



**Njuguna (Suing as the legal administrator and personal representative of the Estate of the Late Joel Njuguna Mbuga) & 4 others v SS Mehta & Sons Limited; Maguo & 3 others (Interested Parties) (Environment & Land Case 166 of 2018) [2023] KEELC 22430 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22430 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ENVIRONMENT & LAND CASE 166 OF 2018**  
**EK MAKORI, J**  
**DECEMBER 7, 2023**

**BETWEEN**

**MARY NJERI NJUGUNA (SUING AS THE LEGAL ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE JOEL NJUGUNA MBUGA) ..... 1<sup>ST</sup> PLAINTIFF**  
**RACHAEL WANJIKU KIMANI ..... 2<sup>ND</sup> PLAINTIFF**  
**KENNETH WAGEMA KIMANI ..... 3<sup>RD</sup> PLAINTIFF**  
**ROBERT MATEMO MBURU GWIRI ..... 4<sup>TH</sup> PLAINTIFF**  
**EMLYN JAMES NGWIRI ..... 5<sup>TH</sup> PLAINTIFF**

**AND**

**SS MEHTA & SONS LIMITED ..... DEFENDANT**

**AND**

**KARISA MBUI MAGUO ..... INTERESTED PARTY**  
**KATANA MBUI MAGUO ..... INTERESTED PARTY**  
**KAZUNGU KARISA ..... INTERESTED PARTY**  
**NZINGO KAZUNGU KAINGU ..... INTERESTED PARTY**

**RULING**

1. The instant application seeks consolidation of this suit with ELC Case No. 55 of 2021 (O.S). The application is based on the grounds on the face of the application and affidavit in support deposited by one Nzingo Kazungu Kaingu the 4<sup>th</sup> Interested Party. It is averred the subject matter here and in ELC



Case No. 55 of 2021 (O.S), involves land parcel No. M20. The consolidation is opposed because the cause of action is not the same.

2. There is only one simple issue in this matter, which is whether to order for consolidation.
3. The principles to consider to allow consolidation of suits are as held in the case of *Abdalla v Hassan & 15 others* (Civil Suit 210 of 2021) [2022] KEELC 13582 (KLR) (5 October 2022) (Ruling) as follows:

“I have taken judicial notice of the myriad of court cases and the underlying guidelines enshrined thereof on the issue of consolidation of cases. These include in the case of *Law Society of Kenya v The Centre for Human Rights & Democracy*, Supreme Court of Kenya Petition No 14 of 2013 the SCOK 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 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”

While Maraga, J, as he then was, held in *Municipal Council of Mombasa v Municipal Council of Mombasa* [2004] eKLR that: “Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time, and effort and to make the conduct of several actions more convenient by treating them as one action. “The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:-

1. Some common question of law or fact arises in both or all of them; or
  2. The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
  3. For some other reason it is desirable to make an order for consolidating them.
15. On this legal ratio, I fully concur with the learned counsel for the 16<sup>th</sup> defendant herein while appropriately citing *Stumberg & Anor v Potgeiter* 1970 EA 323”, where the court stated thus,

“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. ...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.”

4. The causes of action in the two matters are different. In the present suit, the plaintiff seeks an award of damages and other monetary compensation exemplary /punitive because of the defendant’s acts of wastage and trespass on the plaintiff’s land parcel No. LR 2019 (M 202/2) Malindi. The plaintiff contends to be the registered landowner. While ELC Case No. E5 of 2021 O.S., the plaintiffs are seeking adverse possession allegedly of 20 acres out of a parcel known as Plot No. M20/2. The rights of the plaintiffs seeking adverse possession have not crystallized. The issue of impeachment of title will be core in ELC Case No. E5 of 2021 O.S. In my view mixing the two will convolute issues, let the two files run parallel.
5. The upshot is that the application dated 17<sup>th</sup> March 2022 is dismissed with costs.



**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS  
7<sup>TH</sup> DAY OF DECEMBER, 2023.**

**E. K. MAKORI**

**JUDGE**

In the Presence of: -

Ms. Marubu for the Interested Parties

Mr. Githinji for the plaintiffs

Ms. Nyamu for the defendants

Court Clerk: Happy

