



**Kagia & 7 others (Suing as the Owner of Ishiara Place, King'ara Close)
v Elmonice International Limited & 4 others (Environment & Land
Case E184 of 2023) [2024] KEELC 6644 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6644 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E184 OF 2023**

MD MWANGI, J

JULY 9, 2024

BETWEEN

**JEAN WAMAITHA KAGIA 1ST PLAINTIFF
JOSEPH KAGIA NJIHIA 2ND PLAINTIFF
JOHN AKALI 3RD PLAINTIFF
JOHN MAINGI 4TH PLAINTIFF
BILHA HICKS 5TH PLAINTIFF
BEATRICE MBULI 6TH PLAINTIFF
JOHN ABWONJI 7TH PLAINTIFF
JACKSON BOGECHO 8TH PLAINTIFF
SUING AS THE OWNER OF ISHIARA PLACE, KING'ARA CLOSE**

AND

**ELMONICE INTERNATIONAL LIMITED 1ST DEFENDANT
SKINSOL LIMITED 2ND DEFENDANT
NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 3RD
DEFENDANT
NAIROBI COUNTY GOVERNMENT 4TH DEFENDANT
KENYA MEDICAL PRACTITIONERS AND DENTISTS' COUNCIL 5TH
DEFENDANT**



RULING

(In respect to an application for consolidation)

Background

1. This Ruling is in respect of the 2nd Defendant's oral application seeking to consolidate this suit with ELC No. 5 of 2024 (initially filed in the High Court as HCCC No. E148 of 2023). The application is based on the grounds that both suits touch on the same subject matter and the same parties.
2. The instant suit was commenced by way of a Plaint dated November 16, 2023 seeking for orders inter alia; a declaration that the 2nd Defendant's actions of setting up and operating a Medical Skin Clinic threatens the Plaintiffs' right to clean and healthy environment, right to own property and peaceful possession; a declaration that the 2 Defendant's actions of setting up and operating a Medical Skin Clinic within a residential estate are unconstitutional, arbitrary and should be stopped; a declaration that the purported change of user of House Number 3 erected on property title number LR No. 330/962 (Block 14/273) is null and void for non-compliance with statutory requirements; an order of mandatory injunction compelling the 1st and 2nd Defendants to immediately among other prayers.
3. The Plaintiffs' case is that the 2nd Defendant renovated House No. 3 and set up a Medical Skin Clinic within their residential area after obtaining a change of user yet it is not the registered proprietor of the said premises. That as adjacent neighbours to nearby properties, the Plaintiffs allege that they were not invited to participate in the preparation of the Environmental Impact Assessment Report or public participation undertaken during the change of user. The Plaintiffs allege that there has been hazardous waste disposal coming from the clinic that pose a threat to the neighbours and pungent fumes that have been emanating from the activities of the 2nd Defendant Clinic.
4. On the other hand, in ELC No. 5 of 2024 (initially filed in the High Court as HCCC No. E148 of 2023) the 1st and 2nd Defendants herein (Elmonice International Limited and Skinsol Limited) are the Plaintiffs whereas the 1st Plaintiff herein (Jean Wamaitha Kagia) is the Defendant. The Plaintiffs in the said suit seeks orders of; Permanent Injunction restraining the Defendant therein from interfering with the 2nd Plaintiff's business-a Medical Skin Care Clinic, by taking photos or otherwise intruding into Client's privacy on the property known as Lavington, Kangara Road LR No. 330/992(Block 14/273) as well as damages for trespass.
5. The Plaintiffs' case in the said suit is that the 1st Plaintiff, who is the registered owner of the subject premises, leased out the said promises to the 2nd Plaintiff who set up a Medical Skin Care Clinic. The 2nd Plaintiff argues that it invested heavily in setting up the clinic to international standards as well as hiring professionals to operate the business. However, upon operationalizing the Clinic, the Defendant and other persons known to her started taking photographs of its Clients thus intruding into their privacy and causing discomfort. The said actions have threatened the well-being of the 2nd Plaintiff's business and imminent loss of jobs to the employees working therein as well as the huge investment incurred in setting up the Clinic.
6. From the pleadings in ELC No. 5 of 2024 and this case, the following issues are not in doubt: -
 1. Both suits involve the legality operating of a Medical Skin Care Clinic in House Number 3 erected on property title number LR No. 330/962 (Block 14/273).



2. The parties in both cases are the same except that in the instant suit (ELCLC No. E184 of 2023) has more parties both as Plaintiffs and Defendants.
7. Essentially therefore, the bottom line is that the subject matter in this case and that in ELC No. 5 of 2024 is the same i.e. the legality of operating a Medical Skin Care Clinic in House Number 3 erected on property title number LR No. 330/962 (Block 14/273). The parties are also the same save that there are more parties in the instant suit.
8. The jurisdiction to consolidate suits is provided for under Order 11 Rule 3 (1)(h) of the [Civil Procedure Rules](#). This is with a view to furthering the expeditious disposal of the cases and to ensure proper case management.
9. The principles of consolidation of suits was re-stated in *Stumberg and Another –vs- Potgeiter* 1970 EA 323 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”
10. In the Indian case of [Brij Kisbore –vs- Bir Singh & Others](#) at the High Court of Punjab and Harana (CR 5922 of 2013 Justice Paramjeat Singh quoted the following from the Supreme Court Case of [Prem Lala Nahata & Another –vs- Chandi Prasad Sikaria](#), (2007) 2, Supreme Court Cases 551 at paragraph 18:-

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases. Consolidation is a process by which two or more causes or matters are by order of the Court combined or united and treated as one cause or matter. The main purpose of consolidation is therefore 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 where there are two or more matters or causes pending in the Court and it appears to the Court that some common questions of law or fact arises in both or all the suits or that the rights to relief claimed in the suits are in respect of or arise out of the same transaction or series of transactions; or that for some other reason it is desirable to make an order consolidating the suits”
11. In the case of [Law Society of Kenya –vs- The Centre for Human Rights and Democracy & 12 Others](#) (2014) eKLR, the Supreme Court of Kenya had this to say about consolidation of suits: -

“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”
12. As stated earlier in this ruling, the issue here is whether this suit is amenable to consolidation with ELC No. 5 of 2024. The [Civil Procedure Rules](#) requires the courts to consider consolidation of suits and in so doing, to be guided by the following principles: -
 1. Do the same question of law or fact arise in both cases?
 2. Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transaction



3. Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?
13. The above principles were stated in the case of *Nyati Security Guards & Services Ltd. -vs- Municipal Council of Mombasa* (2000) eKLR, the Court held: -
- “The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where: -
- a. Some common questions of law or fact arises in both or all of them.
 - b. The rights or reliefs claimed in them are in respect of the same transactions.
 - c. For some other reasons, it is desirable to make an order for consolidating them.”
14. Considering all the above, it is my view that this is a proper case for consolidation. It will not be an efficient use of available judicial and administrative resources for the Court to determine the matters separately yet dealing with same issue, that is; the legality of operating the Medical Skin Care Clinic on the subject property.
15. Ultimately therefore, having considered the application for consolidation and the pleadings in both cases, I make the following orders: -
- a. That an order for consolidation of the two (2) suits – ELCLC No. E184 of 2023 and ELC No. 5 of 2023 being of the same subject matter and same parties is hereby issued.
 - b. That ELCLC No. E184 of 2023 be the lead file where all the filings of pleadings will be done and the proceedings be recorded from henceforth.
 - c. There shall be no orders as to costs.

It is so ordered

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JULY 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:

Yvette: Court Assistant

