IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 348 OF 2009

NJUKI GITHUKU…….……..……..…PLAINTIFF

VERSUS

WAWERU MUIRURI…..……..……..1ST DEFENDANT

STEPHEN NJENGA NGUGI……2ND DEFENDANT

SADRACK MWANGI CHEGE……..……3RD DEFENDANT

MOSES MUNGAI MBUGUA…….4TH DEFENDANT

JOHN KAHURA NGATHO……5TH DEFENDANT

THUO KONGO……..….6TH DEFENDANT

MUNGAI MBUTIRI……..…….7TH DEFENDANT

(BEING COMMITTEE MEMBERS OF KAMITI RIVER SELF HELP GROUP)

RULING

Coming up before me for determination is the Notice of Motion dated 28th June 2013 in which the Defendants/Applicants seek for orders that this suit being **ELC No. 348 of 2009** be consolidated with **ELC No. 285 of 2011** and **ELC No. 295 of 2011** and that costs of this Application be provided.

The Application is premised on the grounds appearing on the face of it together with the Supporting Affidavit of Waweru Muiruri, the 1st Defendant, sworn on 28th June 2013 in which he averred that sometime in the year 2009, the Plaintiff herein filed this suit disputing the mode of subdivision, balloting and allocation of L.R. No. 13166 I.R. No. 27109 (hereinafter referred to as the "suit property") to its respective shareholders. He further averred that subsequently, in the year 2011, one Joseph Ndichu Kamau filed **ELC No. 285 of 2011** claiming shares in the suit property wherein he was sued as the 7th Defendant. He further averred that subsequent to that, one Muga Njuki also filed **ELC No. 295 of 2011** claiming shares in the suit property wherein he was sued as the 5th Defendant. He further averred that both **ELC No. 285 of 2011** and **ELC No. 295 of 2011** have since been consolidated. He further stated

that all the three suits have the same subject matter being the subdivision, balloting and subdivision of the suit property. He further stated that the Defendants in all the three suits are the same save for the 13th Defendant in **ELC No. 285** and the 11th Defendant in **ELC No. 295 of 2011**. He further stated that it is only fair and just that all these suits be consolidated to save the court's time and expense of the parties.

The Application is contested. The Plaintiff filed her Replying Affidavit sworn on 2nd July 2013 in which she stated that in the present suit, she has sued the committee members of Kamiti River Self Help Group seeking a permanent injunction restraining them from subdividing, installing beacons and from interfering with her quiet possession and occupation of part of the suit property. She further indicated that she is not only disputing the mode of subdivision but also that there was no valid or legal sub-division. She further stated that the Defendants in the present suit and those other two suits vary. She further intimated that in **ELC No. 285 of 2011**, the claim is for return of 12 ballot papers by one Stephen John Karani and for committee members not to execute any transfer in respect of any assets of the estate of one Kamau Makimei and that the two suits do not have any common question of law or fact. Finally, she argued that this Application is tailored to confuse the issues and that the Plaintiffs in those other suits are strangers to her.

The main issue for determination is whether this suit should be consolidated with the **ELC No. 285 of 2011** and **ELC No. 295 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."**

In order to determine whether the three suits comprise common questions of law or fact or that the relief sought in all three suits is in respect to the same transaction or series of transactions or that there is another reason for consolidating the suits, I must enumerate in brief what the claims are in all three suits.

To begin with, in this present suit being **ELC No. 348 of 2009**, the Plaintiff, Njoki Githuku has sued the committee members of Kamiti River Self Help Group which she claims is a social welfare group duly registered under the Ministry of Culture and Social Welfare Services (as it then was). According to her Plaint dated 15th July 2009 filed on 16th July 2009, she claims that she is the owner of a 1-acre parcel of land carved out of the suit property wherein she has built her dwelling house and where she lives. She disclosed that she together with the other 20 members of Njiru Farmers Company were ordered in **HCCC No. 3009** of 1983 to hold the suit property in equal shares. According to her, the sub-division of the suit property amongst themselves has to date never been finalized. She contended that 11 of the members of that company have since passed on and letters of administration in respect of their estates have not been taken out. It is her contention that some of the Defendants in the present suit were beneficiaries of some of the deceased members of Njiru Farmers Company. She now claims that the Defendants brought their own surveyor to sub-divide the suit property and place beacons thereon. It is this sub-division of the suit property by Kamiti River Self Help Group that she is contending.

In **ELC No. 295 of 2011**, the Plaintiff therein, one Muga Njuki, filed his Plaint dated 16th June 2011 and filed on 17th June 2011 claiming that he together with 20 other people, a few of them being Defendants in this suit and others whom he named were issued by the Government the suit property measuring 100 acres to hold the same as tenants in common in equal shares. He further stated that the surviving owners of the suit property resolved to sub-divide it amongst themselves as follows:

a. Each owner would take 9 portions of fraction of the land comprising 31/8 acres.

b. These 9 portions would comprise of residential, business and farming plots.
c. Ballot papers would be provided so that each owner would ballot for 9 different plots comprising residential, business and farming plots of various sizes.

According to him, the ballot took place on 10th September 2009 at the D.O.'s office at Kasarani. He stated that a dispute arose between him and the 11th Defendant where the 11th Defendant was claiming the parcels of land selected by him. He claims that his 9 ballot cards were surrendered to the District Officer Kasarani who subsequently wrongfully released them to the 11th Defendant despite his protests and that is the reason why he filed this suit to claim back his 9 ballot papers and the parcels of land within the suit property which they represent.

In **ELC No. 285 of 2011,** the Plaintiff therein, one Joseph Ndichu Kamau filed suit as the administrator of the estate of Kamau Makimei by a Plaint dated 26th July 2011 and filed on the same date. His claims are similar to the claims made in **ELC No. 295 of 2011** regarding the suit property but states that his late father Kamau Makimei was one of the 21 owners of the suit property. He confirmed having selected 12 ballots for his late father on 10th September 2009 but that some of the Defendants objected to the Plaintiff keeping the balloted plots saying that there was a rival claim for them by the 13th Defendant resulting in the ballots being left with the District Officer in Kasarani Area. The Plaintiff further stated that his ballots were subsequently released by the said District Officer to the 13th Defendant leading to the Plaintiff filing this suit in order to recover the said ballots and the parcels of land that they represent.

After this examination of the claims in the three suits, I have arrived at the conclusion that the subject matter of the three suits is the same being the suit property and that the cause of action of the three suits is also the same being the purported sub-division and allocation of the suit property. Though the Plaintiffs are different in the three suits, there is no question that they have all presented similar claims over the suit property. It is therefore clear to me that all three suits share common questions of law and fact and that the relief sought in all three suits arises from the same transaction. Arising from this, I find that the three suits are perfect candidates for consolidation and I hereby consolidate them.

The lead file shall be **ELC No. 348 of 2009.**

The costs of this Application shall be in the cause.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THIS 25TH

DAY OF JULY 2014.

MARY M. GITUMBI

JUDGE