup> Defendant to reinstate Appeal Nos. 314 of 1998 and 113 of 1999 for hearing and determination.*

*c. Costs of the suit.*

10. The court is of the opinion that the issues raised in the two suits are quite distinct and different from each other. Whereas the instant suit concerns enforcement of property rights by members of Ikandi clan, *Embu ELC No. 24 of 2019* concerns reinstatement of appeals which were allegedly withdrawn by one official of Gekara clan without the sanction of clan members. There are no common questions of law and fact which would arise in the two suits and the rights and reliefs sought in the two suits do not arise out of the same transaction or series of transactions. Accordingly, there are no circumstances to warrant consolidation of the two suits hence they can be heard and determined separately.

11. The upshot of the foregoing is that the court finds no merit in the notice of motion dated 25<sup>th</sup> June 2019 and the same is consequently dismissed with costs to the Plaintiff.

12. It is so ordered.

**RULING DATED, SIGNED and DELIVERED in open court at EMBU this 21<sup>ST</sup> day of NOVEMBER, 2019.**

In the presence of Mr. Kamunda for Plaintiff, Mr. Odhiambo holding brief for Rose Njeru for the 1<sup>st</sup>, 4<sup>th</sup> & 9<sup>th</sup> Defendants and in the absence of the rest of the Defendants.

Court Assistant Mr. Muinde

**Y.M. ANGIMA**

**JUDGE**

**21.11.19**