



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC NO. 75 OF 2012

THAYU KAMAU MUKUGI.....PLAINTIFF

VERSUS

FRANCIS KIBARU KARANJA.....DEFENDANT

RULING

This is an application filed by the Defendant dated 24th February, 2014 seeking an order that the suit herein be consolidated with **ELC No. 49 of 2010 Francis Kibaru Karanja & Another v Isaac Enterprises Limited & 4 Others**. The application is supported by an affidavit sworn by **Geoffrey Maina**, the Defendant's advocate who deposes that the two suits relate to the same property and the dispute is based on ownership and rights over the property. Consequently that it is necessary that the two suits be consolidated to avert two different decisions made by the same court in respect to the same matter.

The application is opposed by the Plaintiff in a Replying Affidavit sworn on 13th May, 2014 wherein he deposed that whereas consolidation of suits is meant to save the court's time, by allowing the application, he will be greatly prejudiced of his right to expeditious disposal of the suit in view of the Defendant's laxity to prosecute the matter. Further that consolidation of the suits for purposes of saving the court's time, in the circumstances, will be defeated. The Plaintiff contended that it would be in the interest of justice that the Defendant's application be dismissed as the same has been used as a delaying tactic whereas he (the Plaintiff) has always been eager to prosecute and conclude his matter.

The application was canvassed by way of written submissions. Maina Makome & Compay Advocates for the Defendant filed submissions dated 3/7/2014, wherein counsel reiterated that the dispute between the parties in this suit is similar to ELC No. 49 of 2010 as the cause of action relates to the same subject matter, namely LR. No 13330/164. Counsel submitted that the Defendant did file the suit on 10/2/2012, before the Plaintiff obtained title in favour and subsequently amended it in November 2012 after learning of the issuance of the title to the property to the Plaintiff. It was counsel's submission that from the two suits, the significant issue for determination was who is entitled to the suit property. Further that consolidation of the suits would avert two conflicting decisions as to ownership of the property.

Kiarie Kariuki & Githii Advocates for the Plaintiff filed submissions dated 14/7/2014, wherein counsel reiterated that the Plaintiff was opposed to the consolidation owing to the Defendant's conduct exhibited throughout the subsistence of the suit that will occasion the Plaintiff great injustice if the same were

allowed. In support of the submission, counsel cited the case of **Law Society of Kenya v Centre for Human Rights and Democracy and 12 Others SCK Petition No. 14 of 2013 (2014) eKLR** where the Supreme Court held that: -

The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it...In addition, the court must be satisfied that no injustice would be occasioned to the Respondents if consolidation is ordered as prayed.

Having now carefully perused the application and response thereto, I do take note that it is not in contention that the dispute in the suits sought to be consolidated is in respect to ownership of property known as **L.R. No. 13330/164**. The Plaintiff acknowledges that the essence of consolidation of suits is to avoid multiplicity of suits, to prevent delays, to clear congested dockets in a bid to attain justice with the least expense and vexation to litigants. The Plaintiff's concern is on the Defendant's conduct which he alleges is one of laxity. The Plaintiff reads this application as one of the Defendant's tactics to delay the determination of the matter.

The Plaintiff does have a point that delay in concluding a matter is prejudicial to a litigant. I am however of the view that it will be inopportune for the court to proceed with the suits separately, resulting to two decisions potentially conflicting, leaving the parties at a cross-roads as to how to execute the said orders. The principle of consolidation of suits was re-stated in the case of **Stumberg and another vs. Potgieter (1970) EA 323** where the court held:

Where there are common questions of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered.

This court is of the considered view that it is desirable that both matters should be disposed of at the same time. The court therefore allows the Defendant/Applicant notice of motion dated 24th February, 2014 with costs in the cause. In that regard, the Defendant's application is allowed. To enable this court to make appropriate directions, the Executive Officer of this Court to immediately avail the court record of **ELC No. 49 of 2010 Francis Kibaru Karanja & Another v Isaac Enterprises Limited & 4 Others**. The matter will be mentioned in 14 days for further directions.

It is so ordered.

Dated, signed and delivered this **11th** day of **November** 2014

L.N. GACHERU

JUDGE

In the Presence of:-

.....For the Plaintiff

.....For the Defendant

.....Court Clerk

Court:

Matter to be mentioned on 26th November, 2014 for further orders.

L.N. GACHERU

JUDGE

11/11/2014