

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ENVIRONMENTAL AND LAND DIVISION

ELC. CASE NO. 1022 OF 2012

MARTIN WALONG MADIWA..... PLAINTIFF

VERSUS

VINCENT ODHIAMBO KAMENYA..... DEFENDANT

RULING

Coming up before me for determination is the Notice of Motion dated 17th July 2014 in which the Plaintiff/Applicant seeks for an order consolidating this suit with **ELC No. 366 of 2011**. The Application is based on the grounds appearing on its face together with the Plaintiff, Martin Walong Madiwa's Supporting Affidavit sworn on 17th July 2014 in which he averred that on 18th December 2012, he filed this suit against the Defendant, Vincent Odhiambo Kamenya, seeking to restrain him from interfering with his plot number 008 Dandora off Kangundo Road (originally Plot No. 476). He further averred that he later came to discover that there is another pending suit being **ELC No. 366 of 2011** filed on 21st July 2011 by Thomas Ndinya Adero & 3 Others versus Wilfred Oluoch Odalo & 3 Others in which the Plaintiffs are members of Dandora Off Kangundo Road Self Help Group of which he is a member and the Defendants are the present office bearers of the said group. He added that in **ELC No. 366 of 2011**, the Plaintiffs therein claim that the Defendants had changed plot numbers, falsified the membership register, made changes to the original letters of allotment and illegally sold plots to third parties in the properties identified as L.R. Nos. 18271, 18272, 18276 and 18277. He stated that he is also directly affected by the acts of the Defendants in that suit and that the issues for determination in that suit would directly assist the court in determination of the issues in this present suit. He added that to that extent, the two suits should be consolidated as they involve the same questions of fact and law.

The Application is contested. The Defendant, Vincent Odhiambo Kamenya, filed his Replying Affidavit sworn on 24th July 2014 in which he stated that he is not a member of and has never been a member of Dandora Off Kangundo Road Self Help Group whose members and officials have sued each other in **ELC No. 366 of 2011**. He added that the cause of action in **ELC No. 366 of 2011** involves internal management disputes, election disputes and the running of that group of which he is not a party to. He added that no common question of law or fact is involved in the two suits and the two suits should not be consolidated.

Both the Plaintiff and the Defendant filed their written submissions.

Should this present suit be consolidated with **ELC No. 366 of 2011**? In **David Ojwang' Okebe & 11 Others v South Nyanza Sugar Company Limited & 2 Others CA Kisumu Civil Appeal (Appl) No. 139 of 2008 (2009) eKLR**, the Court of Appeal discussed the main object of consolidation, that is,

“to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or serious of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so.”

To begin with, the parties in this present suit are different from the parties in **ELC No. 366 of 2011**. The

Defendant in this present suit, Vincent Odhiambo Kamenya, has rightfully stated that he is not a party in **ELC No. 366 of 2011** which involves the members and officials of Dandora Off Kangundo Road Self Help Group. He pointed out that he is not a member of that group. That position was not rebutted by the Plaintiff in this present suit. Secondly, the suit property in the two suits is different. In this present suit, the suit property is identified as plot number 008 Dandora off Kangundo Road (originally Plot No. 476) while in **ELC No. 366 of 2011**, the suit properties are identified as L.R. Nos. 18271, 18272, 18276 and 18277. There is no clarity on whether the suit property in this present suit falls within the suit properties in **ELC No. 366 of 2011**. Thirdly, this present suit is an action to remove a trespasser on the suit property while in **ELC No. 366 of 2011**, the dispute revolves around ownership of plots as between members and officials of Dandora Off Kangundo Road Self Help Group. This being the position, I am of the considered view the two suits do not involve common questions of fact and law and cannot therefore be consolidated.

This Application is therefore dismissed. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 28TH DAY OF OCTOBER 2016.

MARY M. GITUMBI

JUDGE