



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC NO. 100 OF 2007

SAMVO LIMITEDPLAINTIFF

=VERSUS=

DELTA HAULAGE SERVICES LIMITED.....1ST DEFENDANT

CATHAM PROPERTIES LIMITED.....2ND DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 22nd June 2016, brought by the second defendant/applicant. The application seeks consolidation of the present suit with Nairobi ELC No. 326 of 2012, and Nairobi ELC No. 615 of 2015. The application is supported by an affidavit sworn on 23rd June 2016, by LI Wenjie a shareholder and Assistant Manager of the applicant company.

2. The applicant gives a brief history of the subject matter of the three suits which revolves around a property which is at Kilimani area of Nairobi City County. The property is being claimed by three parties namely the applicant, Delta Haulage services Limited and Samvo Limited.

3. In ELC 100 of 2007, the Plaintiff is Samvo Limited . The first defendant is Delta Haulage Services Limited, while the applicant Catham Properties Limited is the second defendant. In ELC 326 of 2012 , the plaintiff is Delta Haulage Services Limited, while the fourth defendant is Samvo Limited . In ELC No 615 of 2014 , the plaintiff is Delta Haulage services Limited and the Defendant is Catham Properties Limited.

4. From the pleadings filed in these suits, the three parties to this dispute seem to agree that the initial LR No. of suit land was LR No.2/75. The applicant contends that the suit property was subdivided into two portions namely Nairobi Block 17/556 and Nairobi Block 17/557 while Delta Haulage Services Limited contends that the suit property after subdivision became LR No. 2/694 and LR No.2/695. On the other hand, Samvo Limited contends that the suit property has not been subdivided and is known as Nairobi/Block 17/338.

5. The applicant contends that there are common issues in the three suits which should be consolidated so that they can be heard together to save on judicial time. The applicant's application is opposed by Delta Haulage Services Limited through a Replying Affidavit sworn by its director Ali Mohammed Egal on 12th July 2016, and a further affidavit sworn on 11th August 2016. Delta Haulage Services Ltd contends that the applicant's application does not meet the threshold for consolidation as there are no same or similar questions of law or fact involved in the suits and as such there is nothing for the court to exercise

its discretion.

6. Delta Haulage Services Limited further contends that already ELC No. 100 of 2007 and ELC No. 326 of 2012 have been consolidated and that no second order can be given in that regard. That the applicant's application is misconceived and is an abuse of the process of the court. That the issues in the three suits do not warrant the three suits to be consolidated.

7. I have gone through the applicant's application, the opposition thereto by Delta Haulage Services Limited as well as submissions filed by counsel for the applicant and Delta haulage Services limited. There is already an order of consolidation of ELC 100 of 2007 and ELC 326 of 2012. Consolidation of these two suits was done by consent on the 27th October 2014. The only issue for determination is whether ELC No. 615 of 2014 should be consolidated with the two other cases.

8. In ELC 615 of 2014, Delta Haulage Services Limited has sued the applicant herein seeking an order of eviction from LR No. 2/75, permanent injunction, damages of Kshs.58 Million for malicious damage to property and damages for illegal trespass. Samvo Limited who are not a party to this suit have already applied to be enjoined as a defendant in the suit but the application has not been heard.

9. Samvo Limited through an affidavit sworn by its counsel Stephen Musalia Mwenesi has sworn an affidavit in support of consolidation. The primary purpose of consolidating suits is to save on time taken to dispose of those suits. Where the suits raise common issues of fact or law; they should be consolidated and heard together. Consolidation furthers the overriding objective as set out in Section 1A of the Civil Procedure Act which provides as follows:-

“ The overriding objective of this Act and the rules made here under is to facilitate the just,expeditious ,proportionate, and affordable resolution of the civil disputes governed by the Act”.

10. In the instant case, it is clear that all the three parties are claiming ownership of the same property on the ground. The only difference is that of description of the parcels and the regime of law under which the property was registered. Samvo Limited contends that the property was registered as freehold whereas the applicant and Delta Haulage Services Limited contend that the property is leasehold.

11. In ELC No.615 of 2014 , Delta Haulage Services Limited is claiming that it was in occupation of the suit land described as LR No. 2/75 but that Samvo Limited came in with hired goons and evicted it under supervision of police officers from Kilimani Police Station. A building which was on the property was brought down hence its claim for damages for malicious damage to property.

12. All the claims by Delta Haulage Services limited stem from the fact that according to its contention, it is the owner of the property. Samvo limited moved into the property on the basis that it belongs to it. The applicant also contends that the property belongs to it as it purchased it from two individuals.

13. A number of decided cases have set out principles relating to consolidation of suits. In **Petition No. 14 of 2013 Law Society of Kenya Vs The Centre for Human Rights and Democracy & others** the supreme Court judges had this to say regarding consolidation;-

“ The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide co framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantages towards the party that opposes it. In the matter at hand, this court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the Respondents if consolidation is ordered as prayed”.

14. In the English case of **Harwood Vs Statesman publishing Co.Ltd & others (1929) ALL ER 554, Sankey LJ** held that an order to consolidate may be made when two or more actions are pending.

i. Between the same plaintiff and same defendant

ii. Between the same plaintiff and different defendant

iii. Between different plaintiff and the same defendants

iv. Between different Plaintiffs and different defendants BUT there must be some common measure of fact in the two or more cases which it is desired to consolidate”

15. In the case of **Stumberg & another Vs Potgieter (1970) EA 323 Kneller J** held that ;-

“Consolidation of suits should be ordered where there are common questions of law or fact in action having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time”.

16. It is clear that there are issues of facts and law in the three suits which are common, the most important of it being who is the rightful owner. Once ownership is determined, the other claims like compensation or indemnity will follow. An order of consolidation in the circumstances will neither confer an advantage upon the applicant nor occasion injustice to Delta Haulage Services Limited. The three suits can conveniently be heard together. This will avoid separate trials which will not only consume judicial time but also save on litigation costs to the disputants. It is for these reasons that I find that consolidation is necessary. I allow the applicant’s application with the result that ELC No. 615 of 2015 is hereby consolidated with ELC 100 of 2007 and ELC No. 326 of 2012. Costs shall be in the cause.

It is so ordered.

Dated, Signed and Delivered at *Nairobi* this *15th* day of *March 2017*.

E.O .OBAGA

JUDGE

In the presence of ;-

Mr Mwenesi for the Plaintiff/Respondent

Mr Karanja for Dr Kuria for the Defendant/Applicant

Mr Owang for 1st Defendant/Respondent

Court Assistant :Kevin

E.O .OBAGA

JUDGE