



**Shilala & another (Suing as the Legal Administrators of the Estate of James Khiranga Shilala) v Co-operative Bank of Kenya & 2 others (Environment and Land Case E006 of 2023) [2025] KEELC 6806 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6806 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND CASE E006 OF 2023  
A NYUKURI, J  
OCTOBER 2, 2025**

**BETWEEN**

**NAPHTALY MUAMBE SHILALA ..... 1<sup>ST</sup> PLAINTIFF  
STANELY KANGUANA SHILALA ..... 2<sup>ND</sup> PLAINTIFF  
SUING AS THE LEGAL ADMINISTRATORS OF THE ESTATE OF JAMES  
KHIRANGA SHILALA**

**AND**

**CO-OPERATIVE BANK OF KENYA ..... 1<sup>ST</sup> DEFENDANT  
DANCAN KINYANJUI WANJUU T/A DOLPHIN AUCTIONEERS .... 2<sup>ND</sup>  
DEFENDANT  
WAKARIMA INVESTMENT CO. LTD ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

**Introduction**

1. Before court is a Notice of motion dated 23<sup>rd</sup> January 2024 filed by the plaintiff seeking for the following orders;
  - a. That this honourable court be pleased to consolidate this matter with Kakamega ELC NO. E122 OF 2019 in which similar questions of fact and law pertaining to ownership of the suit property Kakamega/Kongoni/246 are pending hearing and determination before this court and the said Kakamega ELC NO. E 122 of 2019 be deemed the lead file for purposes of hearing and determination;
  - b. That costs be provided for



2. The application is anchored on the affidavit sworn on 23<sup>rd</sup> January 2025 by Jackson Ruiru, the director of the 3<sup>rd</sup> defendant. The applicants' case is that the cause of action herein arose from a similar set of facts and similar questions of law as those in Kakamega ELC NO. E122 OF 2019 arose for determination. That the subject matter being parcel No. Kakamega/Kongoni/246 is the same in the two matters and some of the defendants in the earlier suit are similar to the parties in the counterclaim herein. That it is necessary to consolidate the two matters so as to save on judicial time and serve best interests of justice. That no prejudice will be suffered by the parties.
3. The application was not opposed.

### **Analysis and determination.**

4. The court has duly considered the application. The only issue that arise for the court's determination is whether this matter ought to be consolidated with Kakamega ELC NO. E122 of 2019 for hearing and determination.
5. It is trite that where two or more matters are pending in the same court where the same questions of law or fact arise in both cases; where the reliefs sought in both cases arise out of the same transaction or series of transactions; and where the consolidation will not confer undue advantage to one party, consolidation of two or more suits may be ordered by the trial court so as to facilitate efficient and expeditious disposal of disputes at an affordable cost to the parties.
6. In the case of Joseph Okoyo v Edwin Dickson Wasuna (2014) e KLR the court cited with approval the case of Korean United Church of Kenya & 3 Others v Seng Ha Sang (2014)e KLR, where it was stated as follows;

“Consolidation of suits is done for the purpose of achieving the overriding objective of the Civil Procedure Act, that is for the expeditious disposal of civil disputes. The main purpose of consolidation of suit is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”
7. Similarly, in the case of Law Society of Kenya v The Centre for Human Rights and Democracy, Supreme Court of Kenya, Petition No. 14 of 2013, the Supreme Court held 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. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was intended to occasion any disadvantage towards the party that opposes it.”
8. In the instant case, the applicant states that the facts, parties, issues and subject matter in this suit and in Kakamega ELC NO. E122 OF 2019 are similar. Apart from the subject matter, the applicant has not disclosed which facts, issues or parties in the two suits are the same. The applicant has not attached any of the pleadings in respect of Kakamega ELC NO. E122 OF 2019, to enable the court ascertain the correctness of his assertions. In addition, no attempt has been made by the applicant to justify or shed light on the justification for there being two pending similar cases in respect of the same facts, subject matter, parties and issues; in view of the doctrine of sub judice which bars a court from proceeding with a subsequent suit when a similar case is pending. Considering that the instant suit was filed way back in 2005 at the High Court in Eldoret being ELD HCC NO. 39 OF 2005, before being transferred to the High Court at Kakamega being Kakamega HCC No. 7 of 2019 and later transferred to this court in 2022, this case has been pending for the last 20 years and it appears to me that there is no urgency on the part of the parties to have the matter expedited. In the absence of pleadings in regard



to Kakamega ELC NO. E122 OF 2019, this court is unable to confirm allegations of the applicants, or ascertain the nature of the similarity in the two matters. The fact that the application is unopposed is not a justification for the applicant not to demonstrate the basis and necessity for consolidation. For a matter to be consolidated with another, the existence of the two suits should be justified and there ought to be a demonstration that the subsequent suit is not sub judice and that the two suits arise from similar transactions and raise the same questions of fact and law.

9. For the above reasons, I find no merit in the application dated 23<sup>rd</sup> January 2024 which I hereby dismiss with no order as to costs.

10. It is so ordered

**DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 2<sup>ND</sup> DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM**

**A. NYUKURI**

**JUDGE**

**In the presence of;**

Ms Moraa for the defendant/applicant

Mr. Naphtally Shilala the 1<sup>st</sup> plaintiff in person

Court Assistant- Delphine

