



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC CASE NO. 389 OF 2013**

**HARUN MURIUKI.....1<sup>ST</sup> PLAINTIFF**

**CHARLES MURIITHI.....2<sup>ND</sup> PLAINTIFF**

**ELIUD WACHIRA GACHARIA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**KIRINYAGA COUNTY COUNCIL.....DEFENDANT**

**JOSEPH MWANGI GAKUYA.....APPLICANT**

**RULING**

In **PETITION NO. 14 of 2013 LAW SOCIETY OF KENYA VS CENTER FOR HUMAN RIGHTS AND DEMOCRACY & OTHERS**, the Supreme Court addressed the issue of consolidation of suits 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”.***  
Emphasis added

And in **STUMBERG & ANOTHER VS POTGEITOR 1970 E.A 323 KNELLER J.** after referring to English decisions on consolidation of suits stated that:

***“Where there are common questions of law or fact in actions 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”.*** Emphasis added

Under **Order II Rule 3 (1) of the Civil Procedure Rules**, consolidation of suits may be considered for purposes of ***“furthering expeditious disposal of cases and case management”***.

It follows therefore that consolidation of suits can only be done where two or more suits are pending determination and cannot be done where one of the suits sought to be consolidated has infact been finalized.

On the other hand, under **Order 1 Rule 10 (2) of the Civil Procedure Rules**, a party may be enjoined in proceedings if his ***“presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit”***.

I have before me the application by **JOSEPH MWANGI GAKUYA** (Applicant herein) dated 16<sup>th</sup> August 2016 seeking the following orders:

- 1. That the Applicant be enjoined as an interested party in this matter.**
- 2. That the case be consolidated with KERUGOYA ELC CASE No. 324 of 2013.**
- 3. Costs of the application be provided for.**

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

The gravamen of the application is that this suit involves land parcel No. MUTIRA/KAGUYU/50 which was also the subject in **KERUGOYA ELC CASE No. 324 of 2013** in which there is already a judgment in favour of the Applicant and others a fact that was not disclosed by the parties in this suit. What is remaining in **KERUGOYA ELC CASE No. 324 of 2013** is the sub-division of the land parcel No. MUTIRA/KAGUYU/50 to the beneficiaries. Consolidation will therefore prevent a situation whereby two Courts of competent jurisdiction make conflicting orders.

**GRACE MUKUHA** counsel for the plaintiffs in **KERUGOYA ELC CASE No. 324 of 2013** has filed a replying affidavit in which they do not oppose the prayer for joinder of the Applicant in those proceedings but object to the prayer for consolidation on the ground that **KERUGOYA ELC CASE No. 324 of 2013** has been heard and determined and there is nothing pending in that suit to warrant consolidation with this suit.

Counsel for the plaintiffs herein **MR. MAGEE** has filed grounds of opposition describing the application as bad in law and an abuse of the Court process as it would be un-procedural to consolidate this suit with a matter that is finalized. In a further replying affidavit, the Applicant has deponed that in **KERUGOYA ELC CASE No. 324 of 2013** (which had been filed earlier in **NYERI as H.C.C No. 70 of 1993** before being transferred to this Court) the plaintiffs herein had applied to set aside a judgment obtained in favour of the Applicant and others but that application was dismissed with costs. And instead of appealing that order of dismissal, the plaintiffs filed this suit seeking similar prayers that have been already adjudicated upon.

The application has been canvassed by way of written submissions which have been filed by **MAINA KAGIO & COMPANY ADVOCATES** for the Applicant and **MAGEE WA MAGEE ADVOCATES** for the plaintiffs.

I have considered the application, the rival affidavits and grounds of opposition and the submissions by counsel.

With regard to the prayer to enjoin the Applicant in these proceedings, it is clear that indeed there exists **KERUGOYA ELC CASE No. 324 of 2013** in which the Applicant was the 2<sup>nd</sup> defendant and the case involved land parcel No. MUTIRA/KAGUYU/50 which is also the subject matter in this case. The record shows that **KERUGOYA ELC CASE No. 324 of 2013** was determined on 8<sup>th</sup> June 2001 when the elders' award was read to the parties and adopted as a Court order. As the Applicant has stated, and it is not in dispute, that this case touches on land parcel No. MUTIRA/KAGUYU/50 in which he and others have an interest as there is an award in their favour, I think it is in the interest of justice to enjoin him in these proceedings as that will no doubt "**enable the Court effectually and completely**" adjudicate the issues involved in this dispute since he has a recognizable stake in the subject matter. The prayer for joinder is therefore granted.

With regard to the prayer seeking consolidation of this suit and **KERUGOYA ELC CASE No. 324 of 2013**, it is clear from the authorities cited at the beginning of this ruling that it is now not feasible to have the two files consolidated for the simple reason that **KERUGOYA ELC CASE No. 324 of 2013** was heard and determined some sixteen (16) years ago. That prayer is therefore dismissed.

Ultimately therefore and upon considering the Applicant's Notice of Motion dated 16<sup>th</sup> August 2016, I make the following orders:

- 1. The Applicant be enjoined in these proceedings as an interested party.***
- 2. The prayer to consolidate this suit and KERUGOYA ELC CASE No. 324 of 2013 is disallowed.***
- 3. The Applicant to file and serve his pleadings upon the other parties within 15 days from the date of this ruling.***
- 4. The plaintiffs and defendants are at liberty to amend their pleadings within 15 days of service upon them.***
- 5. Costs in the cause.***

**B.N. OLAO**

**JUDGE**

**8<sup>TH</sup> DECEMBER, 2017**

Ruling dated, delivered and signed in open Court this 8<sup>th</sup> day of December 2017 at Kerugoya

Mr. Munene for Mr. Magee for Plaintiffs present

Mr. Wanjau for Defendant absent

Mr. Kagio for the Applicant present

Mr. Gichia Court clerk present.

**B.N. OLAO**

**JUDGE**

**8<sup>TH</sup> DECEMBER, 2017**