



REPUBLIC OF KENYA



Ollin Savings & Credit Co-operative Society Ltd v Kuria (Environment & Land Case 14 of 2018) [2024] KEELC 5778 (KLR) (31 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5778 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 14 OF 2018**

JM MUTUNGI, J

JULY 31, 2024

BETWEEN

OLLIN SAVINGS & CREDIT CO-OPERATIVE SOCIETY LTD PLAINTIFF

AND

PATRICK NJIRU KURIA DEFENDANT

RULING

1. The Applicant/Defendant herein by an application dated 17th October 2023 prays interalia for an order that:-

“The Honourable Court be pleased to consolidate the suit herein with Kerugoya ELC No. 33 of 2021 for hearing and determination.”
2. In support of the application the Applicant avers that the subject matter in Kerugoya ELC No. 33 of 2021 is the same as in the instant suit; that the parties are the same and the evidence in both suits is the same; and that the claim in either suit is like a Counterclaim in the other suit. The Applicant thus argues it would be expedient and convenient for the two matters to be consolidated and heard together and that no party shall be prejudiced if the application is allowed. The application was supported on the annexed affidavit sworn by the Defendant/Applicant.
3. The Plaintiff opposed the application for consolidation vide a Replying Affidavit sworn by its Executive Officer John Mwangi Gathige on 31st October 2023. The Plaintiff averred that it was not correct that the subject matter in the instant suit was the same as the subject matter in ELC No. E 33 of 2021. The Plaintiff averred the subject matter in ELC No. 33 of 2021 was plot 159 Wang’uru Township while in the instant suit the subject matter is plot No. 160 Wang’uru Township. The Plaintiff further denied the parties in the two suits are the same. The Plaintiff stated in the instant suit there are only 2 parties (the Plaintiff and the Defendant) while in ELC 33 of 2021 there are 5 parties (a Plaintiff and 4 Defendants). The Plaintiff further averred the Defendant/Applicant had hatched a conspiracy with



the “supposed interested parties” to deprive the Plaintiff of Plot 160 Wang’uru in the pretext that it occupied the same space as plot No. 159 Wang’uru which they lay claim to.

4. In the Plaintiff in ELC No. 33 of 2021 the Plaintiff who is the Defendant in the instant suit pleaded that the 3rd Defendant who is the Plaintiff in the instant case was a victim of fraud when it purchased and had plot No. 160 Wang’uru Transferred to it by the 1st and 2nd Defendants when the 2nd Defendant never had a good title to the plot. The Plaintiff in the Plaintiff prays for orders:-
 - a. A declaration that the sale and alleged transfer of Plot No. Wang’uru/Township/160 by the 1st and 2nd Defendants to the 3rd Defendant was fraudulent, unlawful, null and void.
 - b. An order for general damages for loss of user of the suit land payable by the 1st, 2nd, and 3rd Defendants, jointly and severally, from 1st January, 2017 till the date that the Plaintiff shall regain possession and use of the same.
 - c. An order for the rectification of records with the 4th Defendant and the land registry, to reflect that the Plaintiff is the owner of Plot No. Wang’uru/Township/160 while the Purity Njambi Muriithi and Mercy Wairimu Muriithi are the owners of Plot No. Wang’uru/township/159.
 - d. An order for cancellation of the 3rd Defendant as owner of Plot No. Wang’uru/Township/160 in its register at Kirinyaga Lands Office and at the offices of the 4th Defendant.
5. The Plaintiff avers that the application by Purity Njambi Muriithi and Mercy Muriithi to be joined as Interested Parties in the instant suit was dismissed as was an application by the Defendant for leave to amend his defence to include a Counterclaim against the Plaintiff and five others. The Plaintiff contends the Defendants application for consolidation is intended to achieve what he failed to get through the application for amendment that was dismissed. The Plaintiff asserted the application for consolidation lacks merit and prayed for dismissal of the same and urged that ELC No. E33 of 2021 having been filed much later than the instant suit ought to be stayed to await the determination of the present suit.

Analysis and Determination

6. After a careful review of the Applicant's Notice of Motion, the Respondent's Replying Affidavit, all accompanying annexures, and the parties' written submissions, the core issue for consideration, in this case, is whether this suit should be consolidated with ELC Case No. 33 of 2021.
7. The principles on consolidation of suits are settled. They were aptly explained in the case of *Stumberg and another v Potgeiter* 1970 EA. 323 where the Court stated as follows:-

“Where there are common questions of law or facts 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.”
8. The Supreme Court of India in the Case of *Prem Lala Nahata v Chandi Prasad Sikaria* (2007) 2, Supreme Court Cases 551 at paragraph 18 stated: -

“...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 arise in both or all the suits or that the rights to the 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 Case of the *Law Society of Kenya v The Centre for Human Rights and Democracy & 12 Others*(2014) eKLR, the Supreme Court of Kenya had this to say about the consolidation of suits: -

“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.”

10. *Black’s Law Dictionary (8th Edition)* defines consolidation as follows:-

“to combine, through a Court order, two or more actions involving the same parties or issues into a single action ending in a single judgment, or sometimes, separate judgments.....”

11. The Applicant seeks the consolidation of the current case with Kerugoya ELC Case No. 33 of 2021, asserting that both cases relate to similar subject matter, parties, and evidence. However, the Respondent opposes this request, pointing out significant differences between the two cases. The Plaintiff highlights that the Kerugoya ELC Case No. 33 of 2021 was initiated four years after the current case, in response to conservatory orders issued by this court in favour of the Respondent. Furthermore, the Respondent notes a discrepancy in the number of parties involved—four in the Kerugoya ELC case No. 33 of 2021 as compared to two in the current case. The Respondent further emphasizes the distinction in the subject matters and asserts that the positions and evidence presented in each case vary significantly. Additionally, the Respondent argues that the later case mirrors the amendments proposed by the Applicant on 5th June, 2020, which this Court previously rejected. According to the Respondent, the Applicant’s motion for consolidation is an indirect attempt to reintroduce the dismissed proposed amendments of their pleadings in the instant suit through Kerugoya ELC Case No. 33 of 2021, which they argue would constitute an act of bad faith on the part of the Applicant.
12. The Supreme Court in the *Law Society of Kenya Case (Supra)*, emphasized that the purpose of consolidation is neither to give an unfair advantage to the party requesting it nor to disadvantage the opposing party. The core issue for determination is straightforward: it concerns whether this suit constitutes an abuse of the Court’s process. Should the answer be yes, then consolidation would be inappropriate, as it’s intended use was never to rectify or conceal an abuse of the Court’s process.
13. Given the established legal principles, it is clear that the request for consolidation in this matter fails to meet the necessary legal criteria. Notably, the Kerugoya ELC Case No. 33 of 2021, filed after the commencement of the current suit, shares significant similarities with the proposed amendments previously dismissed by this Court. This overlap indicates that the latter case essentially mirrors the changes the Applicant sought to introduce through the amendment to the defence, —changes that this Court had already decided against. Filed in 2021, the subsequent suit came into existence following this Court’s rejection of the Applicant’s motion to amend his defense in the ongoing case. The core facts and the relief sought in the subsequent suit align closely, if not entirely, with the amendments this Court declined to allow. The consolidation, if allowed, would hand advantage to the Applicant as the Applicant would have what he failed to get through amendment of the suit and this would prejudice the Respondent.



14. The Court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The *Black's Law Dictionary Sixth Edition Black, 1891- 1991 P 990 P 10-11*. defines abuse as everything, which is contrary to good order established by usage that is a complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use. The situations that may give rise to an abuse of the court process are indeed in exhaustive, it involves situations where the process of the Court has not been or resorted to fairly, properly, and honestly to the detriment of the other party.
15. The Applicant has openly acknowledged engaging in concurrent litigation, effectively pursuing the same issue through two separate court proceedings. This strategy can be likened to a gamble, where the Applicant hopes to secure a favorable outcome in either one or both cases. However, it's important to understand that litigation is not akin to a game of chance or strategy like in chess, where players aim to outwit each other with cunning moves and traps. Rather, litigation is a serious Judicial contest where parties are expected to present their arguments clearly, straightforwardly, and without resorting to manipulation. Initiating legal actions on the same matters in different courts is not only improper but also constitutes an abuse of the legal system. To consolidate these two proceedings in my view would be inadvisable as it could occasion prejudice to the Plaintiff/Respondent.
16. After careful consideration of the application and the evidence presented, I am convinced that the request for consolidation is not made in good faith. It appears to be a strategy to reintroduce amendments and a counterclaim that were previously rejected. It is particularly troubling that, after the Counterclaim was dismissed, the Applicant went ahead to file Kerugoya ELC Case No. 33 of 2021 and now seeks to consolidate these two cases. This action clearly constitutes an abuse of the Court's process. Therefore, it is the Court's position that ELC No. 33 of 2021 should be stayed pending the hearing and determination of the present case which is clearly subjudice. It is so ordered. The application for consolidation is dismissed with costs to the Plaintiff/Respondent.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 31ST DAY OF JULY 2024.

J. M. MUTUNGI

ELC - JUDGE

