



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. CASE NO 24 OF 2017

ANDREW MBARE.....PLAINTIFF

VERSUS

THE HON ATTORNEY GENERAL.....1ST DEFENDANT

NAMU MACHAI.....2ND DEFENDANT

JOSECK NGARI.....3RD DEFENDANT

PETER NJERU.....4TH DEFENDANT

JONAH MUCHURU MUCHANGIA.....5TH DEFENDANT

NTHIGA IRANDI.....6TH DEFENDANT

JULIUS NYAGA NJIRA.....7TH DEFENDANT

NJUE KIUMA.....8TH DEFENDANT

RUNJI NJIRU.....9TH DEFENDANT

NIMROD NJUE MATE.....10TH DEFENDANT

DAVID NTHIGA.....11TH DEFENDANT

NICHOLUS NTHIGA.....12TH DEFENDANT

RULING

1. By a notice of motion dated 28th March 2018 brought under the provisions of **Order 11 Rule 3 (1) (h) of the Civil Procedure Rules**, the Plaintiff sought the following orders;

a. That this honourable court be pleased to order consolidation of this matter (Embu ELC No. 24 of 2017 formerly Nairobi ELC No 1445 of 2005 and Embu CMCC 225 of 2013 formerly Embu HCCC 54 of 2009 and Embu CMCC 226 of 2013 formerly Embu HCCC 47 of 2000.

b. That costs of this application be provided for.

2. The said application was based upon the grounds shown on the face of the motion. The gist of the application was that the parties in all the four mentioned suits were the same and that it would save the court's time to have them consolidated and heard together.

3. The said application was supported by the Plaintiff's affidavit sworn on 28th March 2018 in which it was stated that the subject matter in the four suits sought to be consolidated and the parties were the same.

4. When the said application came up for hearing on 19th November 2018 the Plaintiff's advocate applied to remove *Embu CMCC No 226 of*

2015 from the application since the same had already been heard and concluded. Apart from Mr P.N. Mugo for the 10th Defendant, the rest of the Defendants did not oppose the Plaintiff's application for consolidation.

5. The court has considered the Plaintiff's said application for consolidation of the various suits. The principles to be considered in such application were summarized in the case of **RMG Vs 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.”

6. 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;

1. Some common questions of law or fact arises in both or all of them; or

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

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

7. Bearing in mind the above principles and considerations, the court is of the opinion that the various suits sought to be consolidated raise common questions of law and fact. The land dispute in the 3 suits all arise from the interpretation of the Minister's decision in *Appeal case No. 252 of 1979*. The Plaintiff believes that he was awarded several of the properties in dispute by virtue of the said appeal by which some of the other litigants were also awarded some of the plots in dispute.

8. The court is of the opinion that the various suits dealing with who was awarded which property by virtue of the said appeal may conveniently be heard and determined together. None of the litigants would be prejudiced in any way by consolidation of the pending suits and their determination together.

9. The upshot of the foregoing is that the court finds merit in the Plaintiff's notice of motion dated 28th March 2018 and the same is hereby allowed in terms of prayer No. 1 thereof, of course, excluding *Embu CMCC No. 226 of 2013* which has since been concluded. Costs of the application shall be in the cause.

10. In view of the age of some of the suits the subject of consolidation, the court shall give directions on the hearing of the consolidated suits upon delivery of the ruling.

11. Orders accordingly.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 20th day of DECEMBER, 2018.

In the presence of Mr Momanyi for the Plaintiff and Ms Kithaka for the 12th Defendant and in the absence of the 1st – 11th Defendant.

Court clerk Mr Muinde.

Y.M. ANGIMA

JUDGE

20.12.18