

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION NO. 3 OF 2020

STANLEY KAILUTHA1ST PETITIONER

KANYILI FRANCIS2ND EPTITIONER

BERNARD KIMATHI3RD PETITIONER

GEOFFREY ABURUKI4TH PETITIONER

JOSEPH MUGAMBI5TH PETITIONER

VERSUS

THE ADJUDICATION OFFICER RUIRI/RWARERA ADJUDICATION
SECTION1ST RESPONDENT

THE LAND REGISTRAR MERU CENTRAL DISTRICT
.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

AND

AMON MUTHAMIA IGWETA1ST INTERESTED PARTY

JUSTUS MBAABU MWITHIMBI2ND INTERESTED PARTY

JANE KARAMBU IKAMATI3RD INTERESTED PARTY

JEREMANO SAMAKI M'ARITHI4TH INTERESTED PARTY

PETER MUGAMBI MUCHEKE5TH INTERESTED PARTY

PETER KENNETH MUTHURI6TH INTERESTED PARTY

DAVID KIRIMI MWITHIMBU7TH INTERESTED PARTY

DAVID KIBITI M’GACHARA8TH INTERESTED PARTY

ABDI HASSAN GUYO9TH INTERESTED PARTY

PHILIP KANGETHE10TH INTERESTED PARTY

[AS CONSOLIDATED WITH ELC PET NO. 2 OF 2019]

BETWEEN

DAVID KIRIMIPETITIONER

VERSUS

THE LAND REGISTRAR – MERU CENTRAL DISTRICT

.....1ST RESPONDENT

THE LAND ADJUDICATION OFFICER – RUIRI RWARERA

ADJUDICATION SECTION2ND RESPONDENT

THE HON. ATTORNEY GENERAL3RD RESPONDENT

MACCU MOTORS LTD4TH RESPONDENT

THOMAS MURUGU M’ITWARUCHIU5TH RESPONDENT

JOSPHAT THIAINE IBURI6TH RESPONDENT

FABIAN MURUGU7TH RESPONDENT

TIMOTHY KIMATHI DAVID8TH RESPONDENT

FREDRICK K. MBURUGU9TH RESPONDENT

ROBERTH MUTHAURA GITONGA10TH RESPONDENT

EPHANTUS MAJAU NCHAANI11TH RESPONDENT

AND

GENARO NKUUBI1ST INTERESTED PARTY

ROSALIA MUKIRI2ND INTERESTED PARTY

CICILIA KAMBURA MUKINDIA3RD INTERESTED PARTY

CHARLES RUGOJI4TH INTERESTED PARTY

[AS CONSOLIDATED WITH ELC E001 OF 2021]

BETWEEN

CHARLES RUGOJIPLAINTIFF

VERSUS

DAVID KIRIMI MWITHIMBU1ST DEFENDANT

LARSEN AND TOUBRO LTD2ND DEFENDANT

RULING

1. What is before me is the Application dated **10th February 2025**; brought pursuant to the provisions of **Sections 1A, 1B, 3 and 3A of the Civil Procedure Act Chapter 21, Laws of Kenya; Article 159 (2) (d) of the Constitution**; and all the enabling provisions of the law; and wherein the Applicant has sought the following reliefs:

- (i) *That this application be certified urgent and the same be heard Ex-parte and/or on priority basis in the first instance.*
- (ii) *That this Honourable court be pleased to order and direct that the petition herein, to wit Meru ELC Petition No. 3 of 2020 be disentangled from Meru Petition ELC No. 2 of 2019 and Meru ELC suit No. E001 of 2021 and thereafter be heard and determined separately.*
- (iii) *That costs be in the cause.*

2. The subject application is premised on the various grounds which have been enumerated in the body thereof. Furthermore, the application is supported by the affidavit sworn by one Stanley Kailutha, namely; the 1st petitioner/applicant. The deponent has averred that the subject petition touches on and concerns ownership of various plots whose details have been captured at the foot of the petition dated 7th December 2020. Moreover, it has been averred that the subject petition was consolidated with ELC Petition No. 2 of 2019; and ELC No. E001 of 2021, respectively. Nevertheless, it has been posited that the consolidation was undertaken without the participation and involvement of the petitioners herein.
3. The petitioner in ELC Petition No. 2 of 2019 has filed a replying affidavit opposing the subject petition. In particular, it has been contended that the application for consolidation was duly served on all the parties. However, the petitioners in respect of petition No. 3 of 2020 failed to attend court. In this regard, it has been averred that the petitioner in ELC petition 3 of 2020 cannot now be heard to complain about the consolidation of the various petitions and the suit. Moreover, it has been posited that the issues at the foot of the two petitions and the civil suit are related and intertwined. To this end, the petitioner in ELC petition No. 2 of 2019 has averred that the subject application is misconceived and legally untenable.
4. The rest of the parties neither filed grounds of opposition nor replying affidavit. In addition, the rest of the parties intimated to the court that same would not be opposing the application for deconsolidation.
5. The subject application came up for directions before the court on 21st May 2025; whereupon the parties agreed to canvass and dispose of the

application by way of written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing of the written submissions and exchange of the Written Submission[s].

6. Learned counsel for the applicant [petitioner in ELC petition No. 3 of 2020] filed written submissions and wherein same has highlighted two key issues, *namely*; the issues in respect of the subject petition are separate and distinct from the issues impleaded in petition No. 2 of 2019 and hence the consolidation does not serve any meaningful purpose; and the consolidation was undertaken without the participation of the applicant. In this regard, learned counsel for the applicant has implored the court to review and set aside the order consolidating the suit and thereafter allow the subject petition to be heard and disposed of separately.
7. The counsel for the petitioner in ELC Petition No. 2 of 2019 filed written submissions dated 16th June 2025; and wherein same has similarly highlighted two key issues. The issues highlighted on behalf of the named petitioner are to the effect that the consolidation was undertaken with notice to all the parties; and the issues in dispute cut across the various petitions and the civil suit and thus it is expedient and just to hear and determine the petitions and the suit contemporaneously. Moreover, it has been contended that the deconsolidation will subject the rest of the parties to prejudice and hence the court ought to avert any injustice which may arise from the deconsolidation.
8. I have reviewed the Notice of Motion Application beforehand; the supporting affidavit thereto; and the response filed by the petitioner in ELC

Petition No. 2 of 2019. Additionally, I have also reviewed the pleadings in respect of ELC Petition No. 2 of 2019; ELC Petition No. 3 of 2020; and ELC E001 of 2021. In this respect, I am now conversant and familiar with the details of the properties in dispute, the nature of the dispute and the various reliefs being sought.

9. Flowing from the foregoing, the issue that does arise and which merits consideration is whether or not the deconsolidation ought to be allowed or otherwise. Put differently, whether the deconsolidation being sought is likely to culminate into conflicting decisions being given in respect of the various matters or otherwise.

10. Before venturing forward to address the singular issue which I have highlighted, it is imperative to take cognizance of the various reliefs sought at the foot of the two petitions, and the civil suit.

11. In respect of ELC petition No. 3 of 2020, the relief[s] sought are as hereunder:

*(a) A declaration that the petitioners are the absolute owners of parcel numbers Ruiru/Rwarera, adjudication Section 750, 752, **815**, 831, 2447, 2969, 3999, 5670, 5997, 6266 and 3rd respondents have breached the petitioners' right to property under Article 40 of the Constitution by recording said land parcels in the name of the interested parties.*

(b) An order of mandamus to compel the director of land adjudication and settlement and the land registration Meru central lands registry to follow decision of national land commission as per item No. 5 of the consent dated 24/10/2014

and prohibition of the district land adjudication and settlement officer Ruiru/Rwarera Adjudication Section.

(c) Any other reliefs that the court deems just and equitable in the circumstances.

(d) Costs of this suit and interests

12. In respect of petition No. 2 of 2019, the reliefs sought are as hereunder;

*(a) An order of mandamus compelling the 1st & 2nd respondents to implement the decision dated 8th May 2018, following the objection proceedings in objection No. 5075 of 2018, restoring the petitioners' **parcel No. Meru Central/Ruiru/Rwarera/815** to its original position on the cadastral map/records.*

*(b) A declaration that the petitioner is the absolute registered proprietor of parcel **No. Meru Central/Ruiru/Rwarera/815**.*

*bb. An order rectifying the register to reflect that the petitioners parcel no. **Meru central/Ruiru/Rwarera/815** is 11.20 acres instead of 3.12 acres currently indicated.*

*(c) A declaration that petitioner's parcel No. Meru **Central/Ruiru/Rwarera/815** should be restored to its original position on the cadastral map or record.*

*(d) An order declaring that the interested parties No. 724, 5088, 5089 and 802 have erroneously and wrongfully placed in the position of the petitioners, parcel **No. Meru Central/Ruiru/Rwarera/815** on the cadastral map.*

*(e) A declaration that the petitioners parcel No. **Meru Central/Ruiru Rwarera/815** should remain in situ as occupied by the petitioner.*

e.e. An order directing the respondents to forthwith restore the petitioners parcel No. Meru central/Ruiru/Rwarera/815 to its original acreage of 11.20 acres as earlier allotted.

(f) A permanent injunction restraining the respondent and interested parties from evicting and interfering with lawful possession and occupation of the petitioner on parcel No. Meru Central/Ruirirwarera/815.

(g) Any other reliefs that the court deems just and equitable in the circumstances.

(h) Costs of the petition.

13. In respect of ELC E001 of 202, the reliefs sought are as hereunder;

(i) The defendants do give the plaintiff vacant possession of L.R No. Meru Central/Ruirirwarera/802 and in default the plaintiff would be given vacant possession by officer in charge Kathare Administration Post.

(ii) an order of permanent injunction be issued against the defendants, their successors in title, agents, employees, servants or anybody else claiming at their behest from entering, occupying, remaining or dealing in any manner whatsoever with L.R No. Meru Central/Ruirirwarera/802.

(iii) Mesne profits

(iv) General damages

(v) Special damages of Kshs. 30,000 only

(vi) Costs of the suit

(vii) Interests at court rate

(viii) Any other or better relief as this court deems fit to grant.

14. What becomes apparent from the pleadings filed on behalf of various parties is to the effect that L.R No. Meru Central/Ruirirwarera/815 cuts across. On one hand, the petitioners in respect of petition No. 3 of 2020 are

contending that same are the lawful owners of the named property. In this regard, the said petitioners have invited the court to return a finding and declaration to that effect. On the other hand, the petitioner in respect of petition No. 2 of 2019 contends that same is the lawful owner of the said parcel, *save* that the acreage thereof has been interfered with and reduced to his detriment. In this regard, the named petitioner has sought a declaratory order to that effect and rectification of the register with a view to reinstating [sic] the initial/ original acreage of 11.2 acres.

15. Additionally, the petitioner in respect of petition no. 2 of 2019 has also contended that parcel number 802 has been placed on the cadastral map and same appears to be superimposed on the ground that falls within; or constitutes parcel number 815. According to the petitioner in petition No. 2 of 2019 plot No. 802, together with other related parcel[s] ought to be cancelled and or removed from the cadastral map.

16. Regarding the claim at the foot of ELC E001 of 2021, the plaintiff thereunder contends that same is the lawful owner of plot no. 802. Furthermore, the plaintiff has posited that despite being the owner of plot 802; the defendants to the said suit and who is the petitioner in ELC No. 2 of 2019, has trespassed thereto and taken possession of the named Land [Parcel 802] to the detriment of the plaintiff. To this end, the plaintiff has sought various reliefs. Most importantly, the Plaintiff has sought a declaration that same is the lawful owner of the named plot. In addition, the plaintiff has also sought *Mesne* profits; general damages; and special damages.

17. With the foregoing in mind, it is now appropriate to revert to the issue for determination and to consider whether the subject application is meritorious, or otherwise.
18. Firstly, there is no gainsaying that the issues that colour the two petitions and the civil suit are closely related and intertwined. In particular, the issues turn on the origin; the process underpinning the acquisition and ultimately the ownership of *inter alia* plot no. 815 Ruri Rwarera which is claimed by the principal parties at the foot of the pleadings.
19. To my mind, if this court were to deconsolidate petition number 3 of 2020 and thereafter proceed to hear and determine same on its own, there is a likelihood of the court making orders affecting ownership of inter-alia plot No. 815 Ruri rwarera. Such an order, if made, is bound to affect the rights and interests of the petitioner in ELC No. 2 of 2019. For good measure, it is not lost on me that the petitioner in No. 2 of 2019, contends that same is the lawful and legitimate owner of the said property.
20. Again, if petition No. 3 of 2020 is deconsolidated and heard on its own, there is also a likelihood of the orders therein affecting the proceedings in ELC E001 of 2021, which relates to ownership of plot/parcel No. 802. I beg to remind myself that plot No. 802 is contended to have been placed on the cadastral map at the position which is contended to form the location of parcel 815. Simply put; and what I hear the petitioner in Petition No. 2 of 2019 to be saying is that the said parcel 802 has been superimposed on parcel no. 815.

21. Flowing from the foregoing, what comes to the fore is that the factual issues underpinning the origin, acquisition and ownership of the various plots are related and intertwined. Moreover, the issues of law attendant to the acquisition of the various plots, including plot Number 815, are similarly inter-related. Consequently, and in this regard, there is no gainsaying that the factual and legal issues that underpin the dispute beforehand are intertwined and thus inseparable.

22. Consolidation of suits serves several purposes. Most importantly, consolidation of suits allows the court to have related disputes brought under one roof [consolidated file] and thereafter to hear all the disputes contemporaneously in an endeavor to mitigate costs; and to avert issuance of conflicting decisions, which may arise if the related files were heard separately.

23. It is also worthy to recall and reiterate that the consolidation of related suits also serves to expedite the hearing and determination of the matters in question. Suffice it to highlight that where appropriate and in the interests of affordability, courts of law are enjoined to consolidate suits. Instructively, consolidation of suits falls within the spirit of the overriding objectives of the court, which is better known as the oxygen principle. I beg to add that consolidation of related suits also enables the court to discharge its mandate in line with the command espoused *vide* article 159 (2) (b) of the Constitution.

24. The Court of Appeal highlighted the merits and significance of Consolidation in the case of *Chimweli Jangaa Mangale & 3 others v*

Hamisi Mohamed Mwawasaa & 15 others [p2016] eKLR, where the Court stated thus:

*Clearly, the purpose of consolidating suits is to expedite their hearing and disposal, cut on costs and expenses, save judicial time and ultimately to ensure that justice is administered without undue delay as demanded by **Article 159 (2) (b)** of the Constitution. It does not amount to observing that constitutional demand to hear largely the same dispute between largely the same parties in two different courts and on two or more different occasions. Such an approach entails tying down two courts and calling the same witnesses twice thus incurring unnecessary costs and expense. **Order 11, rule 3(1) (h)** of the **Civil Procedure Rules** regarding pre-trial directions and conferences nowadays empowers the court, with a view to furthering expeditious disposal of cases and case management, to among other things, consolidate suits.*

*In addition, the **overriding objective** found in virtually all the legislation regulating the procedure of the High Court, the ELC and even this Court stipulates that the objective of the legislation is to facilitate the just, expeditious, proportionate and affordable resolution of disputes and requires all the courts to give effect to that objective, so as to achieve the just determination of the proceedings, the efficient disposal of the business of the court, the efficient use of the available judicial and administrative resources, and the timely disposal of the proceedings at a costs affordable by the parties.*

25. To my mind, the consolidation of the three [3] suits *vide* the Court orders made on the 8th of December 2021, was properly undertaken. Moreover, the consolidation was well-intended and in particular, calculated to facilitate efficient, timely and expeditious resolution of the dispute touching on and concerning the ownership of the various plots that have been impleaded at the foot of the pleadings beforehand.

26. Before concluding on this issue, there are two incidental issues which require mention and a short discussion.

27. The petitioner in ELC Petition No. 3 of 2020 [now the Applicant] substantially participated in the hearing and various proceedings that were undertaken after the consolidation of the suit. In particular, learned counsel Mr. Maranya participated in the proceedings of 13th March 2023; and indeed cross-examined the petitioners' witness.

28. Subsequently, learned counsel Mr. Maranya also mounted an application seeking to have the deputy registrar to visit the *locus in quo* at the foot of petition No. 3 of 2020 and thereafter to file a status report. Notably, the application was allowed and the deputy registrar visited the locus in quo. Additionally, a status report was thereafter filed and same forms part of the record of the court.

29. Despite the foregoing, learned counsel Mr. Maranya made an about turn after more than two years and now seeks deconsolidation. In my humble view, the conduct of the petitioner in petition No. 3 of 2020 and that of his learned counsel amount to approbating and reprobating [*namely, blowing hot and cold*] at the same time. The conduct in question does not bode well with equity and the rule of law.

30. Moreover, there is no gainsaying that the amount of time taken in dealing with the subject application, namely; the duration between February 2021 to date, was sufficient to make substantial progress in the hearing of the dispute.

31. Turning to the second incidental issue; I beg to point out that the order consolidating the two petitions and the civil suit was made on 8th December 2021. The subject application was not filed until 10th February 2025. Instructively, the Application was filed after a duration of more than Four years. Quite clearly, the application was filed with unreasonable and inordinate delay. The delay in question warrants the invocation and deployment of the *doctrine of laches*.

32. Finally, it is my hope that going forward, parties and their learned counsel shall appreciate, internalize, and imbue the principles espoused *vide* sections 1A and 1B of the Civil Procedure Act [the overriding principles] and thereafter assist the court in performing its core mandate. Suffice it to underscore that courts of law are commanded to discharge their functions in accordance with Article 159 principles.

FINAL DISPOSITION

33. Flowing from the analysis in the body of the ruling, it must have become apparent that the subject application is not only misconceived, but same reeks of mischief. Moreover, there is no gainsaying that the application is meritless.

34. In the upshot, and for the reasons that have been alluded to; the final orders that commend themselves to the court are as hereunder;

- (i) The Application dated 10th February 2025; be and is hereby dismissed.**
- (ii) Costs of the Application be and are hereby awarded to the Petitioner in ELC No. 2 of 2019 only.**
- (iii) The Petition that the consolidated matters, *namely*; ELC Petition No. 2 of 2019; No. 3 of 2020 and ELC E001 of 2021 shall be heard on priority basis.**
- (iv) Furthermore, the parties are hereby implored to abide by and comply with the directions that shall follow upon delivery of the ruling.**

35. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF
OCTOBER 2025**

**OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].
JUDGE.**

In the presence of:

Hussein - Court Assistant

Mr. Kabba holding brief for Mr. D.M Maranya for the Applicant [petitioners in ELC petition No. 3 of 2020]

Miss Gikundi for the Petitioner in ELC No. 2 of 2019

Mr. Murango Mwenda for the 1st Cross petitioner in ELC No. 2 of 2019.

Miss Miranda [senior Litigation counsel] for the Respondents in ELC Petition No. 3 of 2020; 1st – 3rd respondents in Petition No. 2 of 2019 and 3rd & 4th respondents in cross petition No. 2 of 2019

Mr. Ashaba for the 5th, 10th, 11th, 12th and 14th Interested parties in petition No. 3 of 2023.

Mr. Muchomba for the 4th to 11th respondents in ELC Petition No. 2 of 2019; cross petitioners in ELC No. 2 of 2019; for the the 4th interested parties in ELC No. 2 of 2019 and for the plaintiff in ELC E001 of 2021.