



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT MOMBASA

ELC NO. 15 OF 2021 (O.S)

1. DICKSON MWARINGA RUNYA

2. JOSHUA BAYA KENGA

3. MOHAMMED MBAO MGANDI.....PLAINTIFFS/APPLICANTS

- VERSUS -

DAVID MUCHIRI MUGO.....DEFENDANT/RESPONDENT

RULING

I. Preliminaries.

1. The Notice of Motion application before this Honorable Court for determination is the one dated 14th October 2021 filed on the same date by the Defendant/Applicant herein. It is brought under the provisions of Sections 3A, 18 and 81 (2)(h) of the Civil Procedure Act, Cap. 21.

II. The Defendant/Applicant's case.

2. From the afore stated filed application, the Defendant/Applicant seeks for the following orders:-

a) That Mombasa ELC No. 17 of 2020 (O.S) Fitina Runya & Others - Versus - David Muchiri Mugo and Mombasa ELC No. 122 of 2021 (O.S) Jimmy Safari Kombe and another – Versus - David Muchiri Mugo & Another be consolidated with this suit for hearing and determination accordingly.

b) That Mombasa CMCC/ELC No. 49 of 2020, Kazungu Kiraga & Others – Versus - David Mugo & Others, Mombasa CMCC/ELC No. 201 of 2019, Morris Karisa Mwanjama & others – Versus - David Muchiri Mugo & others be transferred to this court and consolidated with this suit for hearing and determination.

c) Costs of the application.

3. The said application is grounded on the facts, testimony and averments on the face of the application and the 8 Paragraphed Supporting Affidavit of DAVID MUCHIRI MUGO the Defendant/Applicant herein sworn and dated the 14th October, 2021 and one annexure marked as “DMK – 1” annexed hereto. He deposed that the aforementioned cases namely, ELC No. 17 of 2021, ELC No. 122 of 2021(O.S), CMCC ELC No. 49 of 2020 and CMCC ELC No. 201 of 2021 respectively filed at different jurisdiction. All concern the same parties being the Defendant/Respondent herein and his properties being Plot No. 286/II/MN, Plot No. 286/II/MN and 14110/II/MN situated at Kiembeni, within the County of Mombasa (Hereinafter referred to as “The Suit Properties”).

4. He stated that the various Plaintiffs appearing in the above mentioned cases are all squatters in occupation of the suit land that belongs and legally registered in his names. He stated that there existed a group, mostly the said Plaintiffs, hence who posed as officials of the said squatters, and who frequently filed these cases so as to take a chance on either of the said Court cases to mischievously and illegally take away his land. He observed that the multiplicity of the suits were by the same persons and Advocates all intended to forum shop for justice and courts. Clearly, he averred that this conduct of filing multiplicity of suits by these same parties, majority of them being the Plaintiffs herein, would amount to abuse of the due process and causing piecemeal litigation which was likely to embarrass this Honorable Court. Further, he deposed that there was a likelihood of there emerging different and conflicting decisions made by the Court over the same subject matters and same parties. He opined that In order to arrest this state of affairs perpetrated by these Plaintiffs, herein the Defendant/Applicant opined that there should be a consolidation of all the above named suits into one to enable them be heard and finally determined as one single suit.

5. He referred to the pleadings which he attached to Supporting Affidavit. These are a quick overview of these cases. The suit **ELC 122 of 2021(O.S)** the Defendant/Applicant together with Hamisis Shee have been sued by Jimmy Safari Kombe and Julius Masha Karisa & Others who are seeking ownership to the suit property Plot No. 286/II/MN claiming title by virtue of land adverse possession. In the suit of **ELC 17 of 2020**, the Defendant/ Applicant together with Athman Swaleh have been instituted by Fitina Runya, Ng'oa Mwachombo, Charo Fikiri and Yusus Mwangira seeking for a relief of permanent injunction against the said Defendants therein in relation to Plot No. 286/II/MN, Plot No. 286/II/MN and 14110/II/MN. In the sub - ordinate court, the suit **CMCC ELC 201 of 2019**, Morris Karisa Mwanjama, Kazungu Katana, Muthoka Makau, Chengo Charo have sued the Defendant herein together with Mohsin Saleh Shermar, Said Bin Saleh Shermar and Omar Saleh Shermar. The Defendants in that case are seeking relief of permanent injunction against the Defendants herein. In the instant case in relation to Plot No. 224/II/MN and Plot No. 289/II/MN. In another Sub - ordinate case - **CMCC ELC 49 of 2020** Kazungu Kiraga, Musa Said, Kahindi Katana and Mohammed Karisa have sued the Peter Muchiri Mugo and Caroline Bahati Gomans. The Plaintiffs therein seeking for a relief of permanent injunction against the Defendants therein in relation to Plot No. MN/II/13068(Original No. MN/II/286).

6. It is for these reasons that the Defendant/Applicant therein prays that this court consolidates the above mentioned cases into one single case and litigate all the related issues together in the interest of justice in order to eventually avoid an abuse of the court process.

III. The Plaintiffs/Respondents case.

7. On 15th November 2021, in response and while opposing the Notice of Motion application by the Defendant/Applicant, the 1st Plaintiffs/Respondents swore a 25 Paragraphed Replying Affidavit by DICKSON MWARINGA RUNYA, the 1st Plaintiff/Applicant herein and three (3) annexures marked as "DM – 1 to 3" annexed hereto. He indicated that he swore it on behalf of and with the authority of the other Plaintiffs/Respondents. He attached a copy of the said authority marked as "DMR – 1". The deponent negated being aware of the existence of these suits - ELC No. 17 of 2020 until the Defendant/Applicant made and filed this application.

8. In reference to the suit known as CMCC No. 201 of 2019, the Deponent admitted as being true that the Plaintiffs/Respondents therein were Safari Charo Ngao, Arnold Kahindi Wanje, Muthoka Makau and Chengo Charo, who claimed to be the registered owners to the suit properties and thus sought for the relief of permanent injunction against the Defendant/Applicant herein. He held that the suit - ELC 17 of 2020 was instituted by way of a Plaintiff.

9. The deponent argued that every litigant had a right to litigate before court and there was no law that prohibited the filing of diverse suits. He held that the claim made by the Defendant/Applicant failed to prove that the different litigants were squatters as he alleged. The deponent insisted that the law did not limit the number of suits one would file. He opined that the parties were free to file as many suits as they deemed fit and only court had the discretion to determine which suit would proceed on trial. The deponent denied that the parties in these suits being the same apart from only the Defendant/Applicant who seemed together with other Defendants seem to appear in all the suits as a common denominator. He held that the Defendant/Applicant Mr. Dickson Mwangira, conceded the suits related to the same property but claimed they did not relate to the same issues in the present case. As such, he argued that the cause of action were not similar. He urged this Honorable Court to disregard the prayers sought in the application for the interest of justice and expeditious disposal of the suit. The suits should not be consolidated.

10. The deponent claimed that the Defendant/Applicant aimed at defeating the injunction orders already granted by this Honorable Court against him in ELC No. 17 of 2020. For this reason, court should not allow him to play victim as he ought to defend the suits against him. The deponent wondered while the Defendant/Applicant sought orders founded in equity, yet he had not approached court with clean hands as clearly he was misleading the court. Therefore, in the long run, he urged court not to allow the application as it failed to meet the threshold for the consolidation of suits.

IV. Submissions

11. On 18th October 2021, while all the parties were in court, the Court directed them that the Notice of Motion application dated 14th October, 2021 be canvassed by way of written submissions. They all obliged. Pursuant to that, 16th November, 2021 upon all parties having fully complied with court's directions, this Honorable Court reserved the 20th January, 2022 as the day to deliver the ruling accordingly.

A. The Defendant/Respondent's Written Submissions.

12. On 26th October 2021, the Learned Counsel for the Defendant/Applicant, the Law firm of Messrs. Mutisia & Associates Advocates filed written submissions in support of the application. The Learned Counsel extensively and elaborately recapped all the contents and averments already set out in the above Supporting Affidavit of the Defendants/ Applicant herein. He submitted that the Plaintiffs/ Respondents had not disputed that all the other suits concerned the subject matter and the same advocates on record for the Plaintiff/Respondents. They submitted, therefore, that they would not be prejudiced by the proposed consolidation. The Learned Counsel drummed up support for the consolidation and stated that it would enable the final determination of the issues. The Counsel reprimanded the Plaintiffs/Respondents for abusing the court process with the filing of the numerous suits. On this point, to buttress its case the Learned Counsel relied on the case of **Nyati Security Guards & Services Limited - Versus - Municipal Council of Mombasa (2004) eKLR.**

13. Finally, the Learned Counsel urged this Honorable Court to allow the prayers sought in the said application with Costs.

B. The Plaintiffs/Respondents Written Submissions.

14. On 15th November 2021, the Learned Counsel for the Plaintiffs/Respondents, the Law firm of Messrs. Paul Kenneth Kinyua Associates Advocates filed their written submissions. The Learned Counsel in its submissions posed one issue to be determined by this court – whether the current suit should be consolidated with the other aforementioned suits or not. In response to that query, he elaborates and correctly so underscored the statutory underpinning for consideration in the consolidation of suits. He held that it was founded under the Provisions of

Section 81 (2) (h) of the Civil Procedure Rules 2010 which recognized the consolidation of suits. Although, and rightfully so, he recognized that the subject of Consolidation of suits was not well expounded in law, but the same had been well established in common law ‘*in the locus classicus*’ case of “**Stumberg & another – Versus - Potgeiter (1970) EA 323**”, where the court held that:-

“..... where there are common questions of law or laws 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”.

In other words the Honorable Court advocated for and founded it desirable to have the matters disposed of at the same time through consolidation. Under the same breath, the Learned Counsels, also cited another very significant authority on this issue of “**Law Society of Kenya – Versus - Centre for Human Rights and Democracy and 12 others (2014)eKLR**, the court held that:-

“the essence of consolidation of suits is to facilitate the efficient and expeditious disposal of disputes and to provide a framework for a fair and impartial dispensation of justice to parties. Consolidation was never meant to confer any undue advantage upon the parties seeking it or occasion any disadvantage to the party opposing it’.

15. Despite all this, the Learned Counsel submitted that the Defendant/Applicant had failed to demonstrate that there were common questions of law and facts in these suits. Besides, the Learned Counsels opined that the Defendant was present in all the suits and invited court to find that the suits touched on the diverse parcels of land with various questions of law and facts that could not be consolidated into a single suit as pleaded by the Defendant/Applicant. The Learned Counsel invited court to find that the suits sought different reliefs. For instance, the present suit sought Land adverse possession similar to the suits ELC 122 of 2021 while ELC 17 OF 2020 and CMCC ELC 49 of 2020 and CMCC ELC 201 of 2019 sought for the relief of permanent injunction. For these reasons, therefore they argued that the application was bad in law and made in bad faith and ought not to be allowed. They contended that the consolidation intended to disadvantage the Plaintiffs/ Respondents who had already obtained injunction orders in the suit ELC No. 17 of 2020. To them, the Defendant/Applicants should not be allowed to defeat the said orders by allowing this application.

V. Analysis & Determination

16. I have read and fully considered all the filed pleadings, the well articulated written submissions, the myriad of authorities cited hereof by the parties herein and the relevant provisions of law with regard to the Notice of Motion application by the Defendant/Applicant dated 14th October, 2021. In order to arrive at an informed, fair and just decision, I have framed the following two (2) salient issues for consideration. These are:-

a) Whether the five (5) suits namely ELC (Mombasa) No. 17 of 2020 (O.S), ELC (Mombasa) No. 122 of 2021 (O.S), ELC (Mombasa) No. 15 of 2021 (OS), CMCC/ELC (Mombasa) No. 49 of 2020 and CMCC/ELC (Mombasa) No. 201 of 2019 should be consolidated or not?

b) Who will bear the costs of the Notice of Motion application?

ISSUE No. (a) Whether the five (5) suits namely ELC (Mombasa) No. 17 of 2020 (O.S), ELC (Mombasa) No. 122 of 2021 (O.S), ELC (Mombasa) No. 15 of 2021 (OS), CMCC/ELC (Mombasa) No. 49 of 2020 and CMCC/ELC (Mombasa) No. 201 of 2019 should be consolidated or not?

17. Before embarking on a detailed analysis of this matter, I wish to provide brief facts regarding it. From the pleadings, what is the main issue in dispute is the claim on the ownership to the suit land all that suit property known as Plot No. 286/II/MN, Plot No. 286/II/MN and 14110/II/MN situated at Kiembeni, within the County of Mombasa between the Plaintiffs/Applicants by virtue of land Adverse Possession on the one hand and the Defendant alleging to be the legal and absolute registered proprietor to the suit land on the other hand. The dispute involves the following parties – Dickson Mwaringa Runya, Hamisis Shee, Jimmy Safari Kombe, Julius Masha Karisa, Athman Swaleh, Fitina Runya, Ng’oa Mwachombo, Charo Fikiri and Yusus Mwangira. As Plaintiffs, the parties have filed over five (5) cases being suits ELC No. 15 of 2021 (OS); ELC No. 17 of 2021, ELC No. 122 of 2021(O.S), CMCC ELC No. 49 of 2020 and CMCC ELC No. 201 of 2021 respectively at different jurisdiction. Clearly the Defendant/Applicant seem to be a common denominator in all of them. The Defendant herein claims to be registered owner while he describes the Plaintiffs as being all squatters in occupation of the land.

It is for these reasons that the Defendant/Applicant filed this application seeking to have all these cases consolidated, to be heard and finally determined under one suit of course, the application has been vehemently opposed by the Plaintiff/ Respondents on various grounds enumerated hereof.

18. Now having spelt out the brief facts of this case, may I turn to the analysis and the issues of the consolidation of these five (5) suits as pleaded per excellence. While on this point, I fully concur with the elaborate submissions by the Learned Counsel for the Plaintiffs/Respondents to the effect that the subject of Consolidation of suits was not well expounded in law, but the same had been well established in common law the same being Section 81(h) of the Civil Procedure Rules, 2010. In the ‘*locus classicus*’ case of “**Stumberg & another – Versus - Potgeiter (1970) EA 323**” and the “**Law Society of Kenya – Versus - Centre for Human Rights and Democracy and 12 others (2014)eKLR**, cited by the Plaintiff/Applicant are elaborate. This Honorable Court fully concurs with the comprehensive and robust legal ratio founded from the cited cases.

19. Accordingly, the Civil Procedure Rules 2010 mandates courts are to consider consolidations of suit. In so doing, courts are to be guided by the following three (3) legal parameters. These are:-

a) Do the same question of law or fact arise in both cases?

b) Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transactions?.

c) Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?.

I will be considering these principles in depth herein below. In the meantime, I have taken judicial notice of the other myriad of Court cases and the underlying guidelines enshrined thereof on the issue of Consolidation of cases.

The Honorable Court has relied on the decision of the case of: “**Nyati Security Guards & Services Ltd – Versus - Municipal Council of Mombasa (2004) eKLR Maraga J** as the then was held 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 efforts and to make the conduct of serial 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:-

a) Some common question of law or facts arises in both or all of them; or

b) The rights or relief claimed in them are in respect of, or arise out of the same transactions or series of transactions, or

c) For some other reason it is desirable to make an order for consolidating them.

The circumstances in which suits can be consolidated are broadly similar to those in which parties may be joined in one action. Accordingly, actions relating to the same subject matter between the same plaintiff and the same Defendant or between the same Plaintiff and different defendants or between different plaintiff and the same Defendants may be consolidated.’

From these cases and precedents, the legal ratio and holdings are that, the essence of consolidation essentially are:-

a). To facilitate the efficient and expeditious disposal of disputes;

b). To provide a framework for a fair and impartial dispensation of justice to the parties.

20. At all costs and as a matter of principles, consolidation of cases should never be meant to confer any undue advantage upon the party nor should it be intended to occasion any disadvantage towards the party that opposes it.

Having made these legal observations, I now proceed to apply them to this case. From the pleadings filed by the Plaintiff/Respondents against the Defendant/Applicant in all these cases and the facts already expounded herein above there is no doubt that the following common issues sprout out:-

a) In all these suits, they involve almost the same parties - particularly the Defendant/Applicant who definitely is to be a common denominator in all them.

b) In all these suits, they involve and/or pertain to the same subject matter being the suit properties and the relief sought is on the ownership through a claim of Land adverse possession one hand, eviction arising from allegation of trespass on the other hand.

c) The Advocates on record representing the parties in all these suits are the same.

21. In other words, it is my humble view that the cause of action all these five (5) cases arise from a set of three parcels of land that have been interchanged among the said cases creating a web and triangle of litigation. The same firm of advocates have filed these five (5) suits on diverse dates concerning the same parcels of land. Admittedly, the causes of action are both a claim of land ownership through Land adverse possession and permanent injunction sought against the same person. Ultimately the court has the discretion in the interest of justice to consolidate the five (5) suits into one for expeditious disposal of the issues. The Defendant/Applicants herein as well as those in ELC 122 of 2021 and ELC 17 of 2020 in my view will not suffer any prejudice if consolidation is ordered since they are all represented by the same firm of advocates in the said matter. On the contrary, it will abundantly save resources such time and costs for both parties. The court will also not make any orders in vain.

22. In the given circumstances, therefore, it would be sound and correct to state that none of these cases have been finally heard, considered and determined. Based on the guidelines provided for by the Civil Procedure Rules 2010, this case in my view qualifies as a proper and typical one to be considered for consolidation. Whether the cause of action as stated out is one that arises from a claim of land title by way of land adverse possession by the Plaintiffs/Respondents and/or an injunction orders to restraining the Defendant/Applicant and on the other hand orders of eviction arising from trespass, illegal occupation and declaration of legal owners of the suit properties by the Defendant/Applicant is immaterial at the moment. Suffice it to say, there is nothing to stop the supposedly registered proprietor of the land in dispute to seek for the eviction orders of a party claiming to have become owner of the suit land through land adverse possession. As far as I am concerned, both eviction and land adverse possession claim can be consolidated at any stage of the proceedings. It will only depend on the direction taken by court.

23. By the end of the day, I reiterate that what the parties should be pre – occupied with at the moment is the main crystal ball – the suit effectively and completely being heard and determination to its logical conclusion on the ownership of the suit land. Luckily, this court is

willing and ready to hear all these cases which are still fresh. At the same time, I wish to strongly emphasise that it will not be an efficient use of the available judicial and administrative resources – money, time and man hours – for this court to be hearing and finally making a determination of these issues differently – in this case and another court to do so differently in other case.

24. An argument has been ably and vehemently advanced by the Learned Counsel for the Plaintiff/Respondents to the effect that the application fails to meet the threshold for consolidation in that some of the cases have been filed by way of Complaint while others were commenced by way of Originating Summons. I totally beg to differ. Legally speaking, I do not think that argument or submissions to be a bar to consolidation at all. In saying so, I hold the reasoning that once directions are taken under the Provisions of Order 37 Rules 16, 17, 18 and 19 of the Civil Procedure Rules 2010 whereby the suit under Originating Summons will be converted into a Complaint and the Replying Affidavit will be Defence and/or Counter Claim. In that event, no party will be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party. Certainly, this is the legal position and this court holds on it. I need not say more.

25. On the issue of the transfer of the suits from the sub - ordinate court, the Defendant/Applicant has relied on the provision of **Section 18(1)(b) of the Civil Procedure Rules**, which provides that:-

“the High Court may at any stage withdraw any suit or other proceedings pending in any court subordinate to it, and thereafter try or dispose of the same”.

The Defendant/Applicant wishes for the court to transfer CMCC ELC No. 49 of 2020 and CMCC ELC No. 201 of 2019 into this court for hearing and determination. The reasons given for seeking the transfer is that, the Plaintiffs/Respondents are forum shopping in different courts yet they are litigating on the same suit property against the same Defendant/Applicant.

26. In the suit CMCC ELC No. 201 of 2019 the suit properties are 224/II/MN and 289/II/MN, while in CMCC ELC 49 of 2020 the suit property is MN/II/13068 (original No. MN/11/286). I do note that in ELC No. 122 of 2021 has the same suit property as CMCC ELC No. 49 of 2020 and ELC No. 17 of 2020. While the suit property herein is the same suit property as that in ELC 17 of 2020 which is 298/II/MN.

Even though the provision of **Section 11 of the Civil Procedure Act**, guides parties on the court in which to institute suits, I fully concur with the Plaintiffs/Applicants herein that in these cases are emerging as an instant of forum shoppers. They have filed suits both in this court and in the sub - ordinate court litigating on the same parcels of land. This honorable Court opines that the onus is on the Defendant seeking the transfer to make a strong case for the same. This issue was discussed in the Ugandan case of:- **“David Kabungu – Versus - Zikarenga & 4 others, Kampala HCCS NO. 36 of 1995** where the court held that:

“Section 18 (1) (b) of the Civil Procedure Act gives the court the general power to transfer all suits and this power may be exercised at any stage of the proceedings even suo moto by the court without application by any party. The burden lies on the applicant to make out a strong case for the transfer. A mere balance of convenience in favour of the proceedings in another court is not sufficient ground though it is a relevant consideration. As a general rule, the court should not interfere unless the expense and difficulties of the trial would be so great as to lead to injustice. What the court has to consider is whether the applicant has made out a case to justify it in closing the doors of the court in which the suit is brought to the Plaintiff and leaving him to seek his remedy in another jurisdiction... it is well established principle of law that the onus is upon the party applying for a case to be transferred from one court to another for due trial to make out a strong case to the satisfaction of the court that the application ought to be granted. There are also authorities that the principal matters to be taken into consideration are, balance of convenience, questions of expense, interest of justice and possibilities of undue hardship, and if the court is left in doubt as to whether under all the circumstances it is proper to order transfer, the application must be refused... Want of jurisdiction of the court from which the transfer is sought is no ground for ordering transfer because where the court from which transfer is sought has no jurisdiction to try the case, transfer would be refused...”

27. Therefore, in my view, the above decision is on all fours with this instant case in terms of the similarity of the suit properties in lower court suits as well as the high court suits are rather too evident. In the ELC No. 122 of 2021 shares the same suit land with ELC No. 17 of 2020 and CMCC ELC No. 49 of 2020, while this present suit shares the same suit land with CMCC ELC No. 201 of 2019. The orders that will be given in the superior courts will affect the orders that will be granted in the lower courts since the suits land are intertwined as analyzed above. The Provisions of Sections 1, 1A, 3 & 3A of the Civil Procedure Act Cap 21, Section 3 and 13 of Environment and Land Court Act, No. 19 of 2011, Section 101 of the Land Registration, of 2012, Section 150 of the Land Act of 2012, grants court with the powers to make orders in the interest of justice and to prevent the abuse of the process of the court. I find that the multiple suits are only meant to defeat justice and delay the conclusion of the issues between the parties. The suits filed in the Chief Magistrates’ court ought to be transferred herein to be heard and determined.

VI. Determination

28. Ultimately, the upshot of this indepth and elaborate analysis and based on the inherent powers vested in me under the above stated provisions, I do proceed to allow the prayers sought from the Notice of Motion application dated 14th October, 2021 by the Defendant/Applicant as the same is meritorious and has sound legal basis.

For avoidance of doubt, I further do proceed to make the following orders/directions:-

a) THAT the five (5) suits namely ELC (Mombasa) No. 17 of 2020 (O.S), ELC (Mombasa) No. 122 of 2021 (O.S), ELC (Mombasa) No. 15 of 2021 (OS), CMCC/ELC (Mombasa) No. 49 of 2020 and CMCC/ELC (Mombasa) No. 201 of 2019 be and hereby ordered to be consolidated for purposes of being heard and determined together.

b) THAT pursuant to the provisions of Section 18 (1) of the Civil Procedure Act, Cap. 21, the two suits being CMCC/ELC (Mombasa) No. 49 of 2020 and CMCC/ELC (Mombasa) No. 201 of 2019 henceforth be hereby transferred to this Honorable

Court for hearing and final determination.

c) **THAT** the hearing of the consolidated case shall be on the basis of the already filed pleadings in the five (5) suits subject to any subsequent amendments.

d) **THAT** the suit ELC No. 17 of 2020 being the earlier one to be filed shall be the lead file for purposes of filing any further pleadings and recording of the proceedings in this matter.

e) **THAT** for expediency sake in disposing this matter the following action points and time frame to be adhered with strictly as follows:-

(i) The matter to be mentioned on 1st March, 2022 for purposes of case management and holding of a pre-trial conference session under the provisions of Order 11 of the Civil Procedure Rules, 2010.

(ii) Taking of directions on the Originating Summons under the Provisions of Order 37 Rules 16, 17, 18 and 19 of the Civil Procedure Rules, 2010.

(iii) Setting down the Consolidated suit for a full trial within the next ninety (90) days from this date hereof.

f) **THAT** costs of the application awarded to the Defendant/Applicant to be borne by the Plaintiffs/Respondents.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT THIS 24TH DAY OF JANUARY, 2022.

HON. JUSTICE L.L. NAIKUNI

JUDGE

(ELC- MOMBASA)

In the presence of:-

M/s. Yumna Hassan – the Court Assistant

No appearance for the Plaintiffs/Respondents

Mr. Mutisya Advocate for the Defendant/ Applicant.