



**Shah & another v Govani; Jaff (Third party) (Environment & Land
Case 1468 of 2013) [2025] KEELC 3320 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3320 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1468 OF 2013**

AK BOR, J

APRIL 7, 2025

BETWEEN

SANJEET K SHAH 1ST PLAINTIFF

MANISHAH SHAH 2ND PLAINTIFF

AND

SADRUDIN TARMOHAMED MULJI GOVANI DEFENDANT

AND

DR KIBWANA ABDALLA ATHMAN JAFF THIRD PARTY

RULING

1. Pursuant to the directions given by the Presiding Judge (PJ) of the Environment and Land Court (ELC) at Milimani on 4/2/2025, this file was forwarded to me for mention on 26/3/2025 at the Embu ELC for directions on the date of judgment following the submissions by the Plaintiff's advocate, Mr. Michuki who told the court that I heard the matter before the matter went on appeal and that the file was sent back after the Court of Appeal upheld my decision. He informed the court that he had already filed his submissions and that I was to write the judgment. Mr. Sabayiga who appeared for the Defendant told the court that he required 30 days to file submissions.
2. Upon perusal of the file for ELC Case No. 1468 of 2013, I noted that it had the file in respect of Milimani ELC Case No. 595 of 2013 inserted in it and that the two files were tied together.
3. On perusing the file for ELC Case No. 1468 of 2013, I noted from the proceedings that the late Justice Louis Onguto (may his soul continue to rest in eternal peace) had on 23/4/2015 issued directions for the consolidation of ELC Case No. 595 of 2013 and ELC Case No. 1468 of 2013 pursuant to the application made in ELC Case No. 1468 of 2013. The court directed that the pilot file would be



- ELC Case No. 595 of 2013 where all proceedings were to be recorded going forward. The orders and directions of Onguto J have never been varied or set aside.
4. The matter came up on 26/3/2025 when only the Defendant's advocate in ELC Case No. 1468 of 2013 attended court. It matter was put off to 2/4/2025 for the other parties in the two suits to be served so that they could attend court and address the court on the way forward in the two suits.
 5. On 2/4/2025, Ms. Zillah Moka together with Ms. Cindy Salim appeared for the Plaintiff in ELC Case No. 595 of 2013 and the Defendant in ELC Case No. 1468 of 2013. Ms. Muthoni Kigotho held brief for Mr. Kevin Michuki for the Plaintiff in ELC Case No. 1468 of 2013 while Ms. Lilian Muiru held brief for Mr. Martin Muchoki for the Defendant in ELC Case No. 595 of 2013 and the 3rd Party in ELC Case No. 1468 of 2013.
 6. Ms. Moka submitted that in light of the orders for the consolidation of the suit which combined the two matters, it would be fair and just that the matters be heard afresh because the pilot file should have been ELC Case No. 595 of 2013 yet the hearing only proceeded in ELC Case No. 1468 of 2013. In her view, the consolidation of the two suits meant that the suits were combined and were supposed to be heard as one matter. She added that if this court were to deliver a judgment in ELC Case No. 1468 of 2013, it would create an absurdity since proceedings went on without any consideration of the order for consolidation and that this scenario would leave ELC Case No. 595 of 2013 in limbo.
 7. Ms. Kigotho submitted that they had just become aware of the existence of ELC Case No. 595 of 2013 and that in light of the orders made on 23/4/2015, both matters were to be heard together. She sought time to peruse the court file in ELC Case No. 595 of 2013 and indicated that she was in favour of the hearing starting afresh so that there could be a conclusive determination of the dispute.
 8. Ms. Muiru informed the court that they had just been appointed and she did not have the full facts of the case. She sought to be served with all the documents so that they could give their position on the matter. The court informed her that the two files were in Embu and it was not possible for her to peruse the files right away. The court directed that it would give a ruling on the way forward on 7/4/2025.
 9. While sitting at the Milimani ELC in March 2019, I only heard the dispute in ELC Case No. 1468 of 2013 on 7/3/2019 but not ELC Case No. 595 of 2013. At the time when I heard ELC Case No. 1468 of 2013, I was oblivious of the directions made by Judge Onguto on 23/4/2015 regarding the consolidation of ELC Case No. 595 of 2013 with ELC Case No. 1468 of 2013 and the order for ELC Case No. 595 of 2013 to be the lead file. It appears from the proceedings that the file for ELC Case No. 595 of 2013 was supposed to be brought up before me on 19/10/2017, 21/3/2018 and 22/5/2018 but for some unknown reasons, it was not brought up. Ultimately, I gave directions on 16/1/2019 for the filing of trial bundles and fixed the suit, that is ELC Case No. 1468 of 2013 for hearing on 7/3/2019.
 10. It is apparent that if this court were to write and deliver the judgment in respect of ELC Case No. 1468 of 2013, it would cause an absurdity as the dispute in ELC Case No. 595 of 2013 would remain unresolved yet the directions given by Onguto J for the consolidation of the two suits meant that the suits were combined and should have been heard as one matter.
 11. In the circumstances, the files in respect of ELC Case No. 595 of 2013 and ELC Case No. 1468 of 2013 are sent back to the PJ, ELC at Milimani, Nairobi, for allocation to an ELC Judge based in Nairobi for hearing and conclusive determination of the consolidated claims.

DELIVERED VIRTUALLY AT EMBU THIS 7TH DAY OF APRIL 2025.

K. BOR

JUDGE



In the presence of: -

Ms. Cindy Salim for the Defendant in ELC Case No. 1468 of 2013 and the Plaintiff in ELC Case No. 595 of 2013

Ms. Muthoni Kigotho holding brief for Mr. Kevin Michuki for the Plaintiff in ELC Case No. 1468 of 2013

Ms. Lilian Muiru holding brief for Mr. Martin Muchoki for the 3rd Party in ELC Case No. 1468 of 2013 and for the Defendant in ELC Case No. 595 of 2013

