



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**PETITION NO.26 OF 2016**

**RAMADHAN ALI MWATSAHU & OTHERS.....VERSUS**

**THE COUNTY GOVERNMENT OF KILIFI &**

**OTHERS.....RESPONDENTS**

**RULING**

1. By this Notice of Motion application dated 29<sup>th</sup> November 2019, the County Government of Kilifi (1<sup>st</sup> Respondent) prays for Orders:-

***3. That this Petition be consolidated with Malindi Constitutional Petition No. 30 of 2019; Ramadhan Ali Mwatsahu & 5 Others – vs- Tsangwa Ngala Chome***

***4. That in the alternative, this Petition and Malindi Constitutional Petition No. 30 of 2019; Ramadhan Ali Mwatsahu & 5 Others –vs- Tsangwa Ngala Chome be heard concurrently before the same Court.***

2. The application which is supported by an affidavit sworn by th 1<sup>st</sup> Respondent's County Attorney Bibi Fondo, is brought on, inter alia, the grounds that:

***i) The subject matter measuring approximately 1656.7 Ha is also the same subject matter in the said Malindi Petition No, 30 of 2019.***

***ii) The Parties in both Petitions have compelling interests in the property and it is just, expedient and judicious that they be consolidated and a single Judgment be delivered thereon.***

***iii) The consolidation sought will obviate a scenario where this Court may make two Judgments that may conflict and/or contradict each other.***

3. As it turned out, none of the other parties herein filed anything in opposition to the application. The Petitioners did however indicated in Court that in light of the directions earlier on given in the said **Petition No. 30 of 2019**, the 1<sup>st</sup> Respondent's application herein had been overtaken by events.

4. As was stated in **Stumberq & Another –vs- Potgeiter (1970) EA, 323:-**

***“Where there are common questions of law or facts in action 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.”***

5. In **Nyati Security Guards & Services Ltd –vs- Municipal Council of Mombasa (2000) eKRL**, the Court observed and I agree, as follows:-

***“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 of reliefs claimed in them are in respect of or arise out of the same transactions and;***

c) *For some other reasons, it is desirable to make an order for consolidating them.*”

6. In this regard, I have carefully studied the two Petitions herein. It is clear to me that the five Petitioners herein are the very same Petitioners in **Malindi ELC Petition No. 30 of 2019** wherein they have brought the Petition together with one Kesi Ali Mwadzaya.

7. While the Prayers sought in both Petitions appear on the face of it to be different, it is evident that the subject matter in both Petitions is the same parcel of land said to be measuring 1656.7 Ha situated near Mariakani Township along the Mombasa-Nairobi Road.

8. Indeed in their first Prayer in this Petition, the Petitioners urge that the Respondents herein be ordered to compensate them for their said land taken up for public purposes at the current value. That is the same as Prayer No. 4.4. in **Petitions No 30 of 2019** where the Petitioners seek to be compensated for their land said to have been compulsorily acquired for the construction of public facilities.

9. The Applicant County Government, the National Land Commission and the Honourable the Attorney-General are similarly named as Respondents in both Petitions and it is evident that, as submitted by the Applicants, a consolidation of the two suits would amount to a proper use of Judicial time and expedite the matters herein.

10. As the Supreme Court of Kenya stated in **Law Society of Kenya –vs- The Centre for Human Rights and Democracy (Supreme Court of Kenya Petition No. 14 of 2013)**:-

*“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.”*

11. In the premises, I am persuaded that there is merit in the application. Accordingly, I hereby order that the two suits be consolidated for purposes of being heard and determined together and that the hearing thereof be on the basis of the pleadings already filed in the two Petitions subject to any necessary amendment.

12. The Costs of the application shall be in the cause.

**Dated, signed and delivered at Malindi this 29<sup>th</sup> day of April, 2020.**

**J.O. OLOLA**

**JUDGE**