



County Government of Bungoma v Kenya National Trading Corporation (Environment & Land Case 120 of 2011) [2025] KEELC 3185 (KLR) (3 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3185 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE 120 OF 2011**

EC CHERONO, J

APRIL 3, 2025

BETWEEN

COUNTY GOVERNMENT OF BUNGOMA PLAINTIFF

AND

KENYA NATIONAL TRADING CORPORATION DEFENDANT

RULING

1. Kenya National Trading Corporation, the defendant/applicant herein filed a Notice of Motion application dated 27/09/2024 under Order 1 Rule 5 and 6, Order 8 Rule 3, Order 11 Rule 3(1), (h) and Order 51 of the *Civil Procedure Rules* 2010, Section 1A, 1B, 3A and 84 (2) (h) of the *Civil Procedure Act* and all enabling provisions of the law seeking the following orders;
 - a. That this honourable court be pleased to review its order of 13/05/2019 of consolidating the suit with Bungoma H.C No. 48 of 2007 Kenya National Trading Corporation vs. Municipal Council of Bungoma and making this suit as the lead file.
 - b. That the honourable court be pleased to review its order of 13/05/2019 and make the suit filed earlier being Bungoma H.C No. 48 of 2007 Kenya National Corporation vs. Municipal Council of Bungoma as the lead file and a new ELC Number Be Allocated.
 - c. That the honourable court be pleased to allow for joinder of Kakis Properties Limited as a defendant in the suit and leave be granted to the plaintiff to further amend the pleadings to that effect.
 - d. That the cost of this application be in the cause.
2. The application is premised on various grounds which have been enumerated at the foot thereof. Furthermore, the application is supported by the affidavit of R.R.Mwetich(Advocate) sworn on 27/09/2024 and in respect of which the deponent has annexed three [3] documents thereto.



3. It is deposed that the defendants instituted proceedings against the Respondent herein in Bungoma H.C No. 48 of 2007 Kenya National Corporation vs. Municipal Council of Bungoma (now County Government of Bungoma) in relation to land parcel no. Bungoma/Township/ 567. That the Respondent in turn filed the instant suit notwithstanding the pendency of the Applicant's suit. That the Applicant filed an application dated 05/09/2018 for consolidation of this suit and the Respondent's suit which application was allowed on 06/09/2018 in which Respondent's suit was treated as the lead file. That they intend to add Kakis Properties Limited as a defendant since their lease was cancelled and re-allocated to them. They deposed that it is easier to have Bungoma H.C No. 48 of 2007 Kenya National Corporation vs. Municipal Council of Bungoma as the lead file and Kakis Properties Limited to be enjoined as the 2nd defendant so as to bring out the real issues in dispute in this matter.
4. The Respondents filed a replying affidavit sworn by Cynthia Masengeli on 27/01/2025 where she begun by giving a history of the dispute which the court will refrain from considering at the moment so as not to prejudice the substance of suit. The Respondent argues that the current application is being made 5 years after the previous orders were issued. Further that enjoining Kakis Properties Limited will only serve to complicate the issues before court and that no cause of action has been demonstrated against them. That allowing the orders sought will only serve to delay justice and prejudice the existing parties as parties will be forced to amend their pleadings which is akin to beginning the trial afresh. That the Applicant has always slacked in prosecuting this matter and allowing the application would be giving in to their delaying tactics. That the Applicant can only apply to add Kakis Properties Limited as an interested party. They urged the court to dismiss the application.
5. When the application came up for directions, the Parties agreed to canvass the application by way of written submissions.
6. The applicant filed submissions dated 20/02/2025 and relied on the case of *Sumbeiywo Primary School & 3 Others vs. Kipsat Aiyabei & Another* (2017)eKLR and *Jasbir Singh Rai & 3 Others vs. Tarlochan Singh Rai & 4 Others* (2014)eKLR.
7. At the time of preparing this ruling, the Respondent had not filed their submissions.
8. I have carefully considered the Notice motion, the grounds on the face thereof, the affidavit evidence and the rival submissions and the issues that commend for determination are;
 - a) Whether the motion is merited; and
 - b) What about costs?
9. Review of court decrees or orders are provided for under Section 80 of the *Civil Procedure Act* and Order 45 rule 1 of the Civil Procedure Rules. Section 80 donates power to the plaintiff to move the court and equally grants jurisdiction to the court while order 45 sets out the rules. Reviews is also pivoted on sections 1A, 1B, 3 and 3A of the *Civil Procedure Act*. Generally, they stipulate the objectives of the act and the overarching duties of courts.
10. The Applicant herein seeks a review of orders issued on 14/05/2019, not 13/05/2019, as they originally claimed. In these orders, the court allowed an application dated 05/09/2018, consolidating this suit with Bungoma H.C No. 48 of 2007, Kenya National Trading Corporation vs. County Government of Bungoma. On 10/07/2019, both parties were present when this suit was designated as the lead case. They also consented to making the plaint in this suit the primary plaint, with Bungoma H.C No. 48 of 2007 serving as the defence and counterclaim.



11. Subsequently on 12/10/2021, the parties recorded a consent before the Deputy Registrar, allowing the application dated 21/06/2021 to enjoin Kakis Properties Limited as a party to the case. However, in a ruling dated 06/12/2021, the court reversed that consent, citing lack of clarity regarding Kakis Properties Limited's role, and granted leave for a fresh application.
12. The applicant then filed a new application on 07/03/2024, resulting in a consent order dated 28/05/2024 that added Kakis Properties Limited as a second defendant. However, on 26/09/2024, the Respondent's counsel informed the court that, upon review, the application and consent were untenable and proposed that Kakis Properties Limited be included as an interested party instead. The parties then consented to setting aside the orders of 28/05/2024. These proceedings led to the current application.
13. The law governing the consolidation of suit is founded under section 80 (h) of the Civil Procedure Act cap 21. In *Law Society of Kenya vs. 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.”
14. Having highlighted the rationale behind consolidation of suits, it is important to note that the allocation of this suit as the lead file over Bungoma H.C No. 48 of 2007 does not place this suit at an advantage point and that either of the suits qualify as lead files. Considering the background of these proceedings as summarized above, it is this courts considered view that to save time and meet the overriding objective of ensuring the just, expeditious, proportionate and affordable resolution of civil dispute as enshrined under the provision sections 1A and 1B of the Civil procedure Act, Cap 21, Sections 3 and 13 of the Environment & Land Act, No 19 of 2011, sections 101 of the Land Registration Act, No 3 of 2012, section 150 of the Land Act, No 6 of 2012 and articles 159 (1) & (2) of the Constitution of Kenya, clear directions need to be issued to facilitate the conclusion of this suit as contemplated in the provisions above.
15. Guided by the above provisions and the principle that justice must not only be done but it must also be seen to have been done, I am inclined to allow the application which I hereby do and make the following disposal orders;
 - a. Bungoma H.C No. 48 of 2007 Kenya National Trading Corporation vs. Municipal Council of Bungoma having been consolidated with this suit is hereby allocated as the lead file.
 - b. The plaint in Bungoma H.C No. 48 of 2007 Kenya National Trading Corporation vs. Municipal Council of Bungoma shall be the plaint while that in this suit shall be treated as the 1st defendants defence and counter claim.
 - c. Bungoma H.C No. 48 of 2007 Kenya National Trading Corporation vs. Municipal Council of Bungoma shall be named the lead file and allocated a case number at the ELC Registry.
 - d. Kenya National Trading Corporation as the plaintiff is granted leave to amend their pleadings within 7 days from the date hereof, enjoining Kakis Properties Limited as the 2nd defendant herein.
 - e. The added defendant is granted 15 days upon service to file and their defence and compliance documents in accordance with the law.



f. This matter is set down for mention for compliance on 19/05/2025.

g. Costs shall be in the cause.

16. Orders accordingly.

DATED AND SIGNED AND DELIVERED AT BUNGOMA THIS 3RD DAY OF APRIL, 2025.

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HON.E.C CHERONO

ELC JUDGE

In the presence of;

M/S Jeruto for the Applicant.

M/S Masengeli for the Respondent

Bett C/A.

