



**Marete & 2 others v Githere & 2 others (Environment & Land Case E091 of 2024) [2025] KEELC 4137 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4137 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E091 OF 2024**

**MD MWANGI, J**

**MAY 22, 2025**

**BETWEEN**

**PAUL NKANANA MARETE ..... 1<sup>ST</sup> APPLICANT**

**PHELIX KILEU NKANAANA ..... 2<sup>ND</sup> APPLICANT**

**KEPHA KOILEKEN PAUL ..... 3<sup>RD</sup> APPLICANT**

**AND**

**NANCY NJOKI GITHERE ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH MOCHU GITHERE, ANTHONY SAIYALEI SALAON PERTET AND  
STANLEY NGETHE KINYANJUI (LEGAL REPRESENTATIVES OF THE  
ESTATE OF JOHN RICHARD GITHERE) ..... 2<sup>ND</sup> RESPONDENT**

**SALLY GACHANJO GITHERE ..... 3<sup>RD</sup> RESPONDENT**

*(On whether to consolidate this matter with another  
touching on the same subject matter and by the same parties)*

**RULING**

**Background**

1. On 13<sup>th</sup> March 2025, Mr. Nyachiro, advocate for the Applicants in this matter informed the court about the existence of ELCLCMisc/E011/2024 which was in relation to the same subject matter as this suit. He opined that the two matters ought to be consolidated and heard together since the issues as well as the parties in both matters were the same.
2. Mr. Oyoo, advocate for the Estate of Githere, who are the Respondents in this case was of a different view and stated that he saw no reason why the two matters should be handled together.



### Issues for determination

3. The main purpose of consideration is to save on costs, time and effort and to make the conduct of several actions more convenient by treating them as one action as stated by the Supreme Court of India in the case of Prem Lala Nahata & another –vs- Chandi Prasad Sikaria (2007) 2 Supreme Court cases 551. The court observed that,

“The jurisdiction to consolidate arises where there are two or more matters or causes pending in court and it appears to court that some common questions of law or fact arise in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transaction or series of transactions; or that for some other reasons it is desirable to make an order consolidating the suits.”
4. The Supreme Court of Kenya in Law Society of Kenya –vs- Center for Human Rights and Democracy & 12 others (2014) eKLR, expressed a similar view as that of the Supreme Court of India by stating that;

“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes and to provide a fair and impartial dispensation of justice to the parties. Consolidation was never intended to give any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”
5. The issue then for this court to determine is whether there are some common questions of law or fact arising in both matters or the rights or reliefs claimed in them are in respect of the same transaction to justify consolidation of the two matters.

### Analysis and determination

6. This suit was commenced by way of an Originating Summons (OS) dated 19<sup>th</sup> September 2024. The Applicants seek a determination that they are entitled to, by way of adverse possession and or prescriptive rights to the properties registered as L.R. Numbers KJD/Elangata/WUAS 3223, 3224 and 3225 previously registered as L.R. No. Kjd/Elangata-Wuas/5, situate at Isinya Omelook Village, Oltepesi Location in Kajiado County (hereinafter referred to as ‘the suit property’).
7. The Applicants allege to have been in possession and occupation of the suit property prior to 1978 to date. They have since lived in the land and continue to live there as the only home they have known. They allege that they have had peaceful occupation and have extensively developed the suit property. They too assert that they have buried their kith and kin in the suit property.
8. The Applicants aver that it was only in the year 2023 when the Respondents issued them with notices threatening to evict them from the suit property. The Respondents are named as Nancy Njoki Githere and Joseph Mochu Githere, Anthony Saiyalei Salaon Pertet and Stanley Ngethe Kinyanjui (sued as the legal representatives of John Richard Githere) and Stanley Gachanjo Githere.
9. The other matter, ELCLCMISC/E011/2024, was commenced by way of a notice of motion dated 12<sup>th</sup> March 2024. The main prayer in the motion is an order of eviction against the Respondent, Paul Nkanana Marete from the parcel of land known as Kjd/Elangata –Wuas/3224 and for vacant possession of the suit property. The Applicant is the estate of John Richard Githere.



10. The Applicant explains that the suit property is a portion of a larger parcel of land known as Kjd/Elangata-Wuas/5. The beneficiaries of the estate proceeded to subdivide the larger portion into 3 portions being Kjd/Elangata-Wuas/3223, 3224 and 3225.
11. It is obvious that the two matters are in respect of the same subject matter, and essentially involve the same parties.
12. For convenience, avoiding multiplicity of suits, expedition and in order to serve the overriding objective of the court, it is appropriate that the two matters be consolidated and heard as one.
13. The ELCLCMISC/E011 of 2024 is an application. That makes it impossible to collapse this suit into an application. For that reason, the lead file will be this file, being ELCLOS/E091/2024. The Applicants herein will be the Plaintiffs whereas the Respondents will be the Defendants.
14. To allow the Respondents pursue their claim for the land in the consolidated suit, I direct that the Originating Summons be converted into a plaint to allow the Respondents (now Defendants) to lodge a counter-claim.
15. The Plaintiffs shall file a plaint and serve it upon the Defendants' advocates in the next 21 days. The Defendants shall file their statement of defence and counter-claim in 21 days after service. The matter shall thereafter be listed for case management conference and for appropriate directions.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY 2025.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Nyachiro for Plaintiffs

Mr. Wasonga h/b for Mr. Oyoo for the Respondents

Court Assistant: Mpoye

