



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

**AT NAKURU**

**ELC NO 218 of 2012**

**SINDIMAIYO OLE KOISAMU.....PLAINTIFF**

**VERSUS**

**SAKINYA OLE TUUKUO.....1<sup>ST</sup> DEFENDANT**

**DAVID KISERA TUUKUO.....2<sup>ND</sup> DEFENDANT**

**MBATIA OLE TUUKUO .....3<sup>RD</sup> DEFENDANT**

**KAROE OLE TUUKUO .....4<sup>TH</sup> DEFENDANT**

**RULING**

***(Application for consolidation of two suits; suits similar; application allowed but only for purposes of recording evidence and writing a consolidated judgment).***

1. The application before me is that dated 3 February 2014 filed by the defendants. The application seeks orders to have this suit consolidated with the case Nakuru HCCC No. 93 of 2010. The grounds for the application is that the parties in the two cases are the same; that the subject matter is the same; and that the issues are similar. In the supporting affidavit, the applicant has averred that although Section 6 of the Civil Procedure Act, CAP 21, Laws of Kenya, requires that the latter suit be stayed, and this is the latter suit, it is his request that the two cases be consolidated.

2. The application is unopposed by the plaintiff who filed no response and did not appear at the inter partes hearing of it.

3. I have considered the application and looked at the two files in issue. The case Nakuru HCCC No. 93 of 2010 was filed on 4 April 2010 through the law firm of M/s Ombajo, Onoko & Associates Advocates. There are 4 plaintiffs in the matter, who are, Sakinya Ole Tuukuo, David Kisera Tuukuo, Mbatinga Ole Tuukuo and Karoe Ole Tuukuo. The defendant is Sindimaiyo Koisamu. The claim therein is that the plaintiffs are the legal beneficial owners of the land parcel Narok/Cis-Mara/Nairragie-Enkarre/85. It is pleaded that the said land was originally that of Kisera Tuukuo (deceased), who is father to the four plaintiffs and after his death the title was transmitted to his sons, the plaintiffs. It is pleaded that the late Tuukuo accommodated the father of the defendant, one Kariuki Ole Kaisamu, along with his family and allowed them to live and graze their animals on the land. It is averred that the defendant is a trespasser and in the suit the plaintiffs have asked for eviction orders. It is averred in the plaint that there had been a previous suit, Nairobi HCCC No. 712 of 2000 over the same subject matter which suit was dismissed.

The defendant entered appearance and filed Defence through the law firm of M/s Koceyo & Company Advocates. Inter alia, he pleaded that he was in possession of the suit land and that the plaintiffs acquired title fraudulently. Not much has happened in this case, the last item being a Notice of Intention to Act in Person filed by the plaintiffs on 9 December 2013.

4. The other suit, which is the suit herein, was filed by Sindimaiyo Ole Koisamu on 7 December 2012 through the law firm of M/s Koceyo & Company Advocates. The defendants are four. They are Sakinya Ole Tuukuo, David Kiseru Tuukuo, Mbatinga Ole Tuukuo, and Karoe Ole Tuukuo. The subject matter is the land parcel Narok/Cis-Mara/Nairagie-Enkare/85. The plaintiff has averred that he has all along been in possession of the suit property; that his father Keruge ole Koisamu settled in that land in the year 1960; that on 11 March 2011, the defendants secretly obtained title deed; that the title was obtained fraudulently; that there is a decision of the Land Disputes Tribunal in his favour; that there is no other suit pending apart from Judicial Review No. 119 of 2010 and Nakuru HCCC No. 93 of 2010. It is also acknowledged that there has been the suit Nairobi HCCC No. 712 of 2000 which was dismissed for want of prosecution. In the suit the plaintiff has asked for a declaration that the suit land is held in trust and it be divided equally between himself and the defendants. The 4 defendants entered appearance through the law firm of S.L.M.H. Muhia & Company Advocates. A Preliminary Objection was also filed, seeking that this suit be stayed as the issues raised are the same as those raised in the suit Nakuru HCCC No. 93 of 2010 which was filed earlier and is still pending.

5. It looks like the defendants have abandoned their Preliminary Objection and instead wish to have the two suits consolidated. It will be observed that the two suits in issue involve the same parties only that their roles are reversed. The subject matter is the same and the issues are the same although I am not too sure that the plaintiff herein was entitled to file another suit, given that he had earlier filed the suit Nairobi HCCC No. 712 of 2000. But that is an avenue and issue to be considered later and it is not the subject matter before me.

6. I do not see any harm if the two suits are consolidated only for purposes of recording evidence and for purposes of writing a consolidated judgment. They still remain separate suits. No prejudice will be caused to any party by this order. That said, it is my view that it is best if parties are encouraged to file counterclaims rather than file separate suits. That saves a lot of judicial time and expense.

7. I allow this application and order a consolidation of the suits Nakuru HCCC No. 93 of 2010 and Nakuru ELC No. 218 of 2010 for purposes only of recording evidence and writing a consolidated judgment. The suits concern land and they will be heard before this court.

8. Costs of the application will be costs in the cause.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 17<sup>th</sup> day of March 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of : -**

Mr Waiganjo holding brief for Mr Muhia for the defendants/applicants

N/A for M/s Koceyo & Co advocates for plaintiff/respondent

Emmanuel Juma : Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**