



**Registered Trustees of Telposta Pension Scheme v Chief Land Registrar & 6 others (Environment & Land Case E008 & E010 of 2022 (Consolidated)) [2024] KEELC 1242 (KLR) (4 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1242 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE E008 & E010 OF 2022 (CONSOLIDATED)  
SO OKONG'O, J  
MARCH 4, 2024**

**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  
BHAVESH RAMESHCHANDRA RAVEL ..... 4<sup>TH</sup> DEFENDANT  
INDRAVAN ASHABHAI PATEL ..... 5<sup>TH</sup> DEFENDANT  
RAVAL ARTI BHAVESH ..... 6<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH  
ENVIRONMENT & LAND CASE 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**



**BHAVESH RAMESHCHANDRA RAVEL ..... 4<sup>TH</sup> DEFENDANT**  
**INDRAVAN ASHABHAI PATEL ..... 5<sup>TH</sup> DEFENDANT**  
**BANK OF BARODA KENYA LIMITED ..... 6<sup>TH</sup> DEFENDANT**

## **RULING**

1. The two suits before the court namely, ELC No. E008 of 2022 and ELC No. E010 of 2022 are related in that they concern the same subject matter and to a large extent the same parties. The property which is in dispute in the two suits is Title No. Kisumu/ Municipality Block 12/37 (hereinafter referred to only as “the suit property”). In ELC No. E008 of 2022, the Plaintiff has claimed that it is the legal owner of the suit property by virtue of the vesting orders that were issued in its favour in 1988, 1999 and 2001 and that the property was not available for allocation to any other person. The Plaintiff has averred that the 1<sup>st</sup> Defendant illegally issued a title to the 2<sup>nd</sup> Defendant over the suit property. The Plaintiff has averred that the 2<sup>nd</sup> Defendant transferred the suit property to the 3<sup>rd</sup> Defendant who did not acquire a valid title in the property given the defect in the 2<sup>nd</sup> Defendant’s title. The Plaintiff has averred that the 3<sup>rd</sup> Defendant transferred the suit property to the 4<sup>th</sup> and 5<sup>th</sup> Defendants who subdivided the same and transferred portions thereof to themselves. The portion of the suit property in dispute in ELC No. E008 of 2022 is Title No. Kisumu/Municipality Block 12/436. The Plaintiff has sought among other reliefs, the cancellation of the titles issued to the Defendants in respect of the suit property and Plot No. 436.
2. In ELC No. E010 of 2022, the Plaintiff has also claimed that it is the legal owner of the suit property by virtue of the said vesting orders of 1988, 1999 and 2001 and that the property was not available for allocation to any other person. The Plaintiff has averred that the 1<sup>st</sup> Defendant illegally issued a title to the 2<sup>nd</sup> Defendant over the suit property and that the 2<sup>nd</sup> Defendant transferred the property to the 3<sup>rd</sup> Defendant. The Plaintiff has averred that the 3<sup>rd</sup> Defendant transferred the suit property to 4<sup>th</sup> and 5<sup>th</sup> Defendants who subdivided the same and registered portions thereof in their names. The portion of the suit property in dispute in ELC No. E010 of 2022 is Title No. Kisumu/Municipality Block 12/435 (hereinafter referred to only as “Plot No. 435”). The Plaintiff has sought among other reliefs, the cancellation of the titles issued to the Defendants in respect of the suit property and Plot No. 435.
3. The Chief Land Registrar was joined in the two suits in his official capacity over his role in the issuing and registration of the titles in dispute. The 6<sup>th</sup> Defendant in ELC No. E010 of 2022 was struck out of that suit on 27<sup>th</sup> April 2023. The 3<sup>rd</sup> to 6<sup>th</sup> Defendants in ELC No. E008 of 2022 and 3<sup>rd</sup> to 5<sup>th</sup> Defendants in ELC No. E010 of 2022 who are represented by the same firm of advocates have averred that the suit property was allocated to the 2<sup>nd</sup> Defendant in both cases through a letter of allotment dated 2<sup>nd</sup> May 1995 and the necessary payments were made for the allotment before a lease in respect thereof was issued and registered in his name. The 3<sup>rd</sup> to 6<sup>th</sup> Defendants in ELC No. E008 of 2022 and 3<sup>rd</sup> to 5<sup>th</sup> Defendants in ELC No. E010 of 2022 have averred that the 4<sup>th</sup> and 5<sup>th</sup> Defendants in both suits jointly purchased the suit property from the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants for valuable consideration after confirming from the Ministry of Lands that there was no defect on the title. The 3<sup>rd</sup> to 6<sup>th</sup> Defendants in ELC No. E008 of 2022 and 3<sup>rd</sup> to 5<sup>th</sup> Defendants in ELC No. E010 of 2022 averred that the suit property was subdivided into Title No. Kisumu Municipality Block 12/435 (Plot No. 435) and Title No. Kisumu /Municipality Block 127/436 (Plot No. 436) which were registered in the names of the 5<sup>th</sup> and 4<sup>th</sup> Defendants in both suits respectively.



4. What is now before the court is the Notice of Motion application dated 16<sup>th</sup> May 2023 brought by the 2<sup>nd</sup> to 5<sup>th</sup> Defendants in ELC No. E008 of 2022 (hereinafter referred to only as “the Applicants”). In the application, the Applicants have sought the following orders;
  1. That this Honourable Court be pleased to consolidate ELC No. E008 of 2022 with ELC No. E010 OF 2022 for the purposes of hearing and disposal.
  2. That this Honorable Court do strike out the suit against the 2<sup>nd</sup> Defendant, Arvind Raghanji Jethwa as he is deceased and no case can legally be brought against a deceased person hence the suit is an abuse of process of court and scandalous.
  3. That the court does give directions as to the manner of hearing the consolidated cases.
  4. That the costs of this application be in the cause.
5. The application has been brought on the grounds set out on the face thereof and on the affidavit of Indravan Ashbhai Patel sworn on 16<sup>th</sup> May 2023. The Applicants have averred that ELC No. E008 of 2022 and ELC No. E010 of 2022 involve fairly the same parties and the same subject matter being Title No. Kisumu/Municipality Block 12/ 37 (the suit property) which was subdivided to give rise to Title No. Kisumu/Municipality Block 12/435 (Plot No. 435) and Title No. Kisumu/Municipality Block12/436 (Title No. 436). The Applicants have averred that the issues in both suits are the same and it would be proper utilization of judicial time and resources to have the suits consolidated and heard together. The Applicants have averred further that the 2<sup>nd</sup> Defendant died on 13th November 2011 long before the two suits were filed hence the filing of these suits against the deceased 2<sup>nd</sup> Defendant was an abuse of the process of court. The Applicants have averred that the suits against the 2<sup>nd</sup> Defendant should be struck out with costs for being an abuse of the court process and the suits against the other Defendants should be consolidated and directions given as to the manner and mode of hearing of the same.
6. The application was served on all the parties and the same was not opposed. When the application came up for hearing on 23<sup>rd</sup> January 2024 the Applicants’ advocate urged the court to allow the application as prayed. In *Nyati Security Guards & Services Ltd. v Municipal Council of Mombasa* [2000] eKLR the court stated as follows:

“The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:

  - a) Some common question of law or fact arises in both or all of them;
  - b) The rights or reliefs claimed in them are in respect of or arise out of the same transaction;
  - c) For some other reason, it is desirable to make an order for consolidating them.”
7. In *Law Society of Kenya v Center for Human Rights and Democracy and 12 Others* [2014] eKLR, the Supreme Court stated as follows:

“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.”



8. In *Stumberg and another v Potgeiter* 1970 E.A. 323, the Court stated as follows:

“where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered.”

9. In Allahabad High Court of India case of *P.P. Gupta v East Asiatic Co.*, Air 1960 All 184, the Court stated as follows:

“The very nature of the principle of consolidation implies that there is a similarity or identity of the matter in issue in different suits between the same parties which should be decided by the court once and for all. The object of consolidation is to avoid multiplicity of litigation between the same parties whenever the matter in issue is substantially and directly the same.”

10. I have perused the pleadings in the two suits. I am satisfied that; they involve the same questions of law or fact and that the reliefs sought arise out of the same transaction. I agree with the Applicants that it would be convenient to hear and determine the two suits together since the parties are likely to call the same witnesses in the two cases. The consolidation of the two cases would save the court’s time and costs to the parties.

11. The Certificate of Death annexed to the affidavit in support of the application shows that the 2<sup>nd</sup> Defendant in the two suits, Arvind Raghavji Madhavji Jethwa died on 13<sup>th</sup> November 2011. The suits against him having been brought against a deceased person are incompetent and a nullity.

### **Conclusion**

12. For the foregoing reasons, I hereby make the following orders in the matter;

1. ELC No. E008 of 2022 and ELC No. E010 of 2022 are consolidated.
2. ELC No. E008 of 2022 shall be the lead file for the purposes of the proceedings.
3. The name of Arvind Raghavji Jethwa is struck out of ELC No. E008 of 2022 and ELC No. E010 of 2022 in which he was sued as 2<sup>nd</sup> Defendant with no order as to costs.
4. The costs of the application shall be in the cause.

**DELIVERED, DATED AND SIGNED AT KISUMU ON THIS 4TH DAY OF MARCH 2024**

**S. OKONG’O**

**JUDGE**

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

**Mr. Otiende for the Plaintiff**

**N/A for the 1<sup>st</sup> Defendant**

**Mr. Yogo for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Defendants**

**Ms. J. Omondi-Court Assistant**

