



**Njapit & 3 others v Mussa & 4 others (Environment & Land Case E006 of 2021) [2025] KEELC 3538 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3538 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT & LAND CASE E006 OF 2021  
LN GACHERU, J  
APRIL 30, 2025**

**BETWEEN**

**SALANTON OLE NJAPIT ..... 1<sup>ST</sup> PLAINTIFF  
NAISWAKU ENE NJAPIT ..... 2<sup>ND</sup> PLAINTIFF  
NOONKIPA ENE NJA ..... 3<sup>RD</sup> PLAINTIFF  
KARSIE ENE NJAP ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**ISAAK MUSSA ..... 1<sup>ST</sup> DEFENDANT  
KARIM BUX M ..... 2<sup>ND</sup> DEFENDANT  
NASIR ALI MUSS ..... 3<sup>RD</sup> DEFENDANT  
BASHIR MUS ..... 4<sup>TH</sup> DEFENDANT  
HAMID MUSSA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs/Applicants herein Salaton Ole Njapit & 3 others have sought for orders that the suit herein be consolidated with Narok ELC (OS) No. 1 of 2024, for hearing and determination and that the costs be in the cause.
2. The application is supported by the Affidavit of Justin Nyaberi Advocate and the grounds that the land parcels in respect of the two cases are the same being LR. Narok CIS-MARA/Olchoro/Oirowua/17 and 19, respectively; the parties are the same and the witnesses too are the same in the two cases; further, the cause of action is the same; there is fraudulent registration of the Defendants as the registered owners of the two parcels of land, and that it will save the court’s time if the two cases are consolidated and heard together.



3. Justin Nyaberi Advocate, in his Supporting Affidavit averred that the 1<sup>st</sup> Plaintiff who is the co-registered owner of the suit land also filed Nakuru HCCC No.168 of 2008, which was later transferred to this court as Narok ELC(OS) No.1 of 2024. Further, that the suit herein against the Defendants and the suit No. ELC(OS) 1 of 2024 relates to the same land parcels No. Cis-Mara/Olchoro/Oirowua/ 17 &19. Further that the witnesses are the same and thus the instant application for consolidation of the two suits, is merited.
4. The application is opposed through the Replying Affidavit of Githui John Advocate, who averred that this application is incompetent for having been brought under the provisions of Order 40 of the Civil Procedure Rules, which ORDER relates to the application for injunction and not consolidation of suits, and thus the instant application ought to be dismissed.
5. Further, that the court's discretion to consolidate a suit is exercised upon proof of specific factual imperatives that there exists two separate suits, which raise the same question of law and facts or where the same remedies are sought in respect of the same subject matter.
6. Further, that the discretion of the court is not meant to give a litigant an opportunity to save face in instances where he is guilty of abuse of the court process. It was his contention that the instant suit is clearly an abuse of the court process, and therefore, the said application should not be allowed.
7. He also contended that when the applicant filed this matter in March 2021, he pleaded that there was another matter pending in court, being Nakuru ELC 168 of 2008, which was pending hearing and determination. Further, that since March 2021, the applicant neither prosecuted the present suit nor Nakuru ELC 168 of 2008. He also contended that the filing of this suit offends the provisions of Section 6 of the Civil Procedure Act, which provision of law bars proceeding with a suit where there is a similar suit pending in court between the same parties.
8. It was his further contention that the two matters alluded to by the applicants are not matters which raise similar question of fact, question of law on seeking similar reliefs, but is one case filed twice being that the first case was filed in 2008, and the second case filed in 2021.
9. Further that both cases were filed by the same Advocate, and he disclosed the existence of both cases at the time of filing. It was contended that the court has inherent jurisdiction to strike out any pleadings which is an abuse of the court process, and that jurisdiction need not be invoked by a party, and the court can act on its own motion. He urged the court to strike out the instant suit as an abuse of the court process. He urged the court to disallow the instant application.
10. The application was canvassed through written submissions. The Applicants filed their submissions dated 25<sup>th</sup> March 2025, and relied on various decided cases among them the case of Benson G. Mutahi vs Raphael Gichovi Munene Kabutu & 4 others [2016]eKLR which cited the case of Brij Kishore vs Bir Singh & Others at the High Court of Punjab and Harana( LR 5922 of 2013 ),where the court held; -

“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”

11. The Respondents filed their written submissions dated 7<sup>th</sup> March 2025, through Githui & Co. Advocates, and relied on various decided cases among them; Benson G. Mutahi vs Raphael Gichovi Munene Kabutu(supra), Chisinende Farmers’ Cooperative Society Ltd vs Joel K. Bett Civil Suit No.25 of 2017; & Satya Bhama Gandhi of Public Prosecutions & 3 others (2018)eklr. The Respondents urged the court to dismiss the instant application with costs.
12. The court has carefully considered the instant application, the grounds in support of, and against the said application, the relevant provisions of law, the rival written submissions, and the cited authorities and finds as follows; -
13. The Respondents have averred that the application herein is incompetent for having been brought under Order 40 of the Civil Procedure Rules, which Order deals with interlocutory injunctions and therefore, the application ought to be dismissed. The court has considered the heading of the instant application, and confirms that indeed the same is anchored under Sections 1, 1A, 3 & 3A, 61(2) of the Civil Procedure Act and also under Order 40 Rules 1, 2 and 9 and all other enabling provisions of the Law.
14. Though the application is anchored under Order 40 Rules 1, 2 and 9, the same is not indicated whether it is Order 40 of the Civil Procedure Rules or what law? Could it be Order 40 of Civil Procedure Rules or any other provision of law? Even assuming it is Order 40 of the Civil Procedure Rules, is that enough to render the application incompetent? Indeed, the said Order 40 deals with interlocutory injunction, but not consolidation of suits.
15. The issue of consolidation of suits is provided for under Order 11 Rule 3(1)(d) of the Civil Procedure Rules, which Order mandates court to consider consolidation of suits with a view to furthering expeditious disposal of the same. Therefore, the application is brought under the wrong provisions of Law.
16. However, the application is also brought under Sections 1 & 1A, 3 and 3A of the Civil Procedure Act, which sections of law are enough to support the instant application. Section 1A deals with the overriding objective of the Act, which mandates court to facilitate just and expeditious resolution of civil disputes governed by the Act. Section 3 of the said Act provides that in the absence of any specific provision to the contrary, nothing in the Act shall limit or affect any special jurisdiction or power conferred to the court. Further, Section 3A of the same Act, provides that the court has inherent power to make such orders as may be necessary for the ends of justice to be met, and to prevent abuse of the court process.
17. Therefore, the court can still make determination on an application for consolidation as it is a necessary order, which necessary order will allow ends of justice to be met. Relying therefore on one wrong provisions of law, would not render this Application incompetent.
18. Further, Order 51 Rule 10(2) of the Civil Procedure Rules provides that no application shall be defeated on a technicality for want of Form, that does not affect the substance of the application. By relying on Order 40 Rule 1 and 2, instead of Order 11 Rule 3(1) of the Civil Procedure Rules, the said omission has not affected the subsistence of the instant application. Therefore, this court finds and holds that the application herein is not incompetent and cannot be dismissed.
19. On the substance of the application, it is not in doubt that the court has discretion to allow consolidation of suits, and which discretion must be exercised judiciously. The principles for



consolidation of suits were set out in the case of Nyati Security guards and Services Ltd vs Municipal Council of Mombasa [2000]eklr, where the court held as follows; -

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

- i. Some common question of law or fact arises in both or all of them;
- ii. The rights or reliefs claimed in them are in respect of or arise out of the same transaction;
- iii. For some reason it is desirable to make an order for consolidating them.”

20. Further these principles were also stated in the case of Stumberg & another vs Potgeiter 1970 E.A 323; where the court held; -

“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.”

21. Therefore, the issues that this court should consider is whether consolidation of the two suits is appropriate, and whether any party would be prejudiced by the said consolidation, or whether consolidation would give any party undue advantage over the order. The court should guard and protect the limited judicial time, and strife to resolve matters before it expeditiously.

22. It is evident that the suit sought to be consolidated with the instant suit being Narok ELC(OS) No.1/2024, was first filed in the 2006 in Nairobi High court as an ordinary civil suit. The said suit was later transferred to Nakuru High Court in 2008. Eventually the said suit was transferred to this court in 2024.

23. What is also evident is that the said suit involves a dispute over land parcels No. Narok/Olchoro/Oirowua/17 and 19, and the said suit was filed by Ntune ole Njapit against six Defendants named thereon.

24. The instant suit being Narok ELC No. E006 of 2021, also involves the Plaintiffs herein and the five Defendants, who are same Defendants in Narok ELC(OS) 1/2024. The dispute is over the same parcels of land being Cis-Mara/Olchoro/Oirowua/17 and 19. Therefore, it is evident that both suit involve the same parcels of land and same parties

25. The parties in the two suits are the same and further the two suits have been filed by the same advocate. The Narok ELC (OS) 1/2024 is an Originating Summons, wherein the Plaintiff had sought for Orders of a declaration that the transfer of the suit land to the Defendants thereon was fraudulent, among other prayers.

26. The instant suit is by the four Plaintiffs herein who are related to the Plaintiff in Narok ELC (OS) E001/2024, wherein they have sought for orders directed to the Land Registrar Narok to cancel the fraudulent registration of the two parcels land in favour of the Defendants herein.

27. Though the Defendants/ Respondents herein have alleged that the application is brought to circumvent the dismissal of the suit for want of prosecution, there is no evidence that such an application has been filed. What is evident is that the two suits are over a dispute involving the same parcels of land, being land parcels Nos. LR. NAROK CIS-Mara/olchoro/oirowua/17 and 19.



28. For expeditious disposal of the two cases, it would be proper and expedient to consolidate the two suits, as the said consolidation would save precious and limited judicial time. In the case of Law Society of Kenya vs Centre for Human Rights and Democracy & 12 others (Petition 14 of 2013; [2014] eKLR), the Supreme Court held as follows: -

“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.”

29. The main issue herein is whether the registration of the suit properties in favour of the Defendants was done fraudulently or not. It would therefore be efficient use of the limited judicial time for the two suits be consolidated and be heard as one suit, since the witnesses might be the same, and the question of law or facts in both cases are the same and the reliefs sought arise from the same transaction. The Defendants/Respondents not will not be prejudiced by the said consolidation, nor will the Plaintiffs have any advantage.

30. From the above reasons, the court finds and holds that the instant application for consolidation is merited, and the same is allowed entirely with costs being in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK THIS 30<sup>TH</sup> DAY OF APRIL 2025.**

**L. GACHERU**

**JUDGE**

**30/4/2025**

Delivered online in the presence of

Meyoki – Court Assistant

Mr. Nyaberi for the Plaintiffs/Applicants

Mr. Githui for the Defendant/Respondents

**L. GACHERU**

**JUDGE**

**30/4/2025**

