



Muchungu & 2 others v Wachira & Wachira Sued on Behalf of the Estate of the Late Wachira King'uru & another; Kariru & another (Interested Parties) (Environment & Land Case E006 of 2024) [2024] KEELC 7353 (KLR) (7 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E006 OF 2024
JM MUTUNGI, J
NOVEMBER 7, 2024**

BETWEEN

**PHILIP MUCHUNGU 1ST PLAINTIFF
JOSEPH GITAU KIBUCHI 2ND PLAINTIFF
GABRIEL MUCHOKI KIBUCHI 3RD PLAINTIFF**

AND

**ABRAHAM MAINA WACHIRA & DOUGLAS MWANGI WACHIRA
SUED ON BEHALF OF THE ESTATE OF THE LATE WACHIRA
KING'URU 1ST DEFENDANT
LAND REGISTRAR, KERUGOYA 2ND DEFENDANT**

AND

**PETER KARANI KARIRU INTERESTED PARTY
SAMUEL MAINA KARANI INTERESTED PARTY**

RULING

1. Before me for determination is the Plaintiffs/Applicants application dated 28th February 2024. The substantive prayer in the application is that;

This suit be consolidated with Kerugoya ELC Case No. 33 of 2013 – Abraham Maina Wachira & Another –vs- Kariuki Ngundo & Others.
2. The application is based on the grounds set out on the body of the application as hereunder:-



- a. The 1st Respondent filed Kerugoya ELC Case No. 33 of 2013 seeking among others cancellation of entries made in the register of Kiine/Thigirichi/347 which subdivided the land into Kiine/Thigirichi/2320, Kiine/Thigirichi/2321 and Kiine/Thigirichi/2322 and eviction of the occupants residing thereon.
 - b. The Applicants are the owners of Kiine/Thigirichi/2321 and Kiine/Thigirichi/2322 and have resided on the said properties since 2014.
 - c. In filing Kerugoya ELC Case No. 33 of 2013, and during its pendency, the 1st Respondent despite having knowledge of the Applicants possession and occupancy on Kiine/Thigirichi/2321 and Kiine/Thigirichi/2322 did not include them as Defendants in Kerugoya ELC Case No. 33 of 2013 despite seeking orders to evict the Applicants.
 - d. The Applicants were joined in Kerugoya ELC Case No. 33 of 2013 as Interested Parties, even though they stand to be substantively affected by any orders issued therein.
 - e. To protect their interests in Kiine/Thigirichi/2321 and Kiine/Thigirichi/2322 and to fully ventilate any issues surrounding their ownership of these properties, the Applicants filed the instant suit.
 - f. To further avoid multiplicity of suits, the Applicants humbly request that this honourable Court consolidates this instant suit with Kerugoya ELC Case No. 33 of 2013 as they both seek to address real and perceived interests touching on Kiine/Thigirichi/2321 and Kiine/Thigirichi/2322.
 - g. It is in the interest of Justice that the application is allowed as prayed.
3. The annexed Affidavit by the 1st Plaintiff in support of the application reiterated the aforesaid grounds.
 4. Douglas Mwangi Wachira a Co-administrator of the estate of 1st Defendant filed a Replying Affidavit sworn on 4th April, 2024 in opposition to the Plaintiffs application for consolidation of ELC No. 33 of 2013 with the instant suit. The 1st Defendant contended that the causes of action in regard to the two suits were different as were the issues and argued that consolidating the suits would only obscure and confuse the issues.
 5. In ELC No. 33 of 2013 (formerly Embu HCCC No. 22 of 2010) the Defendants, as the Plaintiffs in the suit, sued Kariuki Ngundo (deceased) and Stephen Mbau Warui who they claimed had fraudulently caused the transfer of land parcel Kiine/Thigirichi/347 to their names and sought to have the entries entered against the register of the title effecting the transfer to the said Defendants cancelled and title restored to the Plaintiff, Wachira Kiguru (now deceased). The acts giving rise to the suit filed at the Embu High Court which was later transferred to this Court as ELC No. 33 of 2013 related to the period 2008 to 2014 when the Defendants as per the pleadings caused the suit land to be registered into their names and subsequently subdivided. The 1st Defendant contends that the Plaintiffs herein had nothing to do with the suit property before 2014 when they claim to have come into possession of part of the suit property through acts of the Defendants in ELC No. 33 of 2013 which the 1st Defendant claim were executed in furtherance of the fraud perpetrated by the said Defendants in 2008 when they fraudulently caused the transfer of the Plaintiffs land to themselves.
 6. The Defendants in the instant suit averred that the Plaintiffs herein were joined as Interested Parties in ELC No. 33 of 2013 in 2016 after the suit had been compromised/settled as between the Plaintiffs and the Defendants therein vide a consent. The Defendants aver that the Plaintiffs, as at the time



Kerugoya ELC No. 33 of 2013 was filed in Embu in 2010, had no interest whatsoever in land parcel Kiine/Thigirichi/347 and there would have been no reason to join them in the suit. The Defendants contend that all the abstracts of title (green cards) they obtained in respect of the suit property never indicated the Plaintiffs had any interest in the suit property and/or any part thereof. The Defendants aver that even though the Plaintiffs were joined as Interested Parties in Kerugoya ELC No. 33 of 2013 in 2016, it was not until they filed the instant case in February 2024 that they exhibited abstracts of title indicating they acquired portions of land parcel Kiine/Thigirichi/347 in 2014 putting into question the authenticity of the alleged acquisitions.

7. The Defendants assert that the consolidation of the instant suit with Kerugoya ELC No. 33 of 2013 would prejudice them and hand advantage to the Plaintiffs, as the determination of ELC No. 33 of 2013 would be unduly delayed and issues mirrored yet the issues in the two suits are distinctly different. In ELC No. 33 of 2013 the primary issue is whether the Defendants in that case had unlawfully and illegally caused the transfer of the suit land Kiine/Thigirichi/347 to their names and whether the title register required to be rectified on account of that transfer having been fraudulent. In the present suit the Primary issue is whether the Plaintiffs were the bonafide owners of land parcels of Kiine/Thigirichi/2321 and Kiine/Thigirichi/2322 which were subdivisions from land parcel Kiine/Thigirichi/347 pursuant to a Mutation of the title registered on 3rd September, 2014.
8. The Plaintiffs in the present suit argue that they stand to be directly affected should the Court make an order of eviction in Kerugoya ELC No. 33 of 2013. They fault the Defendants for failing to acknowledge that Kariuki Ngundo and Stephen Mbau Warui (1st & 2nd Defendants) in the earlier suit were no longer in possession and that it was the Plaintiffs who are now in occupation and should have amended the pleadings to include them as Defendants. The Plaintiffs assert their acquisition of the suit property was innocent and they were not privy to any alleged defect in the titles. They contend a consolidation of the two suits would be expedient, convenient and save on costs.
9. The parties canvassed the application by way of Written Submissions. The Plaintiffs/Applicants submissions were dated 25th June, 2024 while those of the Defendants were dated 16th July, 2024. I have considered the submissions of the parties and the singular issue to determine is whether the Applicant's application satisfies the threshold upon which a Court can grant an order for consolidation of suits. The Applicants in their submissions cited and relied on the Indian Supreme Court case in Prem Lala Nahata & Another –vs- Chandi Prasad Sikaria (2007) 2SSc 511 where the Court stated:-

“----- The main purposes 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 of fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions, or that for some other reasons it is desirable to make an order consolidating the suit.”
10. The Kenya Supreme Court in the Case of Law Society of Kenya –vs- Center for Human Rights & Democracy & 12 Others (2014)eKLR 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, now was it intended to occasion any disadvantage towards the party that opposes it.”



11. Both the Applicant and the Respondents place reliance on the Case of Nyati Security Guards & Services Ltd –vs- Municipal Council of Mombasa (2004) eKLR where Maraga J (as he then was) aptly set out the principles that apply in applications for consolidation thus:-

“-----consolidation is a process by which two or more suits or matters are by order of Court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same Court where:-

- i. Some common question of Law or fact arises in both or all of them; or
- ii) the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions; or
- iii) for some other reason it is desirable to make an order for consolidating them.”

12. Applying the principles highlighted in the above referenced authorities to the instant application, it is my view that the Applicant has not satisfied the threshold necessary to have the two suits consolidated. The earlier suit Kerugoya ELC No. 33 of 2013 even though the subject matter could be the same (land parcel Kiine/Thigirichi/347 subsequently subdivided into parcels 2320 to 2322, the cause of action is separate and distinct to the cause of action in the instant suit. The cause of action in the two suits does not arise from one transaction and/or series of transactions. In ELC No. 33 of 2013 the Plaintiffs claim their title of the suit property was unlawfully, irregularly and illegally transferred by the Defendants in that suit to their names. It is that transfer the Defendants herein as Plaintiffs in ELC No. 33 of 2013 seek to be cancelled and the title to revert to the name of the original owner. This cause of action has no correlation with the cause of action in the instant case, yet should the Plaintiffs be successful in ELC No. 33 of 2013 all transactions emanating from that alleged illegal transfer would be affected as the Defendants in ELC No. 33 of 2013 would not have acquired any good title to the land and correspondingly could not pass a good title to anybody in regard to the same property.

13. The Plaintiffs in the instant suit were joined as Interested Parties in ELC No. 33 of 2013 supposedly on the basis that they had demonstrated they had a legal interest in the subject matter of the suit and they stood to be affected by the outcome in the suit. Since the Plaintiffs claim to have acquired some legal interest in the subdivisions that emanated from the suit land, they were properly joined as Interested Parties so that they could be heard on how they acquired their interest in the suit property and in order to safeguard their interest. The Interested Parties (the Plaintiffs herein) have filed their pleadings by way of defence and Counterclaim dated 8th June, 2017 in ELC No. 33 of 2013 and have virtually pleaded the same matters they have raised in the present suit. The suit in my view is subjudice in terms of Section 6 of the *Civil Procedure Act* Cap 21 Laws of Kenya and ought to be stayed to await the determination in ELC No. 33 of 2013. The Plaintiffs filed the suit while the earlier suit was pending and while they had been joined and had filed their pleadings in the earlier suit.

14. Considering all factors I do not consider that the Applicants have made out a case to justify the consolidation of the two suits and I accordingly orders the Applicants application dated 28th February, 2024 dismissed. I have also determined the present suit is subjudice and I order that the same be stayed to await the hearing and determination of Kerugoya ELC No. 33 of 2013.

15. The Costs of the application shall be in the cause. Orders accordingly.



**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 7TH DAY OF
NOVEMBER 2024.**

J. M. MUTUNGI

ELC - JUDGE

