



**Kirinyaga County Government & 3 others v Githumbi & 4 others;
Kandenge & 9 others (Intended Defendant) (Environment & Land Case
55 of 2019) [2023] KEELC 15843 (KLR) (28 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 15843 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 55 OF 2019
EC CHERONO, J
FEBRUARY 28, 2023**

BETWEEN

**KIRINYAGA COUNTY GOVERNMENT 1ST PLAINTIFF
MUTITHI WOMEN GROUP 2ND PLAINTIFF
SAMUEL MAINGI 3RD PLAINTIFF
MUTHIKE MBAARU 4TH PLAINTIFF**

AND

**GICHUHI GITHUMBI 1ST DEFENDANT
JACINTA WAIRIMU 2ND DEFENDANT
PATRICK CHARAI 3RD DEFENDANT
JOHN GITHUMBI GICHUHI 4TH DEFENDANT
DISTRICT LAND REGISTRAR KIRINYAGA 5TH DEFENDANT**

AND

**GEOFFREY KINYUA KANDENGE INTENDED DEFENDANT
JUSTIN MUTHII WACHIRA INTENDED DEFENDANT
JOSEPH IRUNGU NGANGA INTENDED DEFENDANT
FAITH WANJIKU MACHARIA INTENDED DEFENDANT
EVANS IRUNGU MUTUGI INTENDED DEFENDANT
PETER THAIKU MUHUGA INTENDED DEFENDANT
ROBERT MUNGA KARIUKI INTENDED DEFENDANT**



JACKSON MWANGI MBUTHIA INTENDED DEFENDANT
CHARLES MURIITHI GATUURA INTENDED DEFENDANT
JOSEPH GITARI EZEKIEL INTENDED DEFENDANT

RULING

1. The applicants have moved this honourable court vide a notice of motion dated May 17, 2022 seeking the following orders;
 1. An order do issue consolidating the instant suit with Kerugoya ELC Case No 21 of 2018
Tabitha Njeri Cherere (suing as the administrator of the estate of John Cherere Mwangi (deceased) plaintiff
versus
Gichuhi Githumbi (sued as the administrator of the estate of Kithumbikichuhi (deceased) 1st defendant
Patrick Charai Gichuhi 2nd defendant
Joseph Gitari Ezekiel 3rd defendant
 2. That upon consolidation, leave be granted to either of the parties to be at liberty to amend their pleadings within 21 days
 3. The honourable court do make such other and further orders as it may deem fit necessary and expedient in the interest of justice
 4. That cost of this application be provided for.
2. The application is supported by the affidavit of Evans Irungu Mutugi sworn the same date as well as grounds apparent on the face of the said application. According to the applicant, land parcel No Mwerua/kagio/646 situated within kagio market is the same subject matter of dispute in this suit as well as the subject matter in ELC No 21 of 2018 (Kerugoya). He further deposed that the 1st, 3rd & 15th defendants herein are also defendants in the said suit ELC No 21 of 2018 while the plaintiff in ELC No 21 of 2018 (Tabitha Njeri Cherere) has been adversely mentioned in the pleadings in the instant suit
3. The applicant further contends that the causes of action in the two cases arise from the same transaction and that similar questions of law and fact are involved in the two cases which are pending hearing before this honourable court.
4. In conclusion, the applicant averred that the consolidation of the two cases referred hereinabove is necessary to avoid duplication and multiplicity of suit and that it would be just, convenient and expedient for all parties involved to allow the application for consolidation.
5. When the application came up for hearing, no grounds of opposition nor a replying affidavit was filed in opposition thereto. The application was therefore unopposed.

Analysis and decision

6. I have considered the notice of motion application dated May 17, 2022, the supporting affidavit and the applicable law. The principles for consolidation of suits has been discussed in a number of decisions



by the superior court. In *Petition No 14 of 2013 Law Society of Kenya v Center for Human Rights and Democracy and 12 Others (2014) eKLR*, the Supreme Court of Kenya held as follows;

'The essence of consolidation of suits 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 advantage towards the party that opposes it.'

7. In deciding whether suits are appropriate for consolidation, the court should exercise its discretion by comparing the suits sought to be consolidated to determine the following;
 - a. Whether the same involves common questions of law or fact;
 - b. Whether the reliefs claimed arise out of the same transaction;
 - c. Whether it is convenient and efficient to pursue the same in a consolidated suit in fulfilling the overriding objectives;
 - d. Whether consolidation will cause the plaintiff an undue advantage/prejudice.
8. Again in the case of Allahabad High Court of India in *PP Gupta v East Asiatic Co, Air 1960 All 184*, the court observed as follows;

'The very nature of the principle of consolidation implies that there is a similarity or identity of the matter in issue in different suits between the same parties which should be decided by the court once and for all. The object of consolidation is to avoid multiplicity of litigation between the same parties whenever the matter in issue is substantially and directly the same.'

9. I entirely agree with the two decisions by the superior courts. For all the reasons given hereinabove, I find that it would serve the interest of justice to consolidate the two suits in which the parties are the same and the subject matter is also the same.
10. The upshot of my finding is that the notice of motion application dated May 17, 2022 is merited and the same is hereby allowed as prayed. Costs shall abide the event.

Orders accordingly

READ, DELIVERED and SIGNED virtually this 28th February 2023

HON. E.C CHERONO ELC JUDGE

In the presence of;

M/S Micent Small H/B for Beaco for the Plaintiffs

M/S Mutegi H/B for Omenya for the Defendants

