



**Mbogo v Njagi & another (Environment & Land Case  
9 of 2015) [2024] KEELC 5078 (KLR) (20 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 5078 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE 9 OF 2015**

**A KANIARU, J  
JUNE 20, 2024**

**BETWEEN**

**SALESIO S. NJERU MBOGO ..... PLAINTIFF**

**AND**

**MICHAEL MURIITHI NJAGI ..... 1<sup>ST</sup> DEFENDANT**

**ELIJAH MUTERO MURIITHI ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me for determination is a Motion on notice dated 02.05.2023 and filed in court on the same date. It is expressed to be brought under Sections 18(1) and 3A of the *Civil Procedure Act*, and Order 11 Rule 3 of the *Civil Procedure Rules*. The motion has been filed by the 2<sup>nd</sup> defendant – Elijah Mutero Muriithi. He is asking this court to make an order of transfer of Embu Chief Magistrates Court ELC Case No. 34 of 2022 to itself and consolidate it with the suit herein for trial and disposal.
2. The application is anchored on the grounds set out on the face of it and a supporting affidavit sworn by the applicant’s advocate, Muthoni Ndeke, dated 02.05.2023. It is said that the matter pending before the lower court is between the 2<sup>nd</sup> defendant and the plaintiff herein. That in the lower court case, the 2<sup>nd</sup> defendant is seeking orders for removal of caution and eviction of the plaintiff from land parcel Gaturi/Nembure/7267 registered in the names of the said 2<sup>nd</sup> defendant. That in the suit herein, the plaintiff seeks revocation of the 2<sup>nd</sup> defendant’s registration as the owner of the subject land. That the two suits should be consolidated to avoid having two separate trials and also to save time. That no party will be prejudiced if the orders sought are granted.
3. The plaintiff opposed the application by way of a replying affidavit dated 16.06.2023. He deposed, *inter alia*, that when the 2<sup>nd</sup> defendant filed the lower court case, he was fully aware that the suit herein was pending. He admits that the subject matter of the suit herein and the suit in the lower court is land parcel Gaturi/Nembure/7267. He says however, that the lower court case is therefore an abuse



of the court process and the 2<sup>nd</sup> defendant should withdraw the same as it cannot be transferred and consolidated with the suit herein.

4. The motion was canvassed by way of written submissions. The 2<sup>nd</sup> defendant's submissions were filed on 07.12.2023. It was submitted that from the provisions of section 18(1) of the Civil Procedure Act, this court has powers to withdraw any suit or proceeding pending before any court subordinate to it and try or dispose of the same. That it is on that basis that they seek that the lower court's case be transferred to avoid any conflicting judgements or orders of the two courts.
5. The plaintiff's submissions were filed on 07.12.2023. He mainly reiterated the contents of his replying affidavit. He submitted that the transfer of the lower court case and consolidation with the instant suit will cause further delays in determination of the matter. That the 2<sup>nd</sup> defendant is at liberty to withdraw the suit in the lower court since all the issues in dispute can be raised and conclusively determined in the suit herein.
6. Having considered the application as well as the party's responses and submissions, the issue for determination is whether Case No. ELC No. 34 of 2022 should be transferred to this court and consolidated with the instant suit for determination.
7. The parties do not dispute that the two suits relate to land parcel Gaturi/Nembure/7267. The suits are also said to be between the same parties save for the 1<sup>st</sup> defendant who is said to be deceased. It is also not in dispute that the lower court case was filed by the 2<sup>nd</sup> defendant as registered proprietor against the plaintiff herein seeking orders for removal of caution and eviction of the plaintiff from the suit land. The instant suit has been filed by the plaintiff seeking to revoke the 2<sup>nd</sup> defendant's title to the subject land.
8. The plaintiff's main complaint is that he would like the 2<sup>nd</sup> defendant to withdraw the lower court case as he terms it an abuse of the court process. However, this court cannot compel a party to withdraw a suit if there is no justification for withdrawal before the suit is heard on merit. The purpose of consolidating suits was well stated in the Supreme Court case of Law Society of Kenya v Centre for Human Rights & Democracy & 12 others [2014] eKLR, where the court had this to say:-

“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”
9. In my view, this is a proper case for consolidation as ultimately the main issue will be ownership of land parcel Gaturi/Nembure/7267. It will not be an efficient use of judicial resources for this court to allow the matter to be handled by two courts. One court suffices, period. I also do not see how the plaintiff will be prejudiced if the two suits are consolidated as he will defend himself the same way he would have defended himself in the lower court. And in any case, it is also a way of saving him resources and time that would have been injected in defending two separate suits over the same parcel of land.
10. For the foregoing reasons, I allow the notice of motion dated 02.05.2023 in terms of prayer 1 and direct as follows:
  - a. This case and Embu Chief Magistrates Court ELC Case No. 34 of 2022 are hereby consolidated for purposes of being heard and determined together and the hearing shall be on the basis of the pleadings already filed in the two suits subject to any subsequent amendments.



- b. This file shall be the lead file for purposes of filing any further pleadings and recording of proceedings.
- c. Costs to be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 20<sup>TH</sup> DAY OF JUNE, 2024.**

**A. KANIARU**

**JUDGE- ELC, EMBU**

In the presence of Ms Njage for Kathungu for Plaintiff/ Respondent, Ms Muthoni Ndeke for 2<sup>nd</sup> defendant.

Court Assistant - Leadys

