



**Registered Trustees of Telposta Pension Scheme v Chief Land Registrar & 9 others (Environment and Land Case Civil Suit E008, E009, E010 & E011 of 2022 (Consolidated)) [2025] KEELC 5213 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5213 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE CIVIL SUIT  
E008, E009, E010 & E011 OF 2022 (CONSOLIDATED)**

**SO OKONG'O, J  
JULY 10, 2025**

**BETWEEN**

**THE REGISTERED TRUSTEES OF TELPOSTA PENSION  
SCHEME ..... PLAINTIFF**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT  
ARVIND RAGHANJI JETHWA ..... 2<sup>ND</sup> DEFENDANT  
NIRMALA ARVIND JETHWA ..... 3<sup>RD</sup> DEFENDANT  
INDRAWAN ASHABAI PATEL ..... 4<sup>TH</sup> DEFENDANT  
BHAVESH RAMESHCHANDRA RAVAL ..... 5<sup>TH</sup> DEFENDANT  
RAVAL ARTI BHAVESH ..... 6<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT AND LAND CASE CIVIL SUIT E009 OF 2022**

**BETWEEN**

**THE REGISTERED TRUSTEES OF TELPOSTA PENSION  
SCHEME ..... PLAINTIFF**

**AND**

**THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT  
ZACHARIA KARANJA KINYANJUI ..... 2<sup>ND</sup> DEFENDANT**



JOSEPH MBUGUA MAINA ..... 3<sup>RD</sup> DEFENDANT  
NISHI PANDIT ..... 4<sup>TH</sup> DEFENDANT

AS CONSOLIDATED WITH  
ENVIRONMENT AND LAND CASE CIVIL SUIT E010 OF 2022

BETWEEN

THE REGISTERED TRUSTEES OF TELPOSTA PENSION  
SCHEME ..... PLAINTIFF

AND

THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT  
ARVIND RAGHANJI JETHWA ..... 2<sup>ND</sup> DEFENDANT  
NIRMALA ARVIND JETHWA ..... 3<sup>RD</sup> DEFENDANT  
INDRAWAN ASHABAI PATEL ..... 4<sup>TH</sup> DEFENDANT  
BHAVESH RAMESHCHANDRA RAVAL ..... 5<sup>TH</sup> DEFENDANT

AS CONSOLIDATED WITH  
ENVIRONMENT AND LAND CASE CIVIL SUIT E011 OF 2022

BETWEEN

THE REGISTERED TRUSTEES OF TELPOSTA PENSION  
SCHEME ..... PLAINTIFF

AND

THE CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> DEFENDANT  
FREDRICK MESHACK OPONDO ..... 2<sup>ND</sup> DEFENDANT

RULING

1. What is before the court is the Notice of Motion application dated 20<sup>th</sup> September 2024 brought by The Registered Trustees of Telposta Pension Scheme, the common Plaintiff in ELC No. E008 of 2022, ELC No. E009 of 2022, ELC No. E010 of 2022 and ELC No. E011 of 2022. In the application, the common Plaintiff (hereinafter referred to only as “the Plaintiff”) has sought the following orders;
  1. That the court be pleased to consolidate ELC No. E008 of 2022, ELC No. E009 of 2022, ELC No. E010 of 2022 and ELC No. E011 of 2022 (hereinafter together referred to as “the suits”) for hearing and determination together.
  2. That the court be pleased to make such other or further orders as it may deem fit, necessary and expedient in the interest of justice.
  3. That the costs of the application be provided for.



2. The application was brought on the grounds set out on the face thereof and on the affidavit of the Plaintiff's advocate, Lilian Opondo, sworn on 20<sup>th</sup> September 2024. The Plaintiff averred that in ELC No. E008 of 2022 and ELC No. E010 of 2022, the Plaintiff and the Defendants are the same save for one Defendant and the subject matter is the same namely, Title No. Kisumu Municipality/Block 12/37 which has been subdivided into among others, Title No. Kisumu Municipality/Block 12/435 and Title No. Kisumu Municipality/Block 12/436. The Plaintiff averred that in ELC No. E009 of 2022 and ELC No. E011 of 2022, the Plaintiff is the same while the Defendants save for one Defendant, are different. The Plaintiff averred that the subject matter of the two suits, which were, Title No. Kisumu Municipality/Block 12/153 and Title No. Kisumu Municipality/Block 12/145 were also different. The Plaintiff averred that although in the two suits, the properties in dispute were different, the said properties were as a result of the same Survey Plan F/R No. 109/88. The Plaintiff averred that in the four suits, the Plaintiff blamed the common 1<sup>st</sup> Defendant for the illegal creation of the suit properties, Title No. Kisumu Municipality/Block 12/435, Title No. Kisumu Municipality/Block 12/436, Title No. Kisumu Municipality/Block 12/153 and Title No. Kisumu Municipality/Block 12/145 from the land owned by the Plaintiff. The Plaintiff averred that the issues arising for determination in the suits are similar. The Plaintiff averred that the consolidation of the suits would help prevent inconsistencies in the court's determination of the ownership of the suit properties and would also save judicial time and resources.
3. The application was opposed by the 4<sup>th</sup> Defendant in ELC No. E009 of 2022 and the 2<sup>nd</sup> Defendant in ELC No. E011 of 2022. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 opposed the application through grounds of opposition dated 31<sup>st</sup> December 2024. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 contended that from the material placed before the court by the Plaintiff, it was only ELC No. E008 of 2022 and ELC No. E010 of 2022 which could be heard together as the subject matter thereof arose from the same Survey Plan. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 contended that the parcels of land the subject of ELC No. E009 of 2022 and ELC No. E011 of 2022 were from a different survey plan, and as such, the suits could not be heard together with ELC No. E008 of 2022 and ELC No. E010 of 2022.
4. The 2<sup>nd</sup> Defendant in ELC No. E011 of 2022 opposed the application through a replying affidavit of Aggrey Shitsama Shikanga, sworn on 28<sup>th</sup> February 2025. The 2<sup>nd</sup> Defendant in ELC No. E011 of 2022 averred that ELC No. E011 of 2022 was not a proper case to consolidate with ELC No. E008 of 2022, ELC No. E009 of 2022 and ELC No. E010 of 2022. The 2<sup>nd</sup> Defendant in ELC No. E011 of 2022 averred that the properties, the subject matter of the suits, were different, and the issues in each of the suits were distinct and peculiar to each case. The 2<sup>nd</sup> Defendant in ELC No. E011 of 2022 averred that the witnesses to be called by the parties were unlikely to be common. The 2<sup>nd</sup> Defendant in ELC No. E011 of 2022 averred that the consolidation of the suits would cause confusion and would make cross-examination of witnesses complex, tedious and time wasting. The 2<sup>nd</sup> Defendant in ELC No. E011 of 2022 averred that the consolidation of the suits would also increase costs for the parties and that the same would be disadvantageous to the 2<sup>nd</sup> Defendant in ELC No. E011 of 2022.

### **The Submissions**

5. The Plaintiff's application was heard by way of written submissions. The Plaintiff filed submissions dated 31<sup>st</sup> January 2025. The Plaintiff submitted that the only issue arising for determination was whether this suit should be consolidated with ELC No. No. E009 of 2022, ELC No. No. E010 of



2022, and ELC No. No. E011 of 2022. The Plaintiff cited Black's Law Dictionary, 7<sup>th</sup> ed., which defines consolidation as:

“...to combine, through court order, two or more actions involving the same parties or issues into a single action ending in a single judgment, or sometimes, separate judgments...”

6. The Plaintiff submitted that the rationale for the consolidation of suits was discussed in *Law Society of Kenya v. Centre for Human Rights & Democracy & 12 others* [2014] eKLR, where the court stated 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. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”

7. On the same point, the Plaintiff cited *Abdalla v. Hassan & 15 Others* (Civil Suit No.210 of 2021) [2022] KEELC 13582 (KLR) (5 October 2022) (Ruling), where the court stated that:

“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 and
- (b) to provide a framework for a fair and impartial dispensation of justice to the parties. At all costs and as a matter of principle, 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.”

The Plaintiff also relied on *Kamau v. Njoroge* (Civil Appeal 6 of 2023) [2024] KEHC 1953 (KLR) (29 February 2024) (Ruling), in which the court cited with approval the case of *Prem Lala Nahata & Another v. Chandi Prasad Sikaria* [2007] 2 Supreme Court Cases 551, where the Indian Supreme Court stated that:

“It cannot be disputed that the Court has the power to consolidate suits in appropriate cases... The main purposes of consolidation are to save costs, time, and effort, and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises when there are two or more matters or causes pending in court, and it appears to the court that 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 of, or arise out of, the same transaction or series of transactions. Alternatively, consolidation may be ordered for some other reason if it is deemed desirable.”



8. In *Kamau v. Njoroge* (supra), the court stated as follows:

“It is therefore clear that the purpose of consolidation of suits is to save costs, time, expedite trials, eliminate duplicative trials involving the same parties, issues, and evidence, and to promote judicial economy. This process enhances the efficient and proper administration of justice and ensures the expeditious disposal of matters, so long as it is not prejudicial to any of the parties involved.”

9. The Plaintiff submitted that ELC No. E008 of 2022 was suitable for consolidation with ELC No. E009 of 2022, ELC No. E010 of 2022, and ELC No. E011 of 2022. The Plaintiff submitted that the central legal issue the court would address in all the suits was whether the Plaintiff was the rightful owner of the properties known as Title No. Kisumu/Municipality Block 12/37 (later subdivided into Kisumu/Municipality Block 12/435 and Kisumu/Municipality Block 12/436), Kisumu/Municipality Block 12/153, and Kisumu/Municipality Block 12/145.
10. The Plaintiff agreed with the 4<sup>th</sup> Defendant in ELC Case No. E009 of 2022 that the properties the subject of ELC No. E008 of 2022 and ELC No. E010 of 2020 arise from the same survey map F/R No. 64/61, while the properties the subject of ELC No. E009 of 2022 and ELC Case No. E010 of 2011 arise from a separate survey map F/R No. 109/88. The Plaintiff submitted that the different survey maps did not refute the fact that the common issue in all the suits was the ownership of the disputed properties. The Plaintiff submitted that consolidating the suits would allow the court to address the issue of ownership more efficiently and thereby reduce the risk of conflicting judgments.
11. The Plaintiff submitted further that the reliefs sought by the Plaintiff arose from the same or similar factual background, namely Legal Notice No. 133 of 11<sup>th</sup> March 1988, Legal Notice No. 154 of 5<sup>th</sup> November 1999, and Legal Notice No. 131 of September 2001, which conferred ownership of the suit properties upon the Plaintiff while the Defendants' claims of ownership over the said properties were based on different chains of transactions.
12. The Plaintiff submitted that consolidating the suits will ensure the efficient use of judicial time and resources, as the testimony of its witnesses would be presented once and applied to all the cases, while the Defendants' evidence would be produced and considered individually.
13. The Plaintiff submitted that it was not correct as claimed by the 4<sup>th</sup> Defendant in ELC No. E009 of 2022 that the consolidation of the suits would cause embarrassment to the parties, particularly herself, since the properties are situated in different locations, have different survey plans, and different circumstances exist regarding how the properties were acquired. The Plaintiff submitted that the consolidation would not limit the Defendants' right to present their evidence or arguments, as each Defendant would still have the opportunity to submit and challenge the Plaintiff's evidence, and the court would consider the unique facts and circumstances of each case. The Plaintiff submitted that the consolidation of the suits would expedite the hearing and determination of the suits.
14. The Plaintiff submitted that it had demonstrated that consolidating the four suits would prevent conflicting judgments and ensure the fair and efficient resolution of all claims in a single hearing. The Plaintiff urged the court to allow the application.
15. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 filed submissions dated 18<sup>th</sup> March 2025. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that from the survey report attached to the affidavit of Lilian Opondo relating to ELC No. E008 of 2022 and ELC No. E010 of 2022, Title No. Kisumu Municipality/ Block 12/ 37 (original title) was subdivided into Title No. Kisumu Municipality/ Block 12/ 435 and Title No. Kisumu Municipality/ Block 12/ 436, both situated along Nehru Road,



- Milimani Estate, Kisumu. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 averred that the survey plan giving rise to these two parcels of land was the same, being F/R No. 64/61, a product of a survey undertaken on 20<sup>th</sup> April 1949 by a Government Surveyor.
16. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that, on the other hand, according to the two survey reports attached to the affidavit of Lilian Opondo relating to ELC No. E009 of 2022 and ELC No. E011 of 2022, on the two properties, namely Title No. Kisumu Municipality Block 12/ 153 and Title No. Kisumu Municipality Block 12/ 145, showed that the properties were situated along the same road, Awuor Otieno Road in Milimani Estate, Kisumu, and originated from the same survey Plan, F/R No. 109/88 prepared following a survey conducted on 29<sup>th</sup> July 1967 by a Government Surveyor.
  17. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that the three survey reports and the accompanying survey plans disclosed that the properties the subject of the twin cases, namely, ELC No. E008 of 2022 and ELC No. E010 of 2022, on one hand, and ELC No. E009 of 2022 and ELC No. E011 of 2022 on the other hand, arose from different survey plans, were in different locations within Milimani Estate, Kisumu, with the parcels of land the subject of the first two cases being situated along Nehru Road while the parcels of land the subject of the other two cases being situated along Awuor Otieno Road also within Milimani Estate in Kisumu. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that in addition, the respective survey plans were undertaken by different surveyors, at different times, and their records set at different times in different records, with one having been undertaken in 1949 and recorded in 1952 for the first two cases, and the other set of two cases having it undertaken in 1967 and recorded in 1969. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that the four cases concerned different transactions.
  18. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that, while the two separate twin cases could be disposed of together, it would not be appropriate to consolidate all four of them, because the circumstances relating to each of the survey plans, and the persons who undertook the same, were different. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that having the four suits determined together would bring confusion to the issues which each of the Defendants would wish to present, as disclosed in their respective defences. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that an indiscriminate consolidation of the four suits would interfere and prejudice the 4<sup>th</sup> Defendant in ELC No. E009 of 2022's constitutional right to defend herself fairly and appropriately, and based on the identified separate series of transactions giving rise to the survey plans, which constitute the cause of action in each of the set of two cases. The 4<sup>th</sup> Defendant in ELC No. E009 of 2022 submitted that the suits should not be consolidated, save as proposed by the 4<sup>th</sup> Defendant in ELC No. E009 of 2022.
  19. Although the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in ELC No. E010 of 2022 neither filed grounds of opposition nor a replying affidavit; they filed submissions in opposition to further consolidation of ELC No. E010 of 2022 with ELC No. E009 of 2022 and ELC No. E011 of 2022. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in ELC No. E010 of 2022 submitted that whereas ELC No. E008 of 2022 and E010 of 2022 concerned parcels of land with the same origin, and most of the parties involved were the same, ELC No. E009 of 2022 and ELC No. E011 of 2022 concerned parcels of land with no relationship to the properties the subject of ELC No. E008 of 2022 and E010 of 2022, and most of the parties in the two cases were different. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in ELC No. E010 of 2022 submitted that further consolidation of ELC No. E010 of 2022 with ELC No. E009 of 2022 and ELC No. E011 of 2022 would complicate matters, and the court would have difficulty appreciating the evidence from the various parties.



## Analysis and Determination

20. I have considered the application and the affidavits and grounds of opposition filed in opposition thereto. I have also considered the submissions by the advocates for the parties. Order 11 Rule 3 (1)(h) and (i) of the Civil Procedure Rules provides as follows:

- “3. With a view to furthering expeditious disposal of cases and case management
- (1) the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall—
- (a) ...;
  - (b) ...;
  - (c) ...;
  - (d) ...;
  - (e) ...;
  - (f) ...;
  - (g) ...;
  - (h) consider consolidation of suits;
  - (i) identify a test suit and order stay of other suits.”

21. In *Law Society of Kenya v. Center for Human Rights and Democracy and 12 Others*(supra) cited by the Plaintiff, the Supreme Court observed 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 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.”

22. Applying the principles enunciated in this case and the other cases cited by the parties that I have referred to earlier in the ruling, the following is my view on the matter. The burden was upon the Plaintiff to establish that the consolidation of this suit with ELC No. E009 of 2022, ELC No. E010 of 2022 and ELC No. E011 of 2022 would facilitate the efficient and expeditious disposal of the suits, and no party would be put at a disadvantage by the consolidation. In discharging this burden, the Plaintiff had to satisfy the court that the suits raise common questions of law or fact, or that the rights or relief claimed in the suits are in respect of, or arise out of, the same transaction or series of transactions. It is common ground that ELC No. E008 of 2022 and ELC No. E010 of 2022 met the criteria for consolidation and were consolidated on 4<sup>th</sup> March 2024 through a ruling by this court of the same date. The question to be determined by the court is whether the consolidated suits should be further consolidated with ELC No. E009 of 2022 and ELC No. E011 of 2022. I agree with the respondents that the intended consolidation of ELC No. E008 of 2022 and ELC No. E010 of 2022 with ELC No. E009 of 2022 and ELC No. E011 of 2022 has not met the criteria for the consolidation of suits. Whereas the properties the subject of ELC No. E008 of 2022 and ELC No. E010 of 2022 share common origin and the parties involved are largely the same, the properties the subject of ELC No. E009 of 2022 and ELC No. E011 of 2022 have no connection with the properties the subject of ELC No. E008 of 2022 and ELC No. E010 of 2022 and apart from the common Plaintiff and the 1<sup>st</sup>



Defendant, the other parties to the suits are different. While I agree with the Plaintiff that common questions of law would arise in the four suits, the transactions the subject of the two sets of suits cannot be said to have arisen from the same transaction or series of transactions. The facts are therefore not common, and the parties, including the Plaintiff, may have to call different witnesses to prove their cases in the various suits. I am not persuaded that the consolidation of the four suits would facilitate the expeditious disposal of the cases. I agree with the respondents that ELC No. E008 of 2022 and ELC No. E010 of 2022 share many similarities and commonalities and can be heard together, the same with ELC No. E009 of 2022 and ELC No. E011 of 2022, which can also be heard together. However, the consolidation of the four suits would not expedite the trial. To the contrary, such consolidation would make the trial unnecessarily complex.

### **Conclusion**

23. The upshot of the foregoing is that the Notice of Motion dated 20<sup>th</sup> September 2024 is allowed in part on the following terms;
1. ELC No. E008 and ELC No. E010 of 2022 shall remain consolidated as ordered on 4<sup>th</sup> March 2024.
  2. ELC No. E009 of 2022 and ELC No. E011 of 2022 are consolidated for hearing and determination together.
  3. The costs of the application shall be in the cause.

**DELIVERED AND SIGNED AT KISUMU ON THIS 10<sup>TH</sup> DAY OF JULY 2025**

**S. OKONG'O**

**JUDGE**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiff

N/A of the 4<sup>th</sup> Defendant in ELC No. E009 of 2022.

Ms. Okaka h/b for Mr. Yogo for the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants in ELC No. E010 of 2022

Mr. Biketi h/b for Mr. Mamadi for the 2<sup>nd</sup> Defendant in ELC No. E011 of 2022

Ms. J.Omondi-Court Assistant

