



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO. 211 OF 2014

ANDREW IRERI NJERU (CHAIRMAN).....1ST PLAINTIFF

ELISHA MIGWI.....2ND PLAINTIFF

NYAGA NJUE & OTHERS.....3RD PLAINTIFF

VERSUS

ATTORNEY GENERAL1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

LAND ADJUDICATION OF KENYA.....3RD DEFENDANT

EMBU COUNTY GOVERNMENT.....4TH DEFENDANT

RULING

1. By a notice of motion dated 24th November 2017 purportedly brought under the provisions of **section 19 (1) of the Environment and Land Act 2011 and section 6 of the Community Land Act, 2016** the 1st Plaintiff sought an order for consolidation of all suits relating to “Mwea Land” so that the court may hear them and render a single judgement thereon.
2. The said application was based upon the several grounds set out on the face of the motion. It was supported by the supporting affidavit sworn by the 1st Plaintiff on 24th November 2017. The gist of the supporting affidavit was that there were several suits by various litigants who were all claiming to be entitled to “Mwea land” hence it would save time for all such suits to be consolidated and determined together.
3. The 1st Plaintiff did not, however, annex a list of the suits which were said to be pending in respect of Mwea land, the particulars of the parties and the issues involved. Copies of the pleadings in those respective suits were not exhibited either. The 1st Plaintiff only annexed a copy of a judgment in Meru *HCCC No. 71 of 2006 (formerly Embu HCCC No. 19/2005)*. There was also no indication on record if the parties or the advocates involved in the other suits were served with the application for consolidation.
4. Mr Kiratu, the Advocate for the rest of the Plaintiffs did not oppose the said application. Mrs Njoroge for the Attorney General opposed the application on the basis of the grounds of opposition dated 26th February 2018. It was contended that particulars of the other suits sought to be consolidated with the instant suit were not given. It was further contended that it had not been demonstrated that the parties and the issues in the instant suit were similar to those of the other suits. It was also contended that the particulars of the parcel number of the land in dispute had not been disclosed and that the provisions of law relied upon had no relevance to the application for consolidation. Mrs Njoroge relied upon the case of **Nyati Security Guards & Services Ltd Vs Municipal Council of Mombasa [2004] eKLR** and submitted that the 1st Plaintiff had not satisfied the legal requirements for consolidation of suits. She, therefore, urged the court to dismiss the said application with costs.
5. Ms Wairimu for the 4th Respondent opposed the said application for consolidation. She requested to have her notice of preliminary objection dated 26th February 2018 treated as her grounds of opposition to the application. It was contended that the particulars of the land in dispute had not been provided; that the parties in the various suits had not been disclosed; and that the causes of action in the various suits had not been specified. She, therefore, asked the court to dismiss the 1st Plaintiff’s said application for consolidation.
6. The court has considered the 1st Plaintiff’s said application, the responses of the Respondents thereto and the respective oral submissions of the parties herein. The main question for determination herein is whether or not the 1st Plaintiff has satisfied the requirements for consolidation of suits. In **NBI HCCC No. 29 of 2009 (originating summons) RMG Vs NG & Another [2013] eKLR** it was held that;

“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”.

7. Similarly, in the case of **Nyati Security Guards & Services Ltd Vs Municipal Council of Mombasa [2004] eKLR** it was held, *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 right or relief claimed in them are in respect of the same transaction or series of transactions; or

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

8. In the absence of particulars of the other suits sought to be consolidated with the instant suit, the court is unable to establish commonality of either matters of fact or law. The court is also unable to establish if the reliefs claimed in the various suits arise out of the same transaction or series of transactions. The court is equally unable to determine whether or not it would be desirable for any other reason to consolidate the various suits.

9. In the circumstances, the court finds that the 1st Plaintiff has not placed sufficient material before this court to enable the court make an order for consolidation. There was also no evidence on record to demonstrate that all the litigants whose suits would be affected by an order of consolidation had been duly served with the application.

10. The upshot of the foregoing is that the court finds no merit in the notice of motion dated 24th November 2017 and consequently the same is hereby dismissed with costs.

11. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at **EMBU** this **27TH** day of **SEPTEMBER, 2018**.

In the presence of the 1st Plaintiff in person, Mrs Njoroge for the Attorney General for the 1st – 3rd Defendants and in the absence the rest of the parties.

Court clerk Mr Muinde.

Y.M. ANGIMA

JUDGE

27.09.18