



**Kerongo & 4 others v Kisii County Government & others (Environment and Land
Petition E003 of 2024) [2025] KEELC 6813 (KLR) (8 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND PETITION E003 OF 2024**

M SILA, J

OCTOBER 8, 2025

BETWEEN

**THOMSON KERONGO 1ST PETITIONER
RIGENA HUMAN RIGHTS WATCHDOG ORGANIZATION . 2ND PETITIONER
STEPHEN O. NYASIMI 3RD PETITIONER
MATHEW NYANG’AU OGORO 4TH PETITIONER
SAMWEL MAXWELL MARONGA 5TH PETITIONER**

AND

KISII COUNTY GOVERNMENT & OTHERS RESPONDENT

RULING

(Application for consolidation of this petition with a previously filed civil suit; the civil suit having been filed by more or less the same persons who have also sued as petitioners; cause of action similar; court of persuasion that it is an abuse of process of court to file multiple suits over same cause of action; court not persuaded that a party is at liberty to file multiple suits then ask for consolidation; prayer for consolidation dismissed; applicants to make an election on which of the two suits they wish to proceed with or the later suit be struck out)

1. The application before me is that dated 10 April 2025 filed by the petitioners. The application is said to be brought pursuant to Sections 1A, 1B, 3, 3A and 63 (e) of the *Civil Procedure Act*. The substantive prayer sought in the application is that this suit be consolidated with the suit Kisii ELCLC No. E005 of 2023 and the two files to be treated as one, with a single hearing, trial and judgment.
2. The application was served upon the respondents in this suit and the parties in the suit Kisii ELCLC E005 of 2023. The Kisii County Attorney, on behalf of the 1st and 4th respondents, stated that they are not opposing the motion. The State Law Office on behalf of the 2nd, 5th, 6th, 7th 8th and 10th



respondents also submitted that they are not opposing the application. Mr. Mukonyi for the 9th respondent mentioned that his client wished to oppose the motion but by the time the matter was being heard, nothing had been filed on the part of his client. Mr. Mwaura for the 11th – 20th respondents had also stated that his clients wished to oppose the motion but similarly nothing had been filed on his part by the time the application was listed for hearing. Ms. Nyagol who appears for the plaintiffs in the suit Kisii ELCLC No. E005 of 2023 was in support of the application. That does not however mean that I must allow the application. I will give it due consideration.

3. The suit herein was commenced through a constitutional petition dated 26 November 2024. The petitioners are respectively Thomson Kerongo, Rigena Human Rights Watchdog Organisation, Stephen O. Nyasimi, Mathew Nyang'au Ogoro, and Samwel Maxwell Maronga. In a nutshell the petitioners contend that the land parcel Nyaribari Chache/B/B/Boburia/3034 should belong to Rianyamwamu Primary School. They contend that this land was registered in the name of Gusii County Council on 1 July 1971 and reserved for Rianyamwamu DEB Primary School. They aver that the suit land was illegally allocated to Rianyamwamu Tea Factory, the 9th respondent. They state further that the Tea Factory and the 11th – 20th respondents illegally displaced the Primary School so that it moves to the land parcel Nyaribari Chache/B/B/Boburia/3028 which land they aver belongs to the estate of one Francis Okeyo Nyagetiria and that the school can be evicted at any time. In their prayers, they more or less want nullified any allocation of the suit land to Rianyamwamu Tea Factory, eviction of the Tea Factory and the 11th – 20th respondents from the suit land; and for Rianyamwamu DEB Primary School to be moved to the suit land from the land parcel Nyaribari Chache/B/B/Boburia/3802.
4. The suit that the applicants wish to consolidate, that is Kisii ELCLC No. E005 of 2023, was commenced earlier through a plaint filed on 19 September 2023. The plaintiffs are Stephen O. Nyasimi, Mathew Nyang'au Ogoro, and Jackline Kemunto Samwel. They have sued 12 defendants among them being Rianyamwamu Tea Factory as the 11th defendant and the County Government of Kisii as the 12th defendant. Also sued, respectively as the 1st – 10th defendants are Benson Nyangute, James Ng'ong'o Ombati, Ombati Ingote, Lukas Anyoka Ombati, Samwel Maronga Ombati, Mose Ombati, Ng'ong'o Ombati, Charles Ombati, Ombati Ombati, and Ogendi Nyaosi. The subject matter of that suit is Nyaribari Chache/B/B/Boburia/3034 and it is pleaded that this land was set aside for the construction of Rianyamwamu Primary School in 1971 at the time of adjudication. It is claimed that the 1st – 11th defendants have illegally encroached into the suit land thus depriving the Rianyamwamu Community the right to education. They inter alia want orders to permanently restrain the 1st – 11th defendants from the suit land; a declaration that the suit land is meant for construction of Rianyamwamu Primary School; and a declaration that the County Government of Kisii holds the suit land in trust for Rianyamwamu Primary School.
5. It will be seen that the 1st and 2nd plaintiffs in the suit Kisii ELCLC No. E005 of 2023 are the 3rd and 4th petitioners in this petition. I also observe that all the defendants in the suit Kisii ELCLC No. E005 of 2023 are named as respondents in this petition. When this petition was filed the petitioners must have been aware that they have already filed the suit Kisii ELCLC No. E005 of 2023 against the same persons that they have sued in this petition. The subject matter of the two cases is the same, i.e the land parcel Nyaribari Chache/B/B/Boburia/3034. The claim in the suit and in the petition is the same, i.e the contention that this land is held by the County Government of Kisii in trust for Rianyamwamu Primary School, and that Rianyamwamu Tea Factory and the other persons alleged to be on the land ought to be evicted.
6. Now, if the petitioners or at least some of them had already filed the suit Kisii ELCLC No. E005 of 2023, why were they now filing a petition subsequent to the filing of the suit ?



7. The law frowns upon a party filing a multiplicity of suit over the same cause of action. Indeed Section 6 of the *Civil Procedure Act*, bars the court from proceeding with a suit in which the subject matter is directly and substantially in issue in a previously instituted suit. That provision is drawn as follows :
 6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.
8. On my part, I am of conviction that a person filing a second or other suit, over the same cause of action, is engaging in an abuse of the court process. A second suit over the same cause of action ought not to be filed. You cannot subject a defendant or respondent to double jeopardy by filing a multiplicity of suits against him/her. One cannot file a second suit, in clear contravention of the law, then ask that the two suits be consolidated. Proceeding to allow such an application would be to encourage parties to file a multiplicity of suits over the same cause of action, yet such practice ought to be completely fended off. It is for that reason that I am not persuaded to allow this application and I hereby proceed to dismiss the same. I make no orders as to costs since I have seen no substantive reply to the same.
9. What should happen ? It would be within the right of this court to strike out this petition owing to the pendency of the suit Kisii ELCLC No. E005 of 2023. However, I will order the applicants to make an election, either to proceed with the suit Kisii ELCLC No. E005 of 2023 or to proceed with this petition, but they cannot sustain the two suits given that they are more or less the same. The election be made upon delivery of this ruling. If no election is made then this petition will be struck out as it is the subsequent suit.
10. Orders accordingly.

DATED AND DELIVERED THIS 8 DAY OF OCTOBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT AT KISII

