



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT MOMBASA
CIVIL SUIT 183 OF 2015

NEW KENYA COOPERATIVE

CREAMARIES LTD.....PLAINTIFF/APPLICANT

VERSUS

HASSAN ALI MBOGA AND 34 OTHERES..... DEFENDANTS

RULING

1. This is the Notice of Motion dated 19th January 2016. It is brought under Section 1A and 1B of the Civil Procedure Act, Order 1 Rule 1 of the Civil Procedure Rules.

It seeks orders that;

- a) **The suit therein be consolidated, heard and determined together with ELC No.329 of 2015 (O.S.) Hassan Ali Mboga & 103 others –vs- New Kenya Cooperative Creameries Limited.**
- b) **The suit herein be designated as the pilot file for purposes of taking evidence and writing judgment.**
- c) **Costs be provided for.**

2. The grounds are on the face of the application. The application is supported by the affidavit of Peter Kennedy Ombati, the Company Secretary and Chief Legal Manager Legal Affairs of the plaintiff herein. The same is sworn on the 19th of January 2016. The application was served on the defendant counsel and on the form of M/s E. N. Waithera and Company Advocates who are for the plaintiffs in ELC 329 of 2015 (OS). There is a Replying Affidavit sworn by Hass Ali Mboga, the 1st defendant herein and the 1st applicant in ELC 329 of 2015 (OS).

3. I have considered the Notice of Motion dated 19th January 2016 the Supporting Affidavit and the Replying Affidavit. I have also considered the oral submissions of both counsels. The respondents do not object to this consolidation save that ELC 329 of 2015 be the pilot file for taking evidence and writing judgment. I am also of the view that consolidation would advance the overriding objectives as envisaged under Section 1A and 1B of the Civil Procedure Act. The issues are the same.

4. It would serve the same interest of justice if ELC 329 of 2015 (OS) is taken as the pilot file for taking evidence and writing of judgment. The issues in this file, ELC 183 of 2015 can be treated as defence and

counter-claim. I hereby allow the application herein write following terms.

- a) That the suit herein be consolidated, heard and determined together with ELC 329 of 2015 (OS).**
- b) That the ELC 329 of 2015 (OS) be designated as the pilot file for purposes of taking evidence and writing judgment.**
- c) Costs do abide the outcome of the main suits.**

Orders accordingly

Dated and signed on the 13th day of July 2017 at Mombasa.

L. KOMINGOI

JUDGE

13/7/17

Ruling dated and delivered in open court on the 13th day of July 2017 in the present of Ms. Maina for Mwaniki for the defendants and the court assistant Koitamet.

L. KOMINGOI

JUDGE

13/7/17