



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

E.L.C. CASE NO. 30 OF 2014

(FORMERLY KERUGOYA E.L.C CASE NO. 674 OF 2013)

NGARI NGURU.....APPLICANT

VERSUS

JOSPHAT MACHARIA KARACHI.....1ST RESPONDENT

STEPHEN MUYA CHEGE.....2ND RESPONDENT

SUSAN NYAMBURA.....3RD RESPONDENT

ESTHER MUTHONI MACHARIA.....4TH RESPONDENT

CYRUS KARACHI MACHARIA.....5TH RESPONDENT

HENRY MWANGI NDUNG’U.....6TH RESPONDENT

JOSEPH MUIRURI KAMUNDU.....7TH RESPONDENT

RULING

1. By a notice of motion dated 15th May 2019 brought under **Sections 1A, 1B, 3 & 3A of the Civil Procedure Act (Cap. 21), Order 11 Rule 3 (h) of the Civil Procedure Rules, 2010 and all the enabling provisions of the Law** the 1st, 3rd, 4th & 5th Respondents sought an order for consolidation of *Embu ELC No. 225 of 2015, Esther Muthoni Macharia V Ngari Nguru & Igoki Nguru* with the instant suit.
2. The said application was based upon the grounds set out on the face of the motion and supported by the affidavit of the 5th Respondent sworn on 15th May 2019. It was contended that both suits raise similar issues of fact and law and that some of the parties are common in both suits. It was, therefore, contended that it would be convenient to consolidate both suits and have them heard and disposed of together.
3. The Applicant’s advocate, Macharia Muraguri, filed a replying affidavit sworn on 11th June 2019 in opposition to the said application. It was contended that the parties in the instant suit were more than the parties in *Embu ELC No. 222 of 2015*. It was further contended that the causes of action in the two suits were different in that whereas the instant suit concerned adverse possession, *ELC No. 222 of 2015* was a suit for eviction. It was also contended that the parcels of land involved in the two suits are not exactly the same.
4. When the said application was listed for hearing on 2nd July 2019 it was directed that the said application be canvassed through written submissions. The Respondents were given 30 days to file their submissions whereas the Applicant was granted 30 days to file his submissions. The Advocate for the 2nd Respondent informed the court that he had no objection to the application for consolidation. The record shows that the rest of the Respondents filed their written submissions on 29th July 2019 but there is no indication of the Applicant having filed any by the time of preparation of the ruling.
5. The court has considered the Respondents’ said application, the Applicant’s replying affidavit in opposition thereto as well as the submissions on record. The principles to be considered in an application for consolidation 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 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.”

6. Similarly, in the case of **Nyati Security Guards & 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 pending in the same court where;

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

ii. The right or reliefs 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.”

7. It is thus apparent that commonality of parties or causes of action is not a definitive factor in the consolidation of suits. What has to be considered is commonality of questions of law and fact; whether the reliefs claimed arise out of the same transaction or series of transactions; and whether it is desirable to have the entire dispute disposed of together.

8. The court is satisfied on the basis of the material on record that some common questions of fact and law may arise in both suits and that it is desirable to have the entire dispute heard and disposed of at the same time. The court is, therefore, inclined to grant the Respondents' application for consolidation.

9. The upshot of the foregoing is that the court finds merit in the notice of motion dated 15th May 2019 by the 1st, 3rd, 4th & 5th Respondents. The same is consequently allowed in terms order No. 1 thereof. Costs of the application shall be in the cause.

10. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **14TH** day of **NOVEMBER 2019**.

Mr. Manyara holding brief for Mrs. R.W. Chege for the 1st Respondent, Mr. Manyara for the 2nd Respondent, Mr. Manyara holding brief for Mrs. Chege for the 3rd, 4th & 5th Respondent and in the absence of the Applicant.

Court Assistant Mr. Muinde

Y.M. ANGIMA

JUDGE

14.11.19