



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 726 OF 2013

FRANCIS WAINAINA KARIUKI.....PLAINTIFF

VERSUS

SAMUEL KIONGO NDEGWA.....DEFENDANT

NATIONAL BANK OF KENYA LTD.....INTERESTED PARTY

RULING

By his Chamber Summons application dated 4th November 2016, the defendant seeks the following orders:

(a) That this Honourable Court be pleased to enjoin the Interested party in this suit as a defendant or in the alternative, this Honourable Court be pleased to join or consolidate this case with NYERI H.C.C.C No. 161 of 2009.

(b) That if the application is allowed, the defendant be allowed to amend his pleadings accordingly.

(c) Costs of this application be provided for.

The application is based on the grounds set out therein and supported by the defendant's affidavit.

The gravamen of the application is that the Intended interested party illegally sold land parcel No. MWERUA/KANYOKORA/420 which is the subject of this suit to the plaintiff. That arising out of that illegal sale, the defendant has sued the plaintiff and the Intended interested party in **NYERI H.C.C.C No. 161 of 2009** and therefore if the Intended interested party is not impleaded in this case or the two cases are not consolidated, there will be two different judgments which will cause embarrassment. Therefore, this case and **NYERI H.C.C.C No. 161 of 2009** cannot be heard separately.

The application is opposed and the plaintiff has filed grounds of opposition describing it as incompetent, bad in law and an abuse of the Court process.

By consent of the parties, it was agreed that the application be canvassed by way of written submissions and on 28th September 2016, it transpired that infact **NYERI H.C.C.C No. 161 of 2009** and **EMBU H.C.C. No. 189 of 2010** are now **KERUGOYA ELC CASE No. 150 of 2014**. However, only **MR. MUGO** counsel for the defendant filed submissions to the application. **MR. MAGEE** for the plaintiff opted not to file any while counsel for the Intended interested party did not attend Court when directions were taken on the application.

I have considered the application, the grounds of opposition by the plaintiff and the submissions filed.

I have also called for **KERUGOYA ELC CASE No. 150 of 2014** and confirmed that the plaintiff therein is **SAMUEL KIONGO NDEGWA** (the defendant in this case) while the two defendants therein are **NATIONAL BANK OF KENYA** (the Intended interested party herein) and **FRANCIS WAINAINA KARIUKI** (the plaintiff in this case). The subject matter in that case is land parcel No. MWERUA/KANYOKORA/420 which is also the subject matter in this suit. That suit is yet to commence hearing and following its transfer to this Court from the High Court in Embu in 2014, it was only mentioned before me once on 2nd October 2014. It is not clear how it escaped the attention of the Deputy Registrar when such matters were being listed for dismissal. Perhaps it was for good reasons but suffice to state that nothing much has happened in that case since it was filed in 2009. May be the orders that I am about to make in this matter will awaken the parties from what is clearly a deep slumber.

Having said so, since the Intended interested party is already a defendant in **KERUGOYA ELC CASE No. 150 of 2014**, it seems to me that the only prudent order to consider is that of consolidation of that case with this one.

In **STUMBERG VS POTGEITER 1970 E.A 323 KNELLER J.** (as he then was) cited several English authorities on consolidation of cases and held as follows:

“Where there are common questions of law or fact in action having sufficient important 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, consolidation should be ordered”.

In the Indian case of **BRIJ KISHORE VS BIR SINGH & OTHERS L.R 5922 of 2013**, Justice **PARAMJEET SINGH** quotes the following from the Supreme Court Case of **PREM LALA NAHATA & ANOTHER VS CHANDI PRASAD SIKARIA 2007 2 SUPREME COURT CASES 551** at paragraph 18:

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason, it is desirable to make an order consolidating the suits”

Back home in the case of **LAW SOCIETY OF KENYA VS THE CENTER FOR HUMAN RIGHTS AND DEMOCRACY, SUPREME COURT OF KENYA PETITION No. 14 of 2013**, our Supreme Court said the following on the same issue:

“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. Consolidation was never meant to confer any due advantage upon the party that seeks it nor was it intended to occasion any disadvantage towards the party that opposes it”.

Among the issues that a trial Court considers during the pre-trial process under **Order II Rule 3 (1) (h) of the Civil Procedure Rules** is the consolidation of suits in appropriate cases. This is meant to ensure proper case management, achieve efficient use of the available judicial and administrative resources and thereby achieve the expeditious proportionate and affordable resolution of disputes which is an overriding objective of the **Civil Procedure Act and the Rules** made thereunder.

Taking all that into account and bearing in mind that both this case and **KERUGOYA ELC CASE No. 150 of 2014** are yet to commence trial and both involve the land parcel No.

MWERUA/KANYOKORA/420, I find it proper to have the two suits consolidated.

Ultimately therefore, and having considered the application dated 4th November 2016, I make the following directions:

- 1. This case and KERUGOYA ELC CASE No. 150 of 2014 are hereby consolidated.***
- 2. This case shall be the lead file for purposes of proceedings.***
- 3. Parties in both cases to appear before this Court on 14th December 2017 for further directions.***
- 4. Costs shall be in the cause.***

B.N. OLAO

JUDGE

8TH DECEMBER, 2017

Ruling dated, delivered and signed in open Court this 8th day of December 2017

Mr. Munene for Mr. Magee for Plaintiff present

Mr. Mugo for Defendant absent

Mr. Gichia – Court clerk present

B.N. OLAO

JUDGE

8TH DECEMBER, 2017