



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**MISC. APPLICATION NO. 10 OF 2015**

**JAMES NDICHU .....APPLICANT**

**VERSUS**

**MARGARET WANJIRU KURIA A.....1<sup>ST</sup> RESPONDENT**

**MARGARET WANJIRU KURIA B.....2<sup>ND</sup> RESPONDENT**

**BAHATI WOMEN COMPANY LIMITED..3<sup>RD</sup> RESPONDENT**

**PHILOMENA NYAMBUGU NJOROGE....4<sup>TH</sup> RESPONDENT**

**RULING**

***(Application for consolidation of suits; matters related; application allowed)***

1.This is an application filed pursuant to the provisions of Section 18 (1) (b) , 3, 3A and 63 (e) of the Civil Procedure Act. It seeks the following orders :-

- i. *That this Honourable Court be pleased to transfer and or withdraw to itself for trial and disposal Nakuru CMCC No. 877 of 2010, Margaret Wanjiru Kuria & Another vs James Ndichu & Others.*
- ii. *That this Honourable Court be pleased to give any other orders and or directions as it may deem fit and reasonable taking into account all the circumstances of this case.*
- iii. *That costs of this application be provided for.*

The application is based on the grounds that :-

1. *There are pending cases before the High Court being inter alia Nakuru HCCC No. 177 of 2007, Nakuru HCCC No. 133 of 2010, Nakuru HCCC No. 134 of 2010 whose subject matter is the parent parcel of land from which the suit lands in Nakuru CMCC No. 877 of 2010 were hived from.*
2. *That the dispute in the High Court revolves around ownership and subdivision of the parent parcel of land into various parcels inter alia the suit land in Nakuru CMCC No. 877 of 2010 and the High Court has issued orders and/or directions in respect thereto.*
3. *The High Court cases have direct and substantial bearing in the lower court case and hence the need to have the dispute involving the parent parcel of land and or any subdivisions thereof be heard and adjudicated by one court to avoid conflicting decisions over the same subject matter and to save on*

*precious judicial time.*

4. *It is in the interests of justice that this application be allowed and or this honourable court does give any other directions that it may deem fit and deserving in the circumstances.*

2. The application is supported by the affidavit of the applicant. He has more or less repeated the grounds above in his affidavit.

3. The application is opposed by the 1st and 2nd respondent. The 1st respondent has averred in her replying affidavit that she is the absolute proprietor of the land parcel Narok/Siapei 6/634 (Gachembe) and that unless her registration is defeated under law, she is entitled to its exclusive possession. She has averred that the applicant illegally entered into her land and she filed an application Nakuru CMCC No. 877 of 2010. It is her view that the current application is meant to delay the finalization of that suit. She has deposed that the applicant and herself are not parties to the cases in the High Court and that her matter is distinct from those pending in the High Court. The 2nd respondent has fully associated herself with the reply of the 1st respondent. She has added that she is the proprietor of the land parcel Narok/Siapei 6/ 635 (Gachembe).

4. The 3rd and 4th defendants however filed Grounds in support of the subject application. It is their view that the suits relate to the same subject matter and that unless the lower court suit is stayed, there may be confusion.

5. A further supporting affidavit was filed by the applicant. He deposed that the two cases pending in the High Court are now consolidated and are before the Environment and Land Court, the lead file being Nakuru HCCC No. 133 of 2010.

6. I permitted counsels to make submissions and they duly did. I have considered these submissions in my ruling.

7. This application as may be seen, seeks the transfer of the suit Nakuru CMCC No. 877 of 2010. It is said that this suit is related to the cases Nakuru HCCC No. 177 of 2007 and Nakuru HCCC No. 134 of 2010 and Nakuru HCCC No. 258 of 2010. I have had to call for these files which I have perused.

8. The suit Nakuru HCCC No. 133 of 2010 is filed by 10 persons namely Samwel Nganga Ndirangu, Elizabeth Wambui Mwangi, Stanley Kamau Ndirangu, Eunice Muthoni Kariuki, Lucy Wanjiru Muratha, Eunice Ruguru Nganga, Pharis Kariuki Muratha, Silvester Momanyi Marube, Kaniu Wamara Kaniu, and Teresiah Gathoni Mara. They have sued Joseph Kimani Irungu. In this case, the plaintiffs have claimed to be owners of the land parcels Mau Narok/Siapei Block 6/6,7,15,3,2,116,5,122,114,115,14, and 16. It is pleaded that the defendant has illegally invaded the said parcels of land and started ploughing the same. In the suit, the plaintiffs asked that the defendant be permanently restrained from the said parcels of land. In his defence, the defendant averred that the named properties were once owned by Bahati Women Company within LR No. 8669/1 (Mau Narok). He pleaded that his wife was a shareholder and director of this company. He claimed that these land parcels belong to his wife and stated that he is on the land courtesy of his wife. He further claimed that Bahati Women Ltd had passed a resolution to cancel these titles.

9. In the case Nakuru HCCC No. 258 of 2010, the plaintiff is Bahati Women Company Ltd. The defendants are 26. These 26 defendants include the 10 plaintiffs in Nakuru HCCC No. 133 of 2010. In the case, Bahati Women Ltd has pleaded that it owns the land parcel L.R No. 8669/1. It claimed that the defendants have acquired fraudulent titles and in the suit, the company has asked that the titles of the defendants be cancelled.

10. In the case Nakuru HCCC No. 134 of 2010, the plaintiffs are 12. These 12 plaintiffs are all defendants in the case No. 258 of 2010. In their suit, the 12 persons sued one Wilson Siiya. They claimed the land parcels Mau Narok/Siapei Block 6/754,755,756,757,758,759, 760,761,764,765,766,769,770,778,747,748,751,407,410,411,412, and 414. They claimed that the

defendant was in illegal occupation of the same. In the suit, they inter alia sought that the defendant be permanently restrained from the said properties. In his defence, the defendant pleaded that he was engaged by Bahati Women Ltd, through contract, to cultivate 120 acres of the land L.R No. 86691/1 (Mau Narok).

11. The case Nakuru HCCC No. 177 of 2007 is filed by 405 plaintiffs. They are shareholders of Bahati Women Ltd. In the suit, they claimed that the assets of Bahati Women Ltd were being illegally disposed of. They sought a permanent injunction to restrain any dealings in the land L.R No. 8669/1. Among the defendant is Bahati Women Ltd.

12. The suit Nakuru CMCC No. 877 of 2010 has Margaret Wanjiru Kuria as plaintiff and James Ndichu and Philomena Nyambugu Njoroge as defendants. The plaintiffs claim to be owners of the land parcels Mau Narok/Siapei 6/ 34 and 35 (Gachembe). The claim is that the defendants have entered into these parcels of land and the plaintiff wants them permanently restrained.

13. It is apparent to me that the suit Nakuru CMCC No. 877 of 2010 relates to land that was derived from L.R No. 8669/1 which is subject of the other proceedings. I think it is best that this suit also be consolidated with the other suits, which I note were all consolidated into the suit Nakuru HCCC No. 133 of 2010. Any decision made in those other suits may affect this suit. The other suits are in the Environment and Land Court and Nakuru CMCC No. 877 of 2010 should also be heard and concluded in the same court.

14. I therefore allow this application and remove the case Nakuru CMCC No. 877 of 2010 from the Nakuru Chief Magistrate's Court to the Environment and Land Court for disposal. The said suit is consolidated with Nakuru HCCC No. 133 of 2010.

15. I make no orders as to costs.

16. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 19<sup>TH</sup> day of May, 2016.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**In presence of: -**

Parties and counsels: absent

Court Assistant: Janet

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**