



**Mbilu & Another v Nasoor & 5 others (Environment & Land Case  
108 of 2019) [2024] KEELC 7296 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7296 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 108 OF 2019  
SM KIBUNJA, J  
NOVEMBER 6, 2024**

**BETWEEN**

**EUNICE SIMON MBILU & ANOTHER ..... PLAINTIFF**

**AND**

**ALI NASOOR & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5 OTHERS & 5  
OTHERS ..... DEFENDANT**

**RULING**

1. The 2<sup>nd</sup> plaintiff moved the court through the application dated 17<sup>th</sup> May 2024, seeking for consolidation of ELCOS NO. E002 of 2024; Ayub Odhiambo & Others versus Eunice Simon Mbilu & Another with this suit. The application is premised on the six (6) grounds on its face, and supported by the affidavit of Jeremy Njenga advocate, sworn on 17<sup>th</sup> May 2024, deposing inter alia that both suits are over plot No. 628/1/MN, suit property; that the same advocates are appearing for parties in both suits, and to save on judicial time, the two suits that raise adverse possession claims should be consolidated.
2. The application is opposed by 1<sup>st</sup> to 5<sup>th</sup> defendants through the replying affidavit of Killian Mwandori, the 2<sup>nd</sup> defendant, sworn on the 25<sup>th</sup> May 2024, inter alia deposing that on the suit property are between forty to sixty families who have resided there for over 12 years, and have a right to seek proprietary rights; that the plaintiff filed this suit seeking permanent injunctive orders against only five of those residents, and they filed a defence and counterclaim, to which the 2<sup>nd</sup> plaintiff filed a preliminary objection that is yet to be heard; that they are not parties to ELCOS No. E002 of 2024, that is for adverse possession, and which has no relationship to this suit and the application should be dismissed.
3. The learned counsel for the 2<sup>nd</sup> plaintiff and 1<sup>st</sup> to 5<sup>th</sup> defendants filed their submissions dated the 25<sup>th</sup> June 2024 and 26<sup>th</sup> July 2024 respectively, that the court has considered. The learned counsel for the 1<sup>st</sup> plaintiff informed the court on the 3<sup>rd</sup> June 2024 that they are not going to oppose the application
4. The issues for consideration s are as follows:



- a. Whether the 2<sup>nd</sup> plaintiff has met the threshold for consolidation order on the two suits to issue.
  - b. Who pays the costs?
5. The court has carefully considered the grounds on the application, affidavit evidence tendered, submissions by both counsel, superior courts decisions relied upon, and come to the following findings:
- a. That this suit was commenced through the plaint dated 14<sup>th</sup> June 2019, and seeks for declaratory, injunctive, and eviction orders from plot No. 628/1/MN, suit property. It also seeks for general damages for trespass and costs. The 1<sup>st</sup> to 5<sup>th</sup> defendants opposed the plaintiffs' claim through their statement of defence and counterclaim dated the 7<sup>th</sup> November 2023. Vide the counterclaim, they seek to be declared the owners of plot 628/1/MN under adverse possession, mandatory injunction against the plaintiffs and costs. That from the pleadings attached to the supporting affidavit, Mombasa ELCOS E002 of 2024 was commenced through the originating summons dated the 25<sup>th</sup> January 2024, by six plaintiffs on their own behalf, and on behalf of 29 others residents seeking to be declared the owners of plot No. 628/1/MN. Though, all the defendants in this suit are not parties in ELCOS No. E002 of 2024, the plaintiffs herein are the defendants in that other suit. The advocates representing the plaintiffs and 1<sup>st</sup> to 5<sup>th</sup> defendants herein are also appearing for the plaintiffs and defendants in ELCOS No. E002 of 2024.
  - b. That from the facts set out above, both suits are primarily over proprietary rights over the same land, plot No. 628/1/MN. The plaintiffs herein are defendants in the other suit and the learned counsel in this matter are appearing for the opposite parties in the other suit. Though, the 1<sup>st</sup> to the 5<sup>th</sup> defendants have opposed the application to consolidate the two suits, it is obvious similar questions of law and fact will arise in both suits, and consolidating the suits will facilitate their efficient and expeditious disposal, in a cost effective way both to the parties and the court.
  - c. That under section 27 of Civil Procedure Act chapter 21 of Laws of Kenya, costs follow the event, unless where otherwise ordered for good reasons. In this instance, I am of the view that justice of the case will be better served by an order that each party bears their own costs.
6. In view of the above determinations, the court finds and orders as follows:
- a. That the notice of motion dated 17<sup>th</sup> May 2024 has merit and is granted in terms of prayer 1.
  - b. That each party to bear their own costs.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 6<sup>TH</sup> DAY OF NOVEMBER 2024.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

**IN THE PRESENCE OF:**

Plaintiffs : Mr Ndeto for Mutua for 1<sup>st</sup> Plaintiff

Mr Njenga for 2<sup>nd</sup> Plaintiff

Defendants : M/s Choni for Odhiambo for 1<sup>st</sup> to 5<sup>th</sup> Defendants.

Leakey – Court Assistant.



**S. M. KIBUNJA, J.**  
**ELC MOMBASA.**

