



**Blossom Hill Estate Agents Company Limited v National Land Commission & 7 others  
(Environment & Land Case 895 of 2014 & Environment and Land Miscellaneous Application  
47 of 2014 (Consolidated)) [2023] KEELC 700 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 700 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT & LAND CASE 895 OF 2014 & ENVIRONMENT AND  
LAND MISCELLANEOUS APPLICATION 47 OF 2014 (CONSOLIDATED)**

**LN MBUGUA, J**

**FEBRUARY 9, 2023**

**BETWEEN**

**BLOSSOM HILL ESTATE AGENTS COMPANY LIMITED ..... PLAINTIFF**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**GUDKA SUBHASH MEGHJI ..... 3<sup>RD</sup> DEFENDANT**

**RAMJI SHAH ..... 4<sup>TH</sup> DEFENDANT**

**NAIROBI COUNTY GOVERNMENT ..... 5<sup>TH</sup> DEFENDANT**

**ZAVERSHAND RAMJI SHAH ..... 6<sup>TH</sup> DEFENDANT**

**MANJULA ZAVERCHNAD SHAH ..... 7<sup>TH</sup> DEFENDANT**

**ALDERMAN LIMITED ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. The application before me for determination is dated October 26, 2022 brought forth by the 8<sup>th</sup> defendant who seeks orders that the file at City Court CMCC No 16 of 2013; Nairobi City County v Jayantilal Shah & 4 others be transferred to the Environment and Land Court to be consolidated and heard together with the instant suit.
2. The application is premised on the grounds set out on the face of the application and on the supporting affidavit of one Bharat Ramji Manji. The applicant contends that the city court suit was filed by the 5<sup>th</sup> defendant to recover rates, whereby judgment was entered for the then plaintiff and a decree was



issued. Thereafter, the current applicant bought the suit property LR No 209/6/5 at a sum of kshs 30 million in a public auction. A vesting order was issued in ELC Misc No 47 of 2014 and the current applicant was registered as the proprietor of the suit land.

3. That the 6<sup>th</sup> defendant herein applied to set aside the said vesting order but the applicant settled whatever issues the 6<sup>th</sup> defendant had over the sale of land, by paying the 6<sup>th</sup> defendant a sum of ksh 30 million over and above the sums paid by the applicant at the auction. That although the 6<sup>th</sup> defendant had applied to set aside the judgment at the city court, he withdrew that application upon being paid the 30 million shillings. Nevertheless, the 6<sup>th</sup> defendant subsequently and despite the aforementioned settlement agreement proceeded with his application to set aside the judgment and indeed the said judgment was set aside.
4. The applicant herein contends that what is pending before the City Court matter is the applicants rights relating to the payment of the 30 million at the auction and the 30 million to the 6<sup>th</sup> defendant and further he now intends to file a counter claim where the amount claimed is 350 million. He contends that this amounts exceeds the jurisdiction of the subordinate court. He therefore prays that the suit before the Magistrate Court be transferred to this court and that none of the parties shall be prejudiced by this move.
5. The application is opposed by the plaintiff *vide* its replying affidavit sworn on November 14, 2022 by Grace Watetu Waruru, its general manager. She deposes that the plaintiff holds a valid and clear title to the property known as LR No 209/6/5 (IR No 155096) situated in Parklands. She further deposes that CMCC No 26 of 2013: Nairobi City County v Jyantil Natalal Shah & 4 others is distinct from this suit as they do not deal with common issues of facts and law. The reliefs sought in both matters are different and both cases are at different stages of the trial process. The matter before the city court revolves around recovery of rates arrears owed to Nairobi city county government by one Jantilal Natal Shah, the alleged owner of the suit property.
6. The plaintiff also deposes that a public auction over its property was conducted on December 20, 2013, following a decree issued on August 22, 2013 in CMCC No 26 of 2013: Nairobi City County v Jyantil Natalal Shah & 4 others. The 8<sup>th</sup> defendant purported to purchase the suit property and subsequently moved this Hon Court via (OS) Misc application No 47 of 2014 and obtained a vesting order.
7. On learning of the vesting order, the plaintiff applied to set it aside and the court cancelled it *vide* a ruling dated July 18, 2016. Further, the City Court judgment of August 22, 2013 which resulted to the impugned public auction was set aside *vide* a ruling dated February 3, 2021.
8. The application is also opposed by the 6<sup>th</sup> and 7<sup>th</sup> defendants by way of a replying affidavit sworn on November 3, 2022 by Hassan Mohammed Abdirahman, attorney and agent of the 6<sup>th</sup> defendant. He deposes that this court has no power to withdraw a suit in the subordinate court that addresses issues of recovery of rates where the subordinate court has jurisdiction to hear and determine the issue.
9. He further deposes that Mary W Njagi (SPM) delivered a ruling on February 3, 2021 in CMCC No 26 of 2013: Nairobi City County v Jyantil Natalal Shah & 4 others wherein she set aside the *ex parte* judgement delivered on August 22, 2013 and aggrieved by the decision therein, the 8<sup>th</sup> defendant lodged an appeal being ELCA E004 of 2021 Aldermen Limited v Zaverchand Ramji Shah & 3 others which was dismissed on April 27, 2022 by the Honourable Justice M D Mwangi, thus allowing the application would be akin to a review and or a 2<sup>nd</sup> appeal where an appeal has already been proffered and dismissed.



10. In their submissions dated December 13, 2022, the applicants contend that this court has jurisdiction to withdraw the city court matter and transfer the same to this court. They argue that the dispute before the city court relates to a claim of ownership of the suit land which is the same issue before this court. They further state that the counterclaim they intend to lodge is not only confined to issues of rates, rather the applicant desires to recover the sh 60 000 000 they incurred from the transactions of the public auction. In support of their arguments, the applicants have relied on the case of [\*Daikyo Japan Motors Ltd & 2 others v Fairuz Feisal Yasin & another\*](#) (2020) eKLR.
11. The plaintiff filed submissions dated December 19, 2022 in opposition to the application. The said submissions addressed issues; whether the cause of action in ELC No 895 of 2014 is similar to the subject matter before the City Court in CMCC No 16 of 2013 and whether the city court matter should be withdrawn from the said court and subsequently consolidated with the instant suit.
12. On whether this cause and the City Court suit are similar, it is the plaintiff's submission that the 2 cases are distinct and they do not deal with similar issues. It is further submitted that consolidation of the suits would be improper and unjustifiable in the circumstances. It relied on the case of [\*Nyali Security Guards & Services Ltd v Municipal Council of Mombasa\*](#) [2004] e KLR and [\*Law Society of Kenya v Center for Human Rights & Democracy & 12 others\*](#) [2014] e KLR.
13. The 6<sup>th</sup> and 7<sup>th</sup> defendants filed submissions dated December 20, 2022. They argue that the Environment & Land Court is a specialized court with the status of the high court having its own rules and procedures with its jurisdiction outlined at section 162 and section 13(1) of the [\*ELC Act\*](#).
14. It is their submission that the status and jurisdiction are different concepts since status denotes hierarchy while jurisdiction covers the sphere of court operations. They relied on the case of [\*Republic v Karisa Chengo & 2 others\*](#) [2017] eKLR, [\*Sabina Morra Swanya v everly Kemunto Ontiri & another\*](#) [2021] eKLR.
15. They also submit that the matter at City Court concerns rates while this suit concerns ownership of the suit property. They argue that while the court has the power to consolidate suit in appropriate cases, consolidation is a discretionary remedy and the 8<sup>th</sup> defendant failed to demonstrate the need for consolidation. They relied on the case of [\*County Council of Nakuru v Simon Ole Kaminta & 3 others\*](#) [2007] eKLR, [\*Nyali Security Guards & Services Ltd v Municipal Council of Mombasa\*](#) [2004] eKLR and the case of [\*Korean United Church of Kenya & 3 others v Seng Ha Sang\*](#) [2014] eKLR.

### **Determination**

16. The question for determination is whether the matter pending at the Magistrate's Court (City Court) should be consolidated with the current suits before this court.
17. The 8<sup>th</sup> defendant seeks orders to consolidate this suit with CMCC No 26 of 2013: Nairobi City County v Jyantilal Natalal Shah & 4 others of which the latter suit concerns the question of rates payable over the suit property. Section 25 of the [\*Rating Act\*](#) provides as follows:

“Notwithstanding anything to the contrary in the [\*Magistrates' Courts Act\*](#) (cap 10), any magistrate empowered to hold a subordinate court of the first class shall have jurisdiction to hear and determine suits for the recovery of rates under this Act.”



18. In *Machakos County Government v Kapiti Plains Estate Limited* [2021] eKLR, the court had this to say in matters of rates;

“The reading of section 25 of the *Rating Act* gives the Magistrates’ Courts, and not this court, the jurisdiction to hear disputes relating to suits for the recovery of rates at the first instance. Indeed, section 25 of the Act gives all the magistrates of first class, notwithstanding their pecuniary jurisdiction as stipulated under the *Magistrate’s Court Act*, jurisdiction to hear and determine suits for the recovery of rates under the Act.”

19. It follows that issues of rates ought to be dealt with by courts of first instance, in this case, the Magistrates Courts.

20. The applicant however contends at paragraph 10 of their supporting affidavit that since the rates were recovered and now the applicant is the one who pays the rates for the suit land, then the issue of rates is no longer outstanding. That what is now due for determination is the applicant’s rights and expenses pegged at sh. 350 million, and the magistrate’s court no longer has jurisdiction to hear such a matter.

21. The case of *Owners of Motor Vessel ‘Lillian S’ v Caltex Oil (Kenya) Limited* [1989] KLR 1, bears the following passage of Nyarangi, JA:

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step”

22. The court which is seized of the matter is the one obliged to make a determination as to whether it has jurisdiction or not. It is not for this court to make a finding that the court seized of the matter should down its tools.

23. On the issue of consolidation, the Supreme Court pronounced itself on the subject in *Law Society of Kenya v Centre for Human Rights & Democracy & 12 others* [2014] eKLR as follows;

“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...”

24. The criteria for consolidation was also considered in the case of *Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR where the court stated that;

“The *Civil Procedure Rules* mandate courts to consider consolidation of suits and in so doing, to be guided by the following:-

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?”

25. The 8<sup>th</sup> defendant has failed to satisfy the criteria upon which this court can exercise jurisdiction to grant an order of consolidation.



26. In the final analysis, I find that the application dated October 26, 2022 is not merited. The same is hereby dismissed. Each party is to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9<sup>TH</sup> DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Allan Kamau for 1<sup>st</sup> Defendant

Masore for 8<sup>th</sup> Defendant/Applicant

M/s Munene holding brief for Mr. Gathara for Plaintiff Respondent.

Sheuda holding brief for Ann Were for 6<sup>th</sup> and 7<sup>th</sup> Defendants

Court assistant: Eddel

