



REPUBLIC OF KENYA



KENYA LAW
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**Le Pleiadi Investments Limited v Athur & 7 others (Land Case
E029 of 2023) [2025] KEELC 2840 (KLR) (19 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2840 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
LAND CASE E029 OF 2023
EK MAKORI, J
MARCH 19, 2025**

BETWEEN

LE PLEIADI INVESTMENTS LIMITED PLAINTIFF

AND

ABDULLAHI DAKANE ATHUR 1ST DEFENDANT

MOHAMMED ABDULLAHI SHEIKH 2ND DEFENDANT

COUNTY LANDS REGISTRAR MOMBASA 3RD DEFENDANT

DIRECTOR OF PHYSICAL PLANNING, KILIFI COUNTY 4TH DEFENDANT

DIRECTOR OF SURVEY 5TH DEFENDANT

COUNTY GOVERNMENT OF KILIFI 6TH DEFENDANT

NATIONAL LAND COMMISSION 7TH DEFENDANT

LIVINGSTONE KAMANDE GITAU 8TH DEFENDANT

RULING

1. The Plaintiff/Applicant, Le Pleiadi Investments Limited, filed the application dated 28th November 2024 seeking the following prayers:
 - a. That this Honorable Court grants an order for the withdrawal of the Malindi Chief Magistrate's Court, specifically Malindi Chief Magistrates' Land Case No. 40 of 2023; Abdullahi Dakane Athur & another – v - Le Pleiadi Investment Limited.
 - b. Following such withdrawal, this Honorable Court orders the transfer of Malindi Chief Magistrates Land Case No. 40 of 2023, Abdullahi Dakane Arthur & another –v- Le Pleiadi Investment Limited to this Honorable Court for trial and disposition.



- c. This Honorable Court consolidates the case mentioned above, Malindi Chief Magistrates Land Case No. 40 of 2023; Abdullahi Dakane Arthur & another –v- Le Pleiadi Investment Limited, with this suit for trial and final disposition.
 - d. That the costs of this application be provided.
2. The application was opposed by a replying affidavit of Richard Otara, advocate, dated 16th February 2025. The opposition was based on the argument that the application seeks to steal a march from the Respondents; this court decided in ELC Appeal No. E033 of 2023, that Malindi CMCLC E040 of 2023 was properly seized in the Magistrates' Court regarding the access road.
 3. The application was considered through written submissions.
 4. Based on the materials and submissions presented to me, I frame the issues for determination of this court as to whether the applicant is entitled to the prayers sought in the body of the application, significantly the consolidation of this suit with Malindi Chief Magistrates Land Case No. 40 of 2023; Abdullahi Dakane Athur & another v Le Pleiadi Investment Limited.
 5. The Plaintiff/ Applicant is of the view that Section 18 of the Civil Procedure Act bestows upon the High Court the power to transfer any suit pending before it to any court subordinate to it and competent to try it or withdraw any suit pending in any court subordinate to it and thereafter try or dispose it or transfer it as the case may be. It provides:
 - “(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - a. transfer any suit, appeal, or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b. withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter—
 - (i) try or dispose of the same; or
 - (ii) transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - (iii) re-transfer the same for trial or disposal to the court from which it was withdrawn.
 - (2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.”=
 6. Mr. Nyongesa for the Applicant is of the view that the basis for the application is that the Applicant is the Defendant in Malindi Chief Magistrates Land Case No. 40 of 2023; Abdullahi Dakane Athur & another v Le Pleiadi Investment Limited in which the Plaintiffs (1st & 2nd Defendants/Respondents in this case) are seeking orders of opening of a purported access road registered as portion number 662/1 Malindi.



7. During the pendency of the suit at the Chief Magistrates' Court and before it could be heard, the Applicant filed this suit at the ELC Court in Malindi, ELC No. E029 of 2023. The Applicant filed this suit because it was unable to file a counterclaim in the lower court regarding its parcel of land, No. 662 Malindi, which falls beyond the court's pecuniary jurisdiction. It attached a valuation report and the pleadings in the lower court and this court.
8. The Applicants explained that this court had decided that the subject matter in the lower court was the access road registered as portion No. 662/1, Malindi, and not the Applicant's parcel of land No. Malindi 662. The case before the court cannot, therefore, be sub judice as argued by the Respondent. In the suit before this court, the subject matter is the applicant's land, known as Portion 662 Malindi, which is not a subject matter in the lower court. The alleged access road, which is the subject matter in the lower, is also a subject matter in this case before the court. The two issues are, therefore, intertwined and before this court.
9. The Applicant is also seeking several prayers in the plaint before this court regarding land portion 662, and one of them is a declaration that it is the registered owner of a parcel of land known as portion number 662, Malindi. As already pointed out, this parcel of land is not the subject matter in the lower court. Its value exceeds the pecuniary jurisdiction of the lower court. A counterclaim cannot be filed before that court, nor can this case be transferred to a lower court. It is, hence, not accurate, as argued by the Respondent, that once the lower court determines the suit, there will be nothing left to determine. Neither case has even gone to trial, and therefore, no prejudice will be suffered by any of the parties.
10. Mr. Nyongesa contends that a similar issue arose in the case of *Daikyo Japan Motors Ltd & 2 others v Fairuz Feisal Yasin & another* [2020] eKLR. The court, in allowing the transfer of the suit, stated:

“Applying the principles established above to the circumstances of the instant suit. It is clear that the parties and cause of action are the same, and the Defendants ought to have filed a Counter-claim rather than filing a fresh suit. The question of concern is, however, whether the Applicants herein could Counter-claim Kshs.71,700,245/= in the case before the Lower Court. Clearly, therefore, and considering the fact the pecuniary jurisdiction of the Chief Magistrates' Court is limited to the sum of Kshs.20,000,000/=, it goes without saying that the Applicants' Counterclaim is not capable of being heard before the Lower Court.

30. Having stated under Paragraph 24 above that CMCC. No.12 of 2020 was not a nullity ab initio, the inescapable verdict that one can make is that the matter be transferred to the High Court then the Applicant file their defence and cross suit so as to have them disposed of in the same trial. My support to this view is based on the overriding objectives of the *Civil Procedure Act* contained in Sections 1A and 1B of the Act as well as the principles of exercising judicial authority as enshrined in Article 159 (2) of *the Constitution* of Kenya, which now enjoin this court to perform its duties in a just, expeditious, proportionate and affordable way and without undue regard to procedural technicalities.”
11. On his part, Mr. Otara, for the 1st and 2nd Defendants, is of the view that the Plaintiff herein, with the intention of obstructing, has failed to proceed with the case before the Magistrates' Court and to circumvent the Judgment and orders made in ELC Appeal No. E033 of 2023, the Plaintiff/Applicant herein has filed the instant application seeking the withdrawal of Malindi CMCLC E040 of 2023. The orders sought by the Plaintiff/Applicant are mischievous and cannot be granted, as once a matter is withdrawn, it cannot be consolidated with any other matter.



12. He avers that Section 11 of the *Civil Procedure Act* provides that:

“Every suit shall be instituted in the Court of the lowest grade competent to try it except that where there are more subordinate courts than one with jurisdiction in the same district competent to try it, a suit may if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate Courts.”

13. He states that the cause of action in the present suit is the same as the cause of action pending determination before the Magistrates’ Court. The entire cause of action is centered on the disputed public access road. Once the Lower Court makes a finding on the validity or invalidity of the Public Access road, this suit should have been automatically determined as well. This suit is nothing but a creation of convolution and duplication of cases over the exact cause of action.

14. On his part, the solution to this issue is found in Section 6 of the *Civil Procedure Act*, which provides as follows;

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

15. Mr. Otara opines that the ruling delivered by this court in ELC Appeal No. 33 of 2023, which found that the Magistrate’s Court is the competent court to hear and determine matters dealing with the disputed public access road, should stand. At best, this suit should be dealt with under Section 6 of the *Civil Procedure Act* and await the outcome of the Malindi CMCLC E040 of 2023, which is currently at an advanced stage of consideration. Once the Lower Court case is determined, there will be nothing to litigate in this suit, which is, in any case, sub judice.

16. This court reckons the submissions by the parties. The issues raised in this matter and the Chief Magistrates Court in Malindi CMLC E40 of 2023 seem to be intertwined; the issue of sub judice will not arise, and the quagmire that the Plaintiff /Applicant raises is that its claim here cannot be tried in the Lower Court due to pecuniary jurisdiction as shown in the Valuation Report. Therefore, the prudent course of action is to have the matter in the Lower Court consolidated with this one to avoid trial by installments.

17. To me, that would be the best recourse to take to avoid conflicting decisions made over the same subject matter or part thereof and to avoid trial by installments. It will also save parties from incurring excessive costs in sustaining two parallel suits over the same subject matter.

18. I, therefore, pursuant to the powers conferred to me by Section 18 of the *Civil Procedure Act*, allow the application dated 28th November 2024 to the extent that:

- a. An order is hereby issued directing that Malindi Chief Magistrates’ Land Case No. 40 of 2023, Abdullahi Dakane Arthur & another v Le Pleiadi Investment Limited, be transferred to this court for consolidation with this suit for trial and final disposition.
- b. That the costs of this application be in the cause.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 19TH DAY OF MARCH 2025.



E. K. MAKORI

JUDGE

In the Presence of:

Mr. Nyongesa, for the Plaintiffs

Mr. Otara, for the 1st and 2nd Defendant

Ms. Ekiru, for the 3rd, 4th and 5th Defendants

Happy: Court Assistant

