



Muiruri & another v Wairimu & others (Environment & Land Case 962 of 2015) [2024] KEELC 1401 (KLR) (14 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1401 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 962 OF 2015**

**AA OMOLLO, J
MARCH 14, 2024**

BETWEEN

JOHN GAKOBO MUIRURI 1ST PLAINTIFF

BENJAMIN GACHAGUA NYAGA 2ND PLAINTIFF

AND

NAOMI WAIRIMU & OTHERS DEFENDANT

RULING

1. For determination is the Notice of Motion dated 22nd May, 2023 brought by the defendants in the original action and the plaintiffs in the amended counter-claim. The Applicants sought for the following orders;
 - i. Spent
 - ii. That the court file in the Environment and Land Court at Milimani ELC Case No. E420 of 2022 *Charles Waithima Githitu v Margaret Wakanyi Njoroge and Naomi Wairimu* be brought and/or called for and consolidated with the Environment and Land Court at Milimani ELC Case No. 962 of 2015 *John Gakobo Muiruri & Benjamin Gachagua Nyaga v Naomi Wairimu & Others*.
 - iii. That the Honourable court give such other necessary and/or consequential directions in the matter.
 - iv. That costs of the application be in the cause.
2. The application is supported by the grounds listed on its face *inter alia*;
 - a. First the question of who is the legal owner of the suit land variously described by the applicants as Plot No. 7, plot No. 8, plot No. 3, Plot No. 6, Plot No. 5 and plot No. 4 within the title L.R



No. Nairobi/ Block 117/267 and variously described by the defendants in the counterclaim as L.R No. Nairobi/ Block 117/846, L.R. No. Nairobi/ Block 117/847 and L.R No. Nairobi/ Block 117/848. That further the L.R No. Nairobi/ Block 117/1166 and L.R No. Nairobi/ Block 117/1165.

- b. The second question that will arise is whether the plots that the applicants had earlier purchased within the L.R No. Nairobi/ Block 117/267 in the years 2009, 2010, 2011, 2012 and 2013 is on the same parcel of land that was allegedly sub-divided by John Gakobo Muiruri and Benjamin Gachagua Nyaga to give rise to the sub-divisions above and for the L.R No. Nairobi/ Block 117/846 whether the same was further sub-divided into L.R No. Nairobi/ Block 117/1166 and L.R No. Nairobi/ Block 117/1165 and whether the latter L.R No. Nairobi/ Block 117/1165 was “sold” to Charles Waithima Githitu, who is the plaintiff in the ELC No. 420 of 2022.
 - c. Whether or not Peter Kariuki Ngacha was the initial proprietor of the L.R No. Nairobi/ Block 117/267 and whether portions of that land were sold to the applicants and thereafter whether having passed on the 26th October, 2012 he again resurrected on the 16th June, 2015 and proceeded to transfer the L.R No. Nairobi/ Block 117/267 to John Gakobo Muiruri and Benjamin Gachagua Nyaga who subsequently sub-divided the land and sold a portion of the same on the 17th August, 2021 to the Plaintiff in ELC Case No. 420 of 2022.
3. The Applicant is further premised on the supporting and supplementary affidavits of Margaret Wakanyi Njoroge. She deposed that the two suits sought to be consolidated raises questions on who is the legal owner of plots described as Nos 4, 5, 6, 7 and 8 hived from Block 117/267. That the second question is whether their plots were illegally subdivided by John Gakobo and Benjamin Nyaga to create Nos 117/846, 847 and 847.
 4. She deposed further that during the pendency of thus suit, the plaintiff without any colour of right processed title No. Nairobi/ Block 117/846 over Margaret Wakanyi share certificates No. 1 and 2 for Plot 7 & 8, and certificate No. 3 (for Naomi Wairimu) being portions of Nairobi/ Block 117/267. Ms. Margaret stated that since the suit title Block 117/1165 claimed by the plaintiff in ELC 420 of 2022 traces its roots to NBI/Block 117/267 the two cases should be heard together.
 5. In opposing the application for consolidation, Mr. Charles Withima Githihi who is the plaintiff in ELC No. 420 of 2022 filed a replying affidavit and grounds of opposition. He averred hat the relationship between the two suits is farfetched and consolidating them will only convolute matters. He deposed further that the reliefs sought in ELC 420 of 2022 is distinct from the reliefs this suit.
 6. That grounds of opposition pleaded inter alia that;
 - a. The consolidation of ELC 962 of 2015 and ELC 420 of 2022 will delay the timeous hearing and determination of either suit. Suffice to note that ELC 420 of 2022 is slated for full hearing on the 30th of October, 2023 whereas the ELC 962 of 2015 which was filed 8 years ago is stuck with numerous pending interlocutory applications
 - b. The question of law arising for determination in ELC 962 OF 2015 are distinctively different from the questions of law that are up for consideration in ELC No. 420 of 2022. This implies that consolidating the two suits will simply obfuscate the proceeding.
 - c. The cause of action giving rise to ELC 962 of 2015 arose in 2010 which is certainly a different time frame from the cause of action that occurred in 2022 and gave rise in ELC No. E420 of



2022. Suffice to note that the two causes of actions are not in any way related and did not arise out of one series of events.

7. The parties relied on the pleadings filed in respect to this application. I have reviewed the plaint and counter-claim in this suit as well the claim (plaint) filed in 420 of 2022. It is the Applicant's claim that the suit plot ELC 420 of 2022 being L.R No. Block 117/1165 traces its root to Block 117/267. This is true by virtue of the pleadings that Block 117/267 was subdivided into three portions Block 117/846, 847 and 848. That parcel 846 was further subdivided to create L.R No. 117/1165 and 1166.
8. In the case of *Republic v Paul Kihara Kariuki & two other exparte Law Society of Kenya* (2020) eKLR it was stated that there must be similarity in law and in fact through the suits that are sought to be consolidated. The case cited the decision of the Supreme Court of India in *Prem Lala Nakala v Chandni Prasad Sikaria* thus;

“...Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits”
9. In the instant suit, the Applicants admits that the suit plot 1165 claimed originated from NBI/Block 117/267 which is in dispute in ELC 962 of 2015. Flowing from the pleadings in the present suit, it is my considered view that the issues to be determined is whether or not the subdivision undertaken by the plaintiffs in original claim was legal or otherwise. There is no doubt that the outcome of that determination would impact the status of ownership in NRI/Bloc 117/1165. However, there is no distinct issue in ELC 420 of 2020 that requires it to be consolidated with 962 of 2015 for determination of the dispute at hand.
10. It is my considered opinion that the Applicants ought to have applied to stay the prosecution of ELC 420 of 2022 but not to consolidate it with this suit. All the issues in dispute between the plaintiffs in the original claim and the plaintiffs in the counter-claim can be properly addressed without consolidation. Consequently, the application dated 22nd May, 2023 is found without merit and is hereby dismissed with costs to the Respondent (Plaintiff in ELC No. 420 of 2022 who opposed it).

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 14TH DAY OF MARCH 2024

A. OMOLLO

JUDGE

