



**Lughanje v Muira & 2 others (Miscellaneous Application 8 of 2022)
[2022] KEELC 13444 (KLR) (11 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13444 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
MISCELLANEOUS APPLICATION 8 OF 2022
MAO ODENY, J
OCTOBER 11, 2022**

BETWEEN

EMMANUEL ZIRO LUGHANJE APPLICANT

AND

RICHARD MUIRA 1ST RESPONDENT

JOSEPH KASENA YERI 2ND RESPONDENT

ALI KOMORA 3RD RESPONDENT

RULING

1. This application is in respect of a notice of motion dated February 16, 2022 seeking the following orders: -
 - a) Spent.
 - b) Spent.
 - c) That upon inter-partes hearing of the instant application this honourable court be pleased to withdraw and transfer Malindi Chief Magistrate's Court Land Case No 2 of 2018 to itself to try and dispose of the same.
 - d) That upon granting prayers 3 above, this honourable court be pleased to consolidate the same with Malindi Environment and Land Court Case No 102 of 2018- Kenya Africa National Union v Emmanuel Ziro Lughanje & 6 others which is pending for hearing, determination and final disposal in this honourable court.
 - e) That upon granting prayer 4 above this honourable court be pleased to proceed to try and dispose of the consolidated land cases.
 - f) That costs of the instant application be in the cause.



2. Counsel agreed to canvas the application vide written submissions which were duly filed. The applicant relied on the grounds on the face of the application and the supporting affidavit where the applicant deponed that the cause of action in the lower court case No 2 of 2018 is similar to that in ELC No 102 of 2018, being a disputed sale agreement dated September 1, 2008 over all that house standing on plot no 4090 Malindi commonly known as KANU office.
3. The applicant further deponed that he is the plaintiff in Case No 2 of 2018 where his claim is that he purchased the suit property from KANU officials, and also a plaintiff in ELC No 102 of 2018 where of the said officials is also a defendant in Case No 2 of 2018.
4. The applicant also stated that KANU disowned the sale agreement in respect of the suit land resulting in the filing ELC No 102 of 2018 where this court presided by the Hon Olola J issued restraining orders against the applicant herein.
5. The 2nd respondent opposed the application and filed a replying affidavit and urged the court to dismiss the application for being fatally defective for failure to involve all the parties in land Case No 2 of 2018 as only the applicant was the common party in the two aforementioned suits.
6. Mr Omwancha counsel for the applicant submitted that consolidation of the suits will enable this court to dispose of the suit expeditiously and efficiently.
7. Counsel relied on order 11 rule 3 of the *Civil Procedure Rules* on consolidation of suits and further cited the cases of *Philip Keipto Chemwolo & another v Augustine Kubende* [1986] eKLR; *Prem Lala Nabata & Anorvs Chandhi Prasad Sikaria* [2007] 2 Supreme Court Cases 551; *Law Society of Kenya v Centre for Human Rights & Democracy & 12 others* [2014] eKLR; and *Nyati Security Guards & Services Limited v Municipal Council of Mombasa* [2000] eKLR.
8. Counsel further submitted that consolidation would advance the overriding objective of the court as envisaged under section 1A and 1B of the *Civil Procedure Act* and relied on the case of *New Kenya Cooperative Creameries Ltd v Hassan Ali Mboga And 34 others* [2017] Eklr.
9. Counsel for the respondent submitted that he was in agreement with the facts, law and submissions as set out by the applicant, however their only issue was that the other parties were not notified of the present application as expected under section 18 of the *Civil Procedure Act*.

Analysis and Determination

10. Section 18 of the *Civil Procedure Act* provides for transfer of suits and states as follows: -
 - 1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage—
 - a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - b) withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter
 - i. try or dispose of the same; or
 - ii. transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or



- iii. retransfer the same for trial or disposal to the court from which it was withdrawn.
 2. Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.
11. The suit sought to be transferred is in respect of the same parties and the same subject matter. The respondent has no objection to the transfer save that other parties have not been notified as provided for under section 18 of the Civil Procedure Act
12. I have also perused the plaint in Civil Case No 2 of 2018, and find that the issues raised are substantially the same as those in ELC 102 of 2018, and indeed revolve around the same property and ownership of the suit property. I also note that the 1st defendant had expressed his intentions to join KANU, the plaintiff in ELC 102 of 2018, as a third party to Civil Case No 2 of 2018 for a just determination to be made.
13. I find that the application has merit and is therefore allowed as prayed. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 11TH DAY OF OCTOBER, 2022.

M.A. ODENY

JUDGE

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Ruling has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

