



**Presbyterian Church of East Africa - Pwani Presbytery & another v Mboe & 5 others
(Environment & Land Case 160 of 2017) [2024] KEELC 6768 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6768 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 160 OF 2017
SM KIBUNJA, J
OCTOBER 16, 2024**

BETWEEN

**PRESBYTERIAN CHURCH OF EAST AFRICA - PWANI
PRESBYTERY 1ST PLAINTIFF**

THE PRESBYTERIAN FOUNDATION 2ND PLAINTIFF

AND

JUMA JEFA MBOE 1ST DEFENDANT

SIDI CHENGO NGATO 2ND DEFENDANT

MOHAMED ABEID KHAMIS 3RD DEFENDANT

JAMAL ABEID KHAMIS 4TH DEFENDANT

ABDULHAKIMABEID KHAMIS 5TH DEFENDANT

NICHOLAS MUNYI KAIGUA 6TH DEFENDANT

RULING

1. The plaintiffs moved the court through the application dated 21st October 2021 seeking for consolidation of this suit with Mombasa ELC No. 219 of 2013 for hearing and determination. The application is based on the ten (10) grounds on its face and is supported by the affidavit of Reverend Boru Samuel Tulicha, Presbyterian clerk of the 1st plaintiff, in which he inter alia deposed that the plaintiffs and 3rd to 5th defendants herein are parties in Mombasa ELC No. 219 of 2013, and land parcel Kilifi/Kawala “A” Kadzonzo/306 forms part of the subject matter in both suits; that it is only fair that the two suits be consolidated and heard together as they involve the same questions of facts and law and that no party will be prejudiced by the consolidation order.



2. The 6th defendant opposed the application through the replying affidavit of Gikandi Ngibuini advocate sworn on the 22nd March 2024, in which he inter alia deposed that the plaintiffs and 6th defendant herein were parties in Mombasa ELC No. 198 of 2012, where issues similar to those herein were raised, and the court delivered judgement over parcels Kilifi/Kawala “A” /Kadzongo/304 & 305 in favour of 6th defendant on 28th October 2021; that the plaintiffs were ordered to give vacant possession by December 2021 or be evicted; that after failing to comply, the 6th defendant obtained warrants to evict the plaintiffs on 6th April 2023, but following some negotiations, the parties entered into a memorandum of understanding dated 16th May 2023 that the plaintiffs to vacate by 31st December 2023; that the plaintiffs vacated and gave vacant possession of the said properties to the 6th defendant on the 20th January 2024; that the said parties memorandum of understanding settled the execution issue in Mombasa ELC No. 198 of 2012 and plaintiffs’ appeal in Mombasa CACA No. E133 of 2022.
3. The court issued directions on filing and exchanging submissions on the 21st February 2024 and 6th May 2024. The learned counsel for the plaintiffs filed their submissions dated the 2nd May 2024, which the court has considered. the counsel inter alia submitted that the plaintiffs are in agreement with the 6th defendant’s depositions in his replying affidavit on settlement of Mombasa ELC No. 198 of 2012, and added that their application does not seek to consolidate that suit with the others; that the suits sought to be consolidated touches on the 1st to the 5th defendants herein and none has filed any response in opposition.
4. The issues for determinations by the court are as follows:
 - a. Whether the suits sought to be consolidated are between the same parties, raises the same questions of facts and law, and whether any of the parties will be prejudiced if the order is granted.
 - b. Who pays the costs?
5. The court has carefully considered the grounds on the application, affidavit evidence, the record, submissions filed, superior courts decisions relied upon and come to the following determinations:
 - a. That the court indeed has the power under Order 11 Rule 3(h) of *Civil Procedure Rules* to order consolidation of suits in appropriate cases. In doing so, the court considers among others whether the suits sought to be consolidated raises similar questions of facts and law, whether the reliefs sought arise from the same transaction, and whether any of the parties stand to be prejudiced if the order to consolidate is granted. See the decision in the case of *Benson G. Mutahi v Raphael Kabutu & Others* [2014] eKLR.
 - b. The Supreme Court of Kenya has affirmed the guiding principles set out above in its decision in the case of *Law Society of Kenya v The Centre for Human Rights and Democracy* [2014] eKLR, where the court held that:
 - “(39) 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 a 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.

- (45) In the circumstances, would it serve the interest of justice to consolidate the appeal in which the parties are the same, and the central issue is the same even if worded differently? The irresistible conclusion is in the affirmative. We do not see what good would result from denying the applicant's prayer for consolidation, and allowing each of the appellants to appropriately canvas its cause. The alternative position would result in the undesirable delays in concluding a matter of great public interest. It is obvious to us that, in the interests of all parties, the central issue in the appeals ought to be determined expeditiously and conclusively by this court. Consolidation of the appeals, in our perception, would significantly advance that goal."

The 1st to the 5th defendants herein have not filed any replies in opposition to the consolidation application, and they did not participate in its hearing.

- c. The 6th defendant response through the replying affidavit sworn on 22nd March 2024 was not really an opposition to the plaintiffs' application to consolidate per se, but rather to bring to the court's attention the position inter alia that the memorandum of understanding between him and the plaintiffs of 16th May 2023 in Mombasa ELC No. 198 of 2012 had settled the parties' claim against each other in respect of that suit and the related pending appeal. That position appear to have been confirmed by the plaintiffs through their submissions. Indeed, there is no opposition to the instant plaintiffs' consolidation application and I find the plaintiffs have met the threshold for consolidating the two suits for hearing and determination.
- d. Under section 27 of the *Civil Procedure Rules* chapter 21 of Laws of Kenya, costs follow the events unless where the court orders differently for good reasons, in the instant application, I find it just for the costs to abide the outcome of the consolidated suits.
6. Flowing from the foregoing determinations, the court finds and orders as follows:
- a. That the plaintiffs' application dated the 21st October 2021, is allowed in terms of prayers one (1), and Mombasa ELC NO. 219 of 2013, is consolidated to this suit for hearing and determinations.
- b. The costs to abide the outcome of the consolidated suits.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 16TH DAY OF OCTOBER 2024.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiffs : No Appearance

Defendants: Mr Muriithi for Thangei and

Mr Mogaka for Plaintiffs in ELC 219 of 2013.

Leakey – Court Assistant.



S. M. Kibunja, J.
ELC MOMBASA.

