



REPUBLIC OF KENYA



Nkuruna & 2 others v National Land Commission & 4 others (Environment & Land Petition E013 of 2024) [2024] KEELC 4132 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4132 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E013 OF 2024**

MD MWANGI, J

MAY 7, 2024

IN THE MATTER OF: ARTICLES 1 (1) & (3), 2(1), 10(2)(A)(B) & (C), 19(1), 20(1) & 3-4), 22(1) (2), 23(1) (3), 40(3), 162(2)(B) AND 258(2) OF THE CONSTITUTION OF KENYA, 2010

IN THE MATTER OF: THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013

IN THE MATTER OF: ARTICLE 17 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948 AND ARTICLE 14 OF THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS OF 1986

BETWEEN

**KONENE OLE NKURUNA 1ST PETITIONER
JOHN M SARUNI 2ND PETITIONER
PUTITA TOPOIKA 3RD PETITIONER**

AND

**NATIONAL LAND COMMISSION 1ST RESPONDENT
KENYA RAILWAYS CORPORATION 2ND RESPONDENT
MINISTRY OF LANDS 3RD RESPONDENT
KENYA COMMERCIAL BANK LIMITED 4TH RESPONDENT
DUPOTO EMBAKASI TOWNSHIP SETTLEMENT SCHEME 5TH RESPONDENT**

(In respect to the Notice of Motion application dated 14th March 2024 seeking to consolidate this Petition with Milimani ELC Petition E009 of 2024)



RULING

Background

1. The Notice of Motion application dated 14th March 2024 prays for the consolidation of this Petition with Milimani ELC Petition E009 of 2024 on the basis that the questions of law and fact raised in both Petitions as well as the substratum are the same. The consolidation will therefore facilitate efficient and expeditious disposal of the issues as well as save the court's time and provide a framework for the fair and impartial administration dispensation of justice.
2. On 20th March 2024, the parties through their respective Advocates presented before the court their arguments for and against consolidation of the Petitions. The only reservation by the Advocate for the Petitioners in Petition E009 was that she suspected there were objections on jurisdiction in the other Petition otherwise, she had no objection to the consolidation.
3. It too emerged that there was a third Petition being Milimani ELC Petition E011 of 2024. The Advocate for the Petitioners in Petition E011/2024 informed the court that the substratum of his Petition was the same as in the other two Petitions. The aspect about compensation cuts across all the Petitions. He was therefore in support of consolidation of the three Petitions.

Determination

4. The main reason for consolidation of suits is to save on costs, time and effort to make the conduct of several actions more convenient by treating them as one action, where there is a common question(s) of law or fact or the reliefs claimed in the suits are in respect of or arise out of the same transaction or series of transactions (*Prem Lala Nabata & Another v Chandhi Prasad Sikaria* (2007) 2 Supreme Court Cases [India])
5. In the case of *LSK v Center for Human Rights & Democracy & 12 others* [2014] eKLR, the Supreme Court of Kenya 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.”
6. In the case of *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2000] eKLR, the court explained some of the considerations that a Court should have in mind in making a decision whether to consolidate suits or not to include:
 - a. Whether there are some common questions of law or fact arising in both or all of them;
 - b. Whether the rights or reliefs claimed arise from the same transaction; and
 - c. Any other reasons making it desirable to consolidate the matters.
7. The applicable law is Order 11 Rule3 (I) (h) of the [Civil Procedure Rules](#) which states as follows:-
 - (1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall—
 - (h) Consider consolidation of suits;”



8. The three Petitions raise common questions of fact and law and the reliefs claimed are in respect of and arise out of the same transaction.
9. Accordingly, the application dated 14th March, 2024 to consolidate the Petition E013 of 2024 with Milimani ELC Petition E009 of 2024 is allowed with no orders as to costs. The Petitions shall also be consolidated with Petition E011 of 2024. The Petition LC Pet. E009/2024 which was filed earlier than the other two and which has a total of a 110 Petitioners will be the lead file.
10. Further directions on the hearing of the consolidated Petitions will be given by and by.
It is so ordered.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAIROBI ON THIS 7TH DAY OF MAY 2024.

M.D. MWANGI

JUDGE

In the Presence of:-

Ms. Beatrice Nduta for the Petitioners in Petition E009 of 2024

Mr. Dahir for the Petitioners in Petition E013 of 2024

Mr. Chasia h/b for Opiyo for the Petitioners in Petition E011 of 2024

Mr. Osoro for the National Land Commission

Ms. Tusiieme for Kenya Railways Corporation

Ms. Wangui For Kenya Commercial Bank Ltd

Yvette: Court Assistant

