



**Santo & others v Mambrui Promotion Limited & another (Environment & Land Case 49 of 2021) [2024] KEELC 13545 (KLR) (2 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13545 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 49 OF 2021  
FM NJOROGE, J  
DECEMBER 2, 2024**

**BETWEEN**

**MAURIZIO DAL SANTO & OTHERS ..... PLAINTIFF**

**AND**

**MAMBRUI PROMOTION LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**ANGLES BAY HOLDINGS LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application for determination is dated 15/2/2024. It was filed by the Defendants pursuant to Sections 1A, 1B and 3A of the Civil Procedure Act, and Order 11 rule 3 (h) of the Civil Procedure Rules. The orders sought are as follows: -
  1. ....Spent;
  2. That the honourable court be pleased to issue an order for consolidation of Malindi ELC Case No. 10 of 2021 and Malindi ELC Case No. 49 of 2021;
  3. That the honourable court be pleased to issue an order for the suit in Malindi ELC Case No. 10 of 2021 and Malindi ELC Case No. 49 of 2021 be heard at the same time;
  4. That costs of this application be in the cause.
2. The application which is supported by the affidavit sworn by Harrison Kazungu Kono, is premised on the basis that the subject matter in both suits is similar in Malindi ELC Case No. 10 of 2021, and that both suits revolve around wrongful alignment of boundaries by erecting barbed wire fence in some areas, closing paths in common areas, changing water reticulation system and removing power lines within the premises known as Angels Bay Village, constructed on the land portion no. 624/708 and 798.



3. The Plaintiffs opposed the application. They filed a replying affidavit sworn by Samuel Odhiambo Eleakim on 29/4/2024 wherein he stated that after entering appearance for the Defendants, the firm of Muli and Ole Kina Advocates wrote to the 1<sup>st</sup> Plaintiff's former advocates stating that they did not have instructions to represent the 2<sup>nd</sup> Defendant; that the said firm therefore has no authority to file the application on behalf of the 2<sup>nd</sup> Defendant. He stated that the issues in the two suits are not similar and save for the 1<sup>st</sup> Defendant, the Defendants in ELC 10 of 2021 are not parties in the present suit. He added that the Plaintiffs herein are not lessees on the parcels of land subject in ELC 10 of 2021 and that the reliefs sought are different in both matters. He asserted that although the suit properties in both cases are located at Angels Bay Village, the suit properties belonging to the Plaintiffs in ELC 10 of 2021 and this case are situated on parcels of land belonging to different companies/lessors.
4. The court directed parties to file written submissions. As the time of writing this ruling, none of the parties had filed submissions thereto. However, ignoring the issue of representation which was not the subject of the application, I do not find the pertinent procedural issue raised by the application to be very contentious and I have upon considering the application, formed the opinion that both matters should be heard together. The application dated 15/2/2024 is granted in terms of prayers no (3) and (4) thereof. Therefore, the evidence of witnesses who are common in both suits shall therefore be taken at once in respect of both matters when they take the stand. The two matters shall be listed for a mention on 29/1/2024 for fixing of an appropriate hearing date.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 2<sup>ND</sup> DAY OF DECEMBER 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

