



REPUBLIC OF KENYA



KENYA LAW

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**Mambui Sea Denus Ltd & 2 others v Yeri & 12 others (Environment & Land
Petition 16 of 2020) [2023] KEELC 22208 (KLR) (14 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22208 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND PETITION 16 OF 2020
FM NJOROGE, J
DECEMBER 14, 2023
IN THE MATTER OF: ARTICLES 10,21,22,23, 62 AND 67 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF: THE ALLEGED CONTRAVENTION OF
FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 40, 47, 64, 65, 73 AND 232 OF THE
CONSTITUTION OF KENYA
AND
IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF
RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE
RULES, 2013
AND
IN THE MATTER OF: THE ENVIRONMENT AND LAND COURT ACT NO.
19 OF 2011,
SECTIONS 13
AND
IN THE MATTER OF: THE LAND ACT, SECTION 4,7, 150, PART VIII
LAND REGISTRATION ACT SECTIONS 24, 25, 26, 30, 34, 35, 36, 37,
40, 101
BETWEEN
MAMBRUI SEA DENUS LTD 1ST PETITIONER



ALESSANDRO TRENTAVIZI 2ND PETITIONER

ACRE ONE LTD 3RD PETITIONER

AND

HON. JOSEPH KASENA YERI & 12 OTHERS RESPONDENT

RULING

1. The petitioners filed this application vide a Notice of Motion dated 18th November 2022 seeking the following orders:
 1. Spent
 2. That the honourable court be pleased to issue an order for consolidation of Malindi ELC Petition No. 16 of 2020 and Malindi ELC Petition No. 7 of 2022.
 3. That costs of the application be in the cause.
2. The application is founded on the grounds set out on its face and the supporting affidavit of Alessandro Trentavizi the 2nd Petitioner who deponed that the 1st Petitioner was the proprietor of Portions of land No. 658 to 707 (Original No.652/2-51) situated North of Mambui Town having acquired vide transfer CR.No.24478/2. He stated that on or about 22nd December 2020, the Petitioners instituted this suit seeking a declaration that they were at all material times and still are the proprietors and the holders of the indefeasible titles and the interest in and rights over their respective suit properties. Further, that there was another suit filed on or before 25th July 2022 by one Kevin Kanani Kariuki being ELC No. 7 of 2022 and that both suits are all related and seek orders related to the same suit properties thus it is just, fair and expedient that the Application be allowed.
3. At the time of writing this opinion, there were no responses by the respondents nor submissions by either party in the file.

Determination

4. The jurisdiction to consolidate suits is donated by order 11 Rule 3 of the Civil Procedure Rules. In *Law Society of Kenya v Center for Human Rights & Democracy & 12 Others* [2014] eKLR, the Supreme Court of Kenya held: -

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: -

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. From the above, it can be seen that the Court has a wide discretion in ordering consolidation 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.
7. The Application at bar is founded on grounds inter alia that ELC Petition No. 16 of 2022 and ELC Petition No. 7 of 2022 are related and seek orders that are related to the same suit properties. I have looked at the copies of the Petitions in the instant suit and ELC Petition No. 7 of 2022. I note that in both suits the common Respondents are: The Settlement Fund Trustee, The director of Survey, the Registrar of Land Kilifi, The Ministry of Lands & Physical Planning, The National Land Commission and The Hon. Attorney General. Though the suit properties are different I also note that the same arise from the same Settlement Scheme. The Petitioners in both suits seek for recognition of the proprietary rights in their respective suit properties.
8. It is this court’s view that the issues in all the suits are basically the same and the witnesses will be the same thus, it would be convenient and expedient to try all the suits together as it would obviate a multiplicity of suits. That approach will lead to the determination of all the issues arising in all the two suits at the same trial. It will be less costly and will save the Court precious judicial time. I therefore grant the application dated and I hereby order as follows:
 - a. Malindi ELC Petition No. 16 of 2020 and Malindi ELC Petition No. 7 of 2022 are hereby consolidated;
 - b. The costs of the application shall be in the cause;
 - c. The two petitions shall be mentioned on 21/2/2024 for further directions.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 14TH DAY OF DECEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

