



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT NAIROBI

ELC No. 91 OF 2013 (O.S)

TENI LIMITED.....APPLICANT

VERSUS

ANNUNCIATA WAITHERA KIBUE

SUSAN NJERI KIBUE

PAUL KIMANI KIBUE (Sued as the administrators of the estate

of JAMES ARAM KIBUE, deceased).....RESPONDENTS

RULING

What is before me is the Applicant's application by way of Notice of Motion dated 18th June 2015 in which the Applicant has sought two main orders namely:-

- (i) Consolidation of this suit with Nairobi ELC No. 141 of 2012 Annunciata Waithera & 2 others vs. Peter Chege Kiarie and another.
- (ii) Such further or any other orders the court may deem fit to grant in the circumstances.

The Applicant's application was brought on the grounds that the subject matter of this suit and Nairobi ELC No. 141 of 2012, Annunciata Waithera & 2 others vs. Peter Chege Kiarie & another (hereinafter "**the first suit**") is LR No. 5989/14, Kiambu Road, Nairobi (hereinafter "**the suit property**"). The Applicant has contended that the Respondents in this suit are the Plaintiffs in the first suit and the Defendants in the first suit have an interest in the Applicant in this suit and that the issues in the two suits are substantially the same. The Application which was supported by the affidavit of John Njuguna Kiarie sworn on 18th June 2015 was opposed by the Respondents through grounds of opposition dated 7th October 2015. In their grounds of opposition, the Respondents contended that the Applicant has not met the threshold for consolidation of suits in that the parties in this suit and the first suit, the issues raised in the two suits and the reliefs sought are all different. The Respondents contended further that the consolidation of the two suits would prejudice them.

The application was heard by way of written submissions. I have considered the application together with the affidavit filed in support thereof. I have also considered the Respondents' grounds of opposition which was filed in response to the application. Finally, I have considered the submissions by the parties' respective advocates and the authorities which were cited in support thereof. The Applicant cited several authorities on consolidation of suits. The common thread that runs through the said authorities is that consolidation of suits is done for the purposes of achieving overriding objective of the Civil

Procedure Acts set out in Sections 1A and 1B of the Civil Procedure Act which is, just expeditious, proportionate and affordable resolution of civil disputes. The situations in which consolidation can be ordered by the court according to the said authorities include:

- (i) Where some common question of law or fact arises in the cases sought to be consolidated.
- (ii) Where the rights or relief claimed in the suits sought to be consolidated are in respect of or arise out of the same transaction or series of transactions.
- (iii) Where for any other reason the court finds that it is desirable to make an order for consolidation.

See, Nyati Security Guards and Services Ltd. vs. Municipal Council of Mombasa [2004]eKLR, Korean United Church of Kenya & 3 Others vs. Seung Ho Song [2014] eKLR and Joseph Okoyo vs. Edwin Dickson Wasunna [2014] eKLR.

I have perused the Originating Summons filed herein and the pleadings filed in the first suit. It is not disputed that the subject matter in the two suit are the same and that the issue for determination in both suits is the ownership of a portion of the suit property said to be occupied by the defendants in the first suit and the Plaintiff in this suit. In the first suit, the Respondents herein have sued Peter Chege Kiarie and Grace Wanjiku Mbugua claiming that they have trespassed on a portion of the suit property. The Respondents have sought the recovery of the said portion of the suit property from the said Peter Chege Kiarie and Grace Wanjiku Mbugua. In their defence, the said Peter Chege Kiarie and Grace Wanjiku Mbugua (“the Defendants in the first suit”) have denied that they are trespassers on the suit property and have contended that they have occupied the disputed portion of the suit property from the year 1992 by virtue of their interest in Teni Limited which is the Applicant herein. The Defendants in the first suit have contended in that suit that Teni Limited, the Applicant herein has acquired the disputed portion of the suit property by adverse possession and that the Respondents herein are time barred from recovering the said portion of the suit property. The Defendants in the first suit who have claimed to be directors of Teni Limited the Applicant herein have intimated in their defence that Teni Limited the Applicant herein would institute appropriate proceedings to have the disputed portion of the suit property registered in its name.

In this suit, Teni Limited the Applicant, has sought to be registered as the proprietor of the suit property by adverse possession and in the alternative a declaration that the Respondents hold the disputed portion of the suit property in trust for it and that the Respondents be ordered to transfer the said portion of the suit property to it. The Respondents are yet to respond to the Originating Summons herein. The advocates acting for the parties in the first suit and in this suit are the same.

I am in agreement with the submissions by the Applicant that consolidation of this suit and the first suit would achieve the overriding objectives of the Civil Procedure Act which I have set out herein earlier. As I have stated above, in the first suit the Respondents herein have sought to recover a portion of the suit property from the defendants in that suit, Peter Chege Kiarie and Grace Wanjiku Mbugua. The said defendants in the first suit have contended that they are directors of the Applicant herein, Teni Limited and that their occupation of the disputed portion of the suit property is on account of their interest in Teni Limited. In the present suit, Teni Limited has sought to be registered as proprietor of the disputed portion of the suit property on the ground that the Respondents holds the same in trust for it and in the alternative that it has acquired the same by adverse possession. I am in agreement with the contention by the Applicant that the main issue that arises for determination in the two suits is the ownership of the disputed portion of the suit property as between the Applicant, the Defendants in the first suit and the Respondents herein. I am convinced that it would save time and cost if this suit and the first suit are heard together so that the issue of the ownership of the suit property is determined at one trial. I am not in agreement with the submission by the Respondents that they would be prejudiced by the consolidation of this suit and the first suit. The Respondents have not come out clearly in their submissions as to the how they would suffer prejudice if the two cases are consolidated. In my view, the issues pointed out by the Respondents as likely to give rise to prejudice goes to the merit of the parties’ respective claims. Since the

