



**Ngaruiya v Registered Trustees of Faith Mission Church & 10 others (Environment & Land Case 226 of 2016) [2024] KEELC 3995 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3995 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 226 OF 2016**

**CA OCHIENG, J**

**MAY 20, 2024**

**BETWEEN**

**WILFRED NG'ANG'A NGARUIYA ..... PLAINTIFF**

**AND**

**REGISTERED TRUSTEES OF FAITH MISSION CHURCH ..... 1<sup>ST</sup> DEFENDANT**  
**VICTOR WAHOME KARIUKI ..... 2<sup>ND</sup> DEFENDANT**  
**IBRAHIM SAKWA MZEE ..... 3<sup>RD</sup> DEFENDANT**  
**JOSPHAT MUSYOKA NDAMBUKI ..... 4<sup>TH</sup> DEFENDANT**  
**HARUN NGUGI NDUNG'U ..... 5<sup>TH</sup> DEFENDANT**  
**ISAAC MASILA MUTUA ..... 6<sup>TH</sup> DEFENDANT**  
**FABIAN CHIMAKATI ..... 7<sup>TH</sup> DEFENDANT**  
**MOSICA PROPERTIES LIMITED ..... 8<sup>TH</sup> DEFENDANT**  
**MWANGANGI MUTULA MUTUA ..... 9<sup>TH</sup> DEFENDANT**  
**JOSEPH WAWERU CHEGE ..... 10<sup>TH</sup> DEFENDANT**  
**JOSEPH MUTINDA MUTUKU ..... 11<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before Court for determination is the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 7<sup>th</sup> and 11<sup>th</sup> Defendants' Notice of Motion Application dated the 3<sup>rd</sup> October, 2023 where they seek the following Orders:-

1. That this Honourable Court be pleased to order a consolidation of this suit with Machakos ELC No. E001 of 2021 between *Richard Makau Nzyimi v Wilfred Nganga Ngaruiya and*



*the Chief Land Registrar & Paul Masila Kimeu - the Administrator of Syokimau Farm Ltd & Others.*

2. That leave be and is hereby granted to the Respondent herein, Wilfred Nganga Ngaruiya to amend the Plaintiff to reflect the consolidation sanctioned by prayer one above.
  3. That further proceedings in this suit be stayed until further orders.
  4. That the Honourable Court do make such other and further orders as it may deem fit, necessary and expedient in the interest of justice.
2. The Application is premised on the grounds on the face of it and the Supporting Affidavit of the 5<sup>th</sup> Defendant/Applicant Harun Ngugi Ndungu, on behalf of the 1<sup>st</sup>, 3<sup>rd</sup>, 7<sup>th</sup> and 11<sup>th</sup> Defendants/Applicants. He confirms having authority from the 1<sup>st</sup> to 14<sup>th</sup> Interested Parties in ELC No. 1/2021, to swear an Affidavit on their behalf. He deposes that this suit was filed in 2016, with the suit land being LR No. 12715/155 while on 4<sup>th</sup> January, 2021, ELC No. 1 of 2021, *Richard Makau Nzyimi v Wilfred Nganga Ngaruiya, Chief Land Registrar & Paul Masila Kimeu - Administrator of Syokimau Farm Limited*, was filed, wherein the suit land is also LR No. 12715/155. He argues that the central issue in this suit as well as ELC No. 1/2021 is the dispute over ownership of LR No. 12715/155 and settling this issue, will render the other suit an academic exercise. He insists that it is necessary for the two suits to be consolidated.
3. The Application was only opposed by the Plaintiff who filed a Replying Affidavit sworn by Edna Brandy Wanja, the Advocate in conduct of this matter on his behalf, where she deposes that the said Application is mischievous and is actually an appeal camouflaged as an Application. She explains that many of the parties in E001 of 2021 which the Applicants' seek to consolidate with the instant suit, had previously made Applications for joinder in the present suit, but the same was dismissed by Justice Angote vide his Rulings dated the 29<sup>th</sup> January, 2021 and 8<sup>th</sup> October, 2021, on the grounds that the said Applicants' did not have documents to support their interests. Further, consolidating the two suits would successfully make them parties to the present suit, despite the impugned Rulings. She contends that, being dissatisfied by another Ruling disallowing parties to file their defences out of time, the Applicants herein (being also parties in ELC E001 of 2021) filed an Application before the Court of Appeal, seeking review of the said Ruling, which application was dismissed. She insists that the present suit has been pending in court from 2016 and is highly advanced as the Plaintiff has testified and closed his case. She avers that since the present suit encompasses very many parties and as such, a Judgment herein would ideally bring closure to the matter, wherein everyone's interests would be provided for. Further, that ELC Case No. 1 of 2021 should have been stood over generally to allow for completion of this suit, which was filed many years ago. She reaffirms that the Plaintiff in ELC Case No. 1 of 2021 should have sought for joinder herein, instead of filing a fresh suit.
4. The Applicants' filed a Further Affidavit wherein they reiterated their averments and confirmed that the Interested Parties in Machakos ELC E001 of 2021 filed their Defences on 23<sup>rd</sup> November, 2023 and served all the parties.
5. The Application was canvassed by way of written submissions.

### **Analysis and Determination**

6. Upon consideration of the instant Notice of Motion Application including the respective Affidavits, annexures, and Applicants' submissions, the only issue for determination is whether this suit should be consolidated with Machakos ELC No. 001 of 2021.



7. The Applicants' in their submissions reiterated their averments and contended that the two suits meet the criteria for consolidation, as there were similar parties who are litigating under the same title. Further, consolidating the two suits would save the court's time, resources and no party will be disadvantaged. To support their arguments, they relied on the following decisions: *Stumberg & Another v Potgeiter* 1970 EA 323; *Law Society of Kenya v The Centre for Human Rights & Democracy*, Supreme Court of Kenya Petition No. 14 of 2013; *Municipal Council of Mombasa v Republic & Another* [2002] eKLR; *Korean United Church of Kenya & 3 Others v Seng Ha Sang* [2014] eKLR and *Ngumbao v Mwatate & 2 others* [1988] KLR 549.
8. On consolidation of suits, Order 11 Rule 3(1) (h) of the *Civil Procedure Rules* stipulates thus:-
- " (1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall— (h) Consider consolidation of suits."
9. In the case of *Benson G. Mutabi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR the learned Judge explicitly described the criteria for consolidation of suits and stated that:-
- " The *Civil Procedure Rules* mandate Courts to consider consolidation of suits and in so doing, to be guided by the following:-
1. Do the same question of law or fact arise in both cases?
  2. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction.
  3. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party."
10. While in the case of *Law Society of Kenya v The Centre for Human Rights & Democracy*, Supreme Court of Kenya, Petition No. 14 of 2013, the Supreme Court of Kenya provided parameters on consolidation of suits and stated 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."
11. In the current scenario, the Applicants' have sought for consolidation of this suit with Machakos ELC Case No. E001 of 2021, which fact has been vehemently opposed by the Plaintiff, who insists that the instant suit has been pending in court since 2016 wherein, he had testified and closed his case. Further, that the Applicants' had initially sought joinder in this suit which was declined by Justice Angote as well as the Court of Appeal. On perusal of the Court record, I note the Plaintiff's case was closed on 5<sup>th</sup> November, 2019. Further, the suit sought to be consolidated was filed in 2021, where the Plaintiff therein sued the Plaintiff herein, in respect to the suit land. I note after the closure of the Plaintiff's case, there have been several applications filed by the Defendants. I have perused the annexures herein, and note many of the parties in E001 of 2021 which the Applicants' seek to consolidate with the instant suit had previously made Applications for joinder in this suit but the same was dismissed by Justice Angote vide his Rulings dated the 29<sup>th</sup> January, 2021 and 8<sup>th</sup> October, 2021. Even though the Applicants' have argued for consolidation, noting that the Plaintiff's case in the instant suit has been heard and closed, it is my considered view that consolidating the two suits would successfully make



them parties to the present suit, despite the impugned Rulings. Further, that it would make this suit more complicated since pleadings were already closed awhile back, parties undertook pretrial directions and the hearing commenced. Further, consolidation of the two suits will culminate in the reopening of pleadings, undertaking fresh pretrial directions and commencement of a fresh hearing, which for sure would amount to wastage of judicial time and resources. I opine that since the present suit encompasses very many parties, a Judgment emanating herein would ideally bring closure to the matter.

12. Even though consolidation of suits is supposed to save on judicial time and resources, however, at this juncture I note the instant case has advanced as opposed to the case sought to be consolidated, which is yet to be set down for hearing. I find that, it would have been proper for the Plaintiff in ELC E001 of 2021 to seek to join this suit, instead of filing a fresh suit, five years later.
13. Based on the facts as presented while relying on the legal provisions I have quoted and associating myself with the cited decisions, at this juncture I find that consolidation of ELC. No. 226 of 2016 and ELC. No. 1 of 2021 is unnecessary and will amount to delay in the determination of the dispute herein. In my view, I hold that, these suits though related, should be heard concurrently.
14. It is against the foregoing that I find the instant Notice of Motion Application unmerited and will dismiss it.

Costs will be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 20<sup>TH</sup> DAY OF MAY, 2024**

**CHRISTINE OCHIENG**

**JUDGE**

In the presence of;

Lumwachi holding brief for Jumba for 8<sup>th</sup> and 10<sup>th</sup> Defendants

Kuria holding brief for Muma for Attorney General

Court Assistant – Simon/Ashley

