



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MACHAKOS
CONSTITUTIONAL PETITION NO. 27 OF 2015

JOSEPHINE WANJIKU(ALIAS WANJIRU).....PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL.....RESPONDENT

AND

NABOOSHI ENE NKUSA.....1ST INTERESTED PARTY

MAXIMA VENTURES LIMITED.....2ND INTERESTED PARTY

BENCHMARK ESTATE LIMITED.....3RD INTERESTED PARTY

RULING

What I have before me is a Notice of Motion application dated 18th March 2016 by the petitioner seeking to have this suit consolidated with Machakos Constitutional Petition No. 26 of 2015. The application is supported by an affidavit sworn on 18th March 2016 by the petitioner's advocate, Mr. Ishmael Kiragu. The application has been brought on the grounds that, the two petitions were filed on the same date and raises similar issues of law and fact. The reliefs sought are also similar. The petitioner has contended that the petitioners in the two petitions are being represented by the same firm of advocates and that a decision on any one of the petitions would have effect on the other. The petitioner has contended that it would serve the interest of justice if the two petitions are consolidated as that would expedite the hearing and disposal thereof.

The application is not opposed. The only issue that arises for determination in the application is whether this petition should be consolidated with Constitutional Petition No. 26 of 2015. The essence of consolidation of suits was captured by the Supreme Court of Kenya in the case of Law Society of Kenya vs. The Centre For Human Rights and Democracy, Petition No. 14 of 2013, as follows:-

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties.”

The Court of Appeal in the case of David Ojwang' Okebe & 11 Others vs. South Nyanza Sugar Company Limited & 2 Others, Kisumu Civil Appeal (Appl) No. 139 of 2008 also discussed the main object of consolidation and stated that it is intended to save costs and time by avoiding multiplicity of proceedings covering largely the same ground. The court stated that;

“.....where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or series of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so.”

The two petitions sought to be consolidated are challenging the jurisdiction of the defunct Kajiado Central Land Disputes Tribunal to order subdivision and transfer of registered land. I am in agreement with the petitioner that the two petitions raise similar questions of fact and law. The court has not been informed of any prejudice that may ensue if the two petitions are consolidated.

Due to the foregoing, I find merit in the Notice of Motion application dated 18th March 2016. The application is allowed in terms of prayer (a) thereof. The costs of the application shall be in the cause. I make a further order that this file be returned to the Environment and Land Court at Machakos where it was domiciled for further action.

Delivered and Signed at Nairobi this 24th day of February, 2017.

S.OKONG'O

JUDGE

In the presence of:

Mr. Munje for the Petitioner

N/A for the Respondents

N/A for the Interested Parties

Kajuju Court Assistant