



Mwangi & 3 others v Githinji & 3 others (Environment & Land Case E031 of 2023) [2024] KEELC 6794 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6794 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E031 OF 2023**

**JM MUTUNGI, J
OCTOBER 17, 2024**

BETWEEN

**FRANCIS MWANGI 1ST PLAINTIFF
MUREITHI NGARI 2ND PLAINTIFF
JOSEPH MIGWI KARUTI 3RD PLAINTIFF
RAPHAEL GACHOKI MUCHIRI (SUING AS THE LEGAL ADMINISTRATOR
OF THE ESTATE OF SAMUEL MUCHIRI KARUTI) 4TH PLAINTIFF**

AND

**MURIITHI GACHEWA GITHINJI 1ST DEFENDANT
JOSEPH KIRAGU MUTHURA (SUED AS THE ADMINISTRATOR OF THE
ESTATE OF THE LATE MUTHURA GACEWA THIGIGI) 2ND DEFENDANT
LAND REGISTRAR KIRINYAGA COUNTY 3RD DEFENDANT
COUNTY SURVEYOR KIRINYAGA COUNTY 4TH DEFENDANT**

RULING

1. The Applicants filed a Notice of Motion dated 16th February, 2024 for orders that;
 - a. That the Honourable Court be pleased to order that Kerugoya ELC Case No. 114 of 2015 be consolidated with this suit.
 - b. That the costs of this application be provided for.
2. The application is supported by an Affidavit sworn jointly by the Applicants. They reiterate the grounds supporting the application and affirm that they are the Defendants in Kerugoya ELC Case No. 114 of 2015, while the 1st and 2nd Defendants herein are the Plaintiffs in the case. They state



that in the instant suit, they are challenging the subdivision of Land Parcel Mutira/Kirunda/1894 into land parcels Mutira/Kirunda/1902 and 1903. On the other hand, the Applicants state that the Defendants herein, in ELC Number 114 of 2015 seek the eviction of the Plaintiffs from Land Parcels Mutira/Kirunda/1902 and Mutira/Kirunda/1903. The Applicants aver that if the two matters are heard separately, the Court may give conflicting Judgments, and a miscarriage of Justice may occur. The Applicants further state that the two suits should be consolidated to ensure efficient and expeditious disposal of the two suits and that no prejudice will be occasioned to the Defendants if the suits are consolidated.

3. The Respondents filed a Replying Affidavit on 8th April 2024, opposing the consolidation of the suits. They argued that ELC no.114 OF 2015 has been pending before the Court since 2015 and that the Applicants filed the instant suit eight years after they had filed their amended defence in ELC No. 114 OF 2015. The Respondents aver that ELC No. 114 OF 2015 has been delayed for too long and should be heard and concluded. They contend that consolidating these two cases will further delay the conclusion of ELC No. 114 OF 2015, as ELC case no. 31 OF 2023 raises issues of statutory time limit and res judicata, which ordinarily ought to be resolved first and which will further delay the conclusion of ELC No. 114 OF 2015.
4. According to the Respondents, this suit is an afterthought as the Applicants were served with the Defendants' Amended Plaintiff in the former suit but did not amend their defense and instead filed this suit. The 2nd Respondent argued that nothing prevented the Applicants from filing a Counterclaim in the previous suit; and therefore, filing this new suit was an abuse of the Court process. The Respondents further pointed out that the issues in the two suits are unrelated, and the outcome of the former suit has no bearing on the current suit. The Respondents further contended the parties were not the same in both suits and averred that they stood to suffer prejudice if the two suits were consolidated.
5. On 11th April 2024, the Court gave directions that the Notice of Motion be canvassed through written submissions. The Defendants filed their written submissions dated 6th May 2024 while the Applicants filed theirs dated 8th May 2024.
6. I have considered the pleadings and parties' submissions and the issue that arises for a determination regarding the Plaintiffs' Notice of Motion is whether this suit is amenable for consolidation with ELC Case No. 114 of 2015.
7. The 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.....”
8. The principles of consolidation of suits were stated in the Case of *Stumberg and another vs Potgeiter* 1970 EA 323 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”.
9. In the Indian case of *Brij Kishore vs Bir Singh & others* at the High Court of Punjab and Haryana (L.R. 5922 of 2013), Justice Paramjeat Singh quotes the following from the Supreme Court of India Case



of *Prem Lala Nahata & Another vs Chandi Prasad Sikaria*, (2007) 2, Supreme Court Case 551 at paragraph 18:-

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases. 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”

10. The above exposition of the applicable principles are equally applicable in our jurisdiction and our Courts routinely apply similar principles in considering and determining applications for consolidation.

11. In the Case of *Law Society of Kenya -vs- The Centre for Human Rights and Democracy*, (2014) eKLR the Supreme Court of Kenya had this to say about 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.”

12. Broadly the factors that a Court of Law will consider when evaluating an application for consolidation will include the following:-

1. Whether the same questions of law or fact arise in both cases.
2. Whether the rights or reliefs claimed in the two cases arise out of the same transaction or series of transactions.
3. Whether any party will be disadvantaged or prejudiced or if the consolidation will confer an undue advantage to the other party.

13. In the present matter it is not in dispute that Land Reference Number Mutira/Kirunda/1894, has been subdivided into two new parcels: Land parcel Number Mutira/Kirunda/1902 and Land Parcel Mutira/Kirunda/1903. The Plaintiffs/Applicants in this case are contesting the subdivision of the original land parcel, Mutira/Kirunda/1894, along with other related land parcels. In the earlier suit, the Plaintiffs seek eviction orders against Francis Mwangi, Muriithi Ngari, Samuel Muchiri, Gerald Manegene, Murimi Muriithi, and Kariuki Murithi Ngari from the newly created parcels, Mutira/Kirunda/1902 and Mutira/Kirunda/1903.

14. The 1st and 2nd Defendants in the current case are the Plaintiffs in the earlier case, while the current Plaintiffs and five others are the Defendants in that case. The ownership of the parcels in question is a key issue in both cases, and resolving the ownership issue would solve the dispute. The claims in both cases stem from the subdivision of the original parcels into subsequent parcels, with the suit parcels being among the subsequent parcels. In my analysis, I am of the considered view that neither the current Plaintiffs nor the Defendants will be disadvantaged by consolidating the cases, as all parties



will have the opportunity to present their cases. If the two cases proceed separately, the court might issue conflicting verdicts, which would be unjust and create more confusion.

15. In the present matter the two suits relate to the same subject matter being land parcel Mutira/Kirunda/1894 now subdivided into parcels Mutira/Kirunda/1902 and 1903. In ELC No. 114 of 2015 the Defendants as the Plaintiffs in that suit seek the eviction of the Plaintiffs herein together with others from land parcels Mutira/Kirunda/1902 and 1903. In the present suit, the Plaintiffs pray for annulment of land titles Mutira/Kirunda/1902 and 1903 registered in the Defendants name and the same to be reverted to them. The issue of eviction sought by the Plaintiffs in ELC No. 114 of 2015 cannot be determined without determining the issue of the ownership of the said Land Parcels Mutira/Kirunda/1902 and 1903 which is in issue in the present suit.
16. In my view it matters not that there are Defendants in ELC No. 114 of 2015 who are not parties in the present suit. If the ownership of the land in issue is determined in favour of the Plaintiffs in that suit, then eviction will issue against all persons named as Defendants in that suit.
17. I am satisfied there is merit in ordering the two suits consolidated as it will be expedient and will facilitate an orderly trial of the consolidated suits. I therefore order that ELC No. 114 of 2015 be consolidated with the present suit and the two suits be heard together. It is ordered that ELC No. 031 of 2023 will be the lead file and all pleadings and proceedings will be taken in that file. To facilitate trial, the parties will prepare and file their trial bundles having regard to the consolidation within the next 45 days from the date of the Ruling. The matter is fixed for mention on 26th February, 2025 for pretrial directions. The costs of the application shall be in the cause.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17TH DAY OF OCTOBER 2024.

J. M. MUTUNGI

ELC - JUDGE

ELC NO. 013 OF 2023	0
---------------------	---

