



Century Life Investments Ltd v Ali (Being sued as the Chairman of Kaloleni Welfare Society) & another; Rhine Forwarders Ltd (Proposed Defendant) (Environment & Land Case E072 of 2022) [2025] KEELC 3435 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3435 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE E072 OF 2022
NA MATHEKA, J
APRIL 30, 2025**

BETWEEN

CENTURY LIFE INVESTMENTS LTD PLAINTIFF

AND

ALI ABDI ALI (BEING SUED AS THE CHAIRMAN OF KALOLENI WELFARE SOCIETY) 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

AND

RHINE FORWARDERS LTD PROPOSED DEFENDANT

RULING

1. The application is dated 9th September 2024 and pursuant to Order 1 Rule 10(2) and Order 11 Rule 3 of the Civil Procedure Rules seeking the following orders;
 1. This Application be certified urgent and be dispensed with at the first instance ex-parte.
 2. This court be and is hereby pleased to stay these proceedings pending the hearing and determination of this Application.
 3. This suit be and is hereby consolidated with Machakos ELC No. 113 of 2019 Abdi Ali versus Rhine Forwarders Ltd & Sammy Muthusi.
 4. Machakos ELC. No. 113 of 2019 be designated as the lead file having been filed first in time.
 5. In the alternative to prayers 3 and 4 above, the Applicant be joined as the 3rd Defendant in this suit and be granted unconditional leave to defend this suit.



6. The court be pleased to grant such other and/or further orders and directions as it may deem just and expedient.
 7. Costs of the Application be in the cause.
2. It is supported by the annexed Affidavit of Kivuva Mutinda on grounds that the Applicant has only recently learnt about the existence of this suit. There exists another suit relating to the same subject property being Machakos ELC. Case No. 113 of 2019 between Ali Abdi Ali versus Rhine Forwarders Ltd & Sammy Muthusi. The Plaintiff/Respondent's main claim that it is the proprietor of all that property known as L.R. No. 25194 IR. No. 84873 is based on falsehoods and fraudulent intent. Upon review of the Plaintiff's pleadings filed before this court, the Applicant is convinced that the Plaintiff intends to sanitize its fraudulent claim over the Applicant's property through court proceedings and to achieve its aim has chosen weak and uninterested adversaries in the names of the 2nd and 3rd Respondents. Both properties known as L.R. No. 25194 IR No. 84873 (claimed by the 1st Respondent) and L.R. No. 31990 (claimed by the 2nd and 3rd Respondents) are either non-existent or simply located anywhere else other than the physical location that is otherwise known as L.R. No. 24625 owned by the Applicant. The documents filed by all the Respondents in this suit asserting the existence and ownership of the properties known as L.R. No. 25194 IR. No. 84873 and L.R. No. 31990 have been fraudulently obtained and altered to mask the fact that the said properties reside within L.R. No. 24625 owned by the Applicant. While it is indeed true that the 2nd Respondent's claim before the court in Machakos ELC. 113 of 2019 was that the association was the proprietor of L.R. No. 31990, the learned Judge in her Ruling of 29th January, 2021 found that the Applicant's title to the property known as L.R. 24625 was issued earlier in time. The multiple disputes over the suit property have been subject to judicial proceedings where as noted above, the court has made certain findings and investigations by the DCI, Lands Surveys Department and the Lands Registry where reports of the said investigations have also been made. If the court is to conclusively fairly and justly resolve the disputes surrounding the subject property, it is imperative that the court allows for the consolidation of the two files and/or the joinder of the Applicant and such other parties as the court deems necessary to this matter. There is an urgent need for this Honourable Court to determine this Application with a view to making appropriate directions for consolidation of the two files to avoid the possible and untidy scenario of there being different Judgments in relation to the same subject property by courts of equal and concurrent jurisdiction.
3. This court has considered the application and the submissions therein. The jurisdiction to consolidate suits is provided by order 11 Rule 3 of the Civil Procedure Rules. In the case of Prem Lala Nahata & Anor v Chandi Prasad Sikaria (2007) 2 Supreme Court Cases 551, the India Supreme Court held that;
- “It cannot be disputed that the Court has power to consolidate suits in appropriate cases.... 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 or 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.”



4. In the case of *Law Society of Kenya v Center for Human Rights & Democracy & 12 Others* [2014] eKLR, the Supreme Court of Kenya held 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 intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”

5. In *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* (2000) eKLR, the court held that;

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where: -

- a. Some common questions of law or fact arises in both or all of them.
- b. The rights or reliefs claimed in them are in respect of the same transactions;
- c. For some other reasons, it is desirable to make an order for consolidating them.”

6. The Court has a wide discretion in ordering consolidation. Consolidation will be ordered if there is a common question of law or fact in the suits, the reliefs or rights sought arise from the same or a series of transactions, or for any other reason such as for convenience, avoiding multiplicity of suits, expedition and in order to meet the overriding objective set out in the *Civil Procedure Act*, Cap 21 Laws of Kenya. I have perused the pleadings in Machakos ELC. 113 of 2019 and I find that it relates to LR No. 31990 and IR No. 198969 issued on 17th October 2018 and pursuant to a deed plan No. 424486 while the present suit relates to LR No. 2519, IR No. 84973 issued on 20th November 2000 Deed Plan No. 232909. It is not possible to establish the physical locations of the suit properties at this stage to enable me consolidate the two cases. I find that said prayer cannot be granted.

7. As to whether they ought to be enjoined in the suit as a defendant or an interested party, the Court is guided by Order 1 Rule 10(2) of the Civil Procedure Rules which states;

“The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added”.

8. The Supreme Court decision in *Communications Commission of Kenya And 4 Others v Royal Media Services Limited & 7 Others* Petition No. 15 OF [2014] eKLR where the Court pronounced itself on who an Interested Party is and held as follows:

“In determining whether the applicant should be admitted into these proceedings as an interested party, we are guided by this Court’s decision in the Mumo Matemo case where the court (at paragraphs 14 and 18) held:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the



Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- (i) Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- (ii) Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- (iii) Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party's state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?"

9. It is therefore clear that the parties who should be made parties to a suit are persons who are necessary for a complete and effectual adjudication of disputes before the court. The Applicant claims that he bought the suit land. I find that the Applicant has interest over the suit property and ought to be enjoined. I find that no prejudice shall be suffered by the parties herein as the addition of the Applicant as a Defendant to this suit is necessary and shall enable the Court to completely and effectually determine all questions involved in the suit herein in finality.
10. The Applicant stated that both properties known as L.R. No. 25194 IR No. 84873 (claimed by the 1st Respondent) and L.R. No. 31990 (claimed by the 2nd and 3rd Respondents) are either non-existent or simply located anywhere else other than the physical location that is otherwise known as L.R. No. 24625 owned by the Applicant. The documents filed by all the Respondents in this suit asserting the existence and ownership of the properties known as L.R. No. 25194 IR. No. 84873 and L.R. No. 31990 have been fraudulently obtained and altered to mask the fact that the said properties reside within L.R. No. 24625 owned by the Applicant. The Applicant claims the said subject matter and hence has an interest in the suit properties. I find this application succeeds in part and grant the following orders;
 1. That applicant to be enjoined as a 3rd Defendant in the proceedings.
 2. Costs of this application to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 30TH DAY OF APRIL 2025.

N.A. MATHEKA

JUDGE

