



**Mwangi (Personal representative of the Estate of Stephen Flavian Mwangi - Deceased) v
Waiharo & 2 others (Land Case E041 of 2024 & Environmental and Land Originating Summons
E001 of 2021 (Consolidated)) [2025] KEELC 7585 (KLR) (29 October 2025) (Directions)**

Neutral citation: [2025] KEELC 7585 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
LAND CASE E041 OF 2024 & ENVIRONMENTAL AND LAND
ORIGINATING SUMMONS E001 OF 2021 (CONSOLIDATED)**

LL NAIKUNI, J

OCTOBER 29, 2025

BETWEEN

**MARGARET NDUITA MWANGI (PERSONAL REPRESENTATIVE OF THE
ESTATE OF STEPHEN FLAVIAN MWANGI - DECEASED) PLAINTIFF**

AND

MBIU WAIHARO 1ST DEFENDANT

ZAKAYO MURIUKI MBOGORI 2ND DEFENDANT

REGISTRAR OF LANDS - KWALE COUNTY REGISTRY 3RD DEFENDANT

DIRECTIONS

I. Introduction

1. In the course of the proceedings before this Honourable Court, it became imperative for there to be a clear direction offered in order to allow a smooth, expedient and just disposal of the respective subject matters. From a background view point, the matter before the Court concerns two (2) suits filed before this Court in respect of the same parcel of land, being Land Reference No. Kwale/majoreni/1289 (Hereinafter referred to as “The Suit Property”). The suits are:-
 - a. ELC (OS) No. E001 of 2021 – Lily Michael Mwanguo Chikove & 45 Others – Versus - Mbiu Waiharo Zakayo Muriuki Mbogori, Land Registrar Kwale & The Hon. Attorney General”, (Hereinafter referred to as “E001 of 2021”) filed as an Originating Summons premised on a claim for Land adverse possession pursuant to the relevant provisions of the Law.
 - b. ELCLC E041 of 2024 – “Margaret Nduita Mwangi (as Administrator of the Estate of Stephen Flavian Mwangi) – Versus - Mbiu Waiharo Zakayo Muriuki Mbogori, Registrar of Lands



Kwale County & The Hon. Attorney General”, (Hereinafter referred to as “E041 of 2024”) instituted by way of Plaint challenging an alleged fraudulent transfers of the entire Suit Property to the Defendants and other third parties.

2. Faced with this state of affairs, the Court was compelled to critically address the issue of multiplicity of suits and to give pragmatic and practical directions that would allow the dispute to proceed in an orderly, expeditious, and just manner.

II. Background and Proceedings

3. During a mention date of ELC (OS) No. E001 of 2021 on 4th March 2025, Mr. Mungai Advocate for the 1st Defendant in that matter, drew the attention of the court to the existence of another suit ELCLC E041 of 2024 over the same subject matter and which had a hearing dated before this court on 18th March 2025.
4. The Learned Counsel further proposed that the matter to be mentioned on the material date to enable court appreciate the said matter and give uniform directions to avoid embarrassment scheming in the long run. The Honourable court directed on this issue that the matter be mentioned along the civil case ELCLC E041 of 2024 as the subject matter for it to be considered for their consolidation.
5. On 18th March 2025, after perusing both files and hearing the submissions of counsel, the Court observed that:
 - a. Both matters concerned Land Reference No. Kwale/majoreni/1289;
 - b. Some parties overlap between the two suits, notably Mbiu Waiharo and Zakayo Muriuki Mbogori; and
 - c. The same firm, M/s Mungai Kamau & Company Advocates, appears in both records.

The Court thus issued interim directions requiring service of pleadings within three (3) days, for Defendants to obtain instructions, and for a mention on 8th April 2025 to report compliance.

6. On 8th April 2025 - ELCLC E041 of 2024, after mention, the Court granted a further 21 days for full compliance and set mention for 1st July 2025 to consider consolidation and pre-trial arrangements.
7. On 1st July 2025 ELCLC E041 of 2024, and the Honourable upon confirmation of partial compliance, the Court directed that both matters be listed for consideration on 25th July 2025 to determine whether the suits should be consolidated, and if so, to give directions under Orders 7 and 11 of the Civil Procedure Rules.

III. Brief Facts & Observations

8. Upon hearing the presentations by the Counsels and the record, the Honourable Court has made the following observations. Firstly, it is clear that this is a case of multiplicity of suits pertaining to a common subject matter. Secondly, the suits are over that parcel of the Suit Property.

A. The suit OS No E001 of 2021.

9. From keen perusal of the records, the suit was instituted as an Originating Summons vide filing of an Originating Summons dated 21st September 2021, Amended on 20th June 2022 and as Further Amended on 17th April 2023 and Further further Amended on 7th June 2024. It was brought under the provision of Order 37 Rule 7 of the Civil Procedure Rules, 2010 and Sections 1A, 1B and 3 of the



Civil Procedure Act, Cap. 21 and Section 38 of the Limitation of Actions Act. The Further Amended Originating Summons is as follows:-

‘let Mbiu Waiharo Zakayo Muriuki Mbogori, Land Registrar, Kwale And The Hon. Attorney General, the Defendants/Respondents herein within fifteen (15) days after service of this summons on or inclusive of the day of service on them through the Plaintiff’s Advocates, enter an appearance to the summons which is issued upon application of the Plaintiffs who claims that they are entitled to and ought to be declared as the proprietors of that Portion of Plot LR No. Kwale/Majoreni/1289, Kwale County Measuring Approximately 2.02 HA by virtue of adverse possession for the period prescribed in the Limitation of Actions Act, Cap 22 Laws of Kenya for the determination of the following questions:-

1. Whether the Plaintiff Plaintiffs/Applicants are entitled to be declared the proprietors of the whole of that Portion of Plot LR No. Kwale/Majoreni/1289, Kwale County Measuring Approximately 2.02 HA through adverse possession prescribed under the Limitation of Actions Act, Cap 22 Laws of Kenya.
2. Whether that Portion of Plot LR No. Kwale/Majoreni/1289, Kwale County Measuring Approximately 2.02 HA can be registered in favour of the Plaintiffs/Applicants herein.
3. Whether the Land Registrar, the 3rd Defendant herein be directed that the Orders made in prayer 1 & 2 above be an instrument of transfer of ownership and to transfer that Portion of Plot LR No. Kwale/Majoreni/1289, Kwale County Measuring Approximately 2.02 HA to the Plaintiffs/Applicants within thirty (30) days of the Order being made.
4. Whether the Plaintiffs are entitled to costs of the suit.

Grounds:

- a. The 1st Defendant is the registered owner of all that property known as that Portion of Plot LR No. Kwale/Majoreni/1289, Kwale County Measuring Approximately 2.02 HA herein referred to as the "suit property").
- b. The Plaintiffs/ Applicants have continuously and without any interruption, lived in the suit property for a period exceeding 12 years preceding taking of these summonses. Hence, they have acquired prescriptive rights over the suit property.
- c. Since taking possession of the suit property, the Plaintiffs have lived thereon together with their family families constructed a permanent house, carried out farming, dug water wells and planted trees (including coconut trees, mango trees, as well as other indigenous trees). This is the place they and their family families have known and called home for years.
- d. The Plaintiff Plaintiffs' occupation has have been non-permissive, open, peaceful, notorious ("nec vi, nec clam, nec precario"), exclusive and adverse to the 1st Defendant's title including persons claiming under them, without interruption.
- e. The Plaintiffs have further conducted a search at the Lands Office, and has have established that the 1st Defendant is the registered owner of the suit property and that previously the land had been registered under the name of Mbiu Waiharo.
- f. In the circumstances, by operation of the law, the Plaintiffs are entitled to be the legal and registered owner of the suit property, under the doctrine of Adverse Possession.
- g. It is in the interests of administration of justice that the prayers sought be granted.



Which Application is further by the Affidavit of Lily Michael Mwangugo Chikove and upon other and further grounds as may be adduced at the hearing thereof.

10. According to the Plaintiffs/Applicants, they had been in continuous, peaceful and uninterrupted possession of a portion of the Suit Property for over 12 years, having acquired prescriptive rights. The 1st and 2nd Defendants/Respondents were alleged to be the registered owners, but the Plaintiffs/Applicants claim the occupation had been open, non - permissive and adverse to the title. Initially, the 3rd and 4th Defendants/Respondents were included for purposes of registration and oversight.
11. The Plaintiffs/Applicants sought orders declaring them as proprietors by adverse possession of the portion measuring approximately 2.2 HA transfer of that portion to them, and costs. The grounds include long-term farming, construction of houses, and family use without interruption.

B. The ELCLC E041 of 2024.

12. From the filed pleadings, the suit was filed in the year 2024 through a Plaint dated 24th June, 2024. Primarily, the cause of action in this suit was on ownership of the Suit Property. The Plaintiff alleged that her late husband, Stephen Flavian Mwangi, acquired the property on 18th August 1986, with a Certificate of Title Deed issued on 11th May 1994. However, in the course of time, problems commenced when the Plaintiff discovered fraudulent transfers to the 1st and 2nd Defendants on 8th May 2020 and later on 8th June 2021.
13. It was held that although the original acquisition was proper, the registrations in favour of the 1st and 2nd Defendants were fraudulent, unprocedural and without consent or authority. According to the Plaintiff, the Kwale Land Registrar acted irregularly by effecting these transfers without notices. In summary, the Plaintiff sought for declarations that she was the bona-fide owner, nullification of the transfers to the 1st and 2nd Defendants, rectification of the register, general damages, and costs of the suit.
14. In essence, ELC Case No. E041 of 2024 was mainly over the entire Suit Property, which had further convoluted into the issues that arise in ELC (OS) No. E001 of 2021. In the latter suit, a portion of the Suit Property was claimed by the Plaintiffs/Applicants through adverse possession, challenging the registered ownership held by parties overlapping with the 2024 suit.
15. On various dates, applications were filed seeking to set aside alleged fraudulent transfers and for preservatory orders. The court had noted oppositions via affidavits and preliminary objections. While perusing the files, the court had come across orders maintaining status quo pending determination.
16. The court made the observation that it had issued preservatory orders in ELC (OS) No. E001 of 2021 with regards to the Suit Property to be maintained and prohibiting further dealings. However, the same notwithstanding, the court notes the overlapping claims require resolution to avoid duplication of suits and subsequent reliefs to be granted.

IV. Analysis And Determination

17. Having considered all the pleadings in both suits, the responses and the envision of *the Constitution* of Kenya 2010 and the relevant provisions of law, I do frame the following issue for consideration - Whether ELC OS E001 of 2021 and ELCLC E041 of 2024 should be consolidated?
18. The law governing the consolidation of files is founded under the provision of Section 80 (h) of the *Civil Procedure Act*, Cap. 21 and Order 11 Rule3 (I) (h) of the Civil Procedure Rules, 2010 states as follows: -



- 3.
- (1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall—
 - (a) -----
 - (h) Consider consolidation of suits;
19. The Civil Procedure Rules mandates courts are to consider consolidations of suit. In so doing, courts to be guided by the following three (3) legal parameters. These are: -
- a) Do the same question of law or fact arise in both cases?
 - b) Do the rights or reliefs claimed in the two cases or more arise out of the same transaction or series of transactions?
 - c) Will any party be disadvantaged or prejudiced or will consolidation confer undue advantage to the other party?
20. The principles to consider while consolidating suits were amply set out in the case of:- “Nairobi ELC Suit No. 1000 of 2012 Joseph Okoyo – Versus - Edwin Dickson Wasunna (2014) eKLR”, which cited with approval Mombasa in “HCCC No. 992 of 1994 Nyati Security Guards and Services – Versus - Municipal Council of Mombasa” wherein the factors were enumerated as follows:-
- “The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where: -
- (a) Some common question of law or fact arises in both or all of them; or
 - (b) The rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
 - (c) For some other reason it is desirable to make an order for consolidating them.”
21. Additionally, in the case of: “Law Society of Kenya – Versus – The Centre for Human Rights & Democracy, Supreme Court of Kenya Petition No. 14 of 2013 the SOK held that: -
- “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”
22. While Maraga J, as he then was, held in:- “Municipal Council of Mombasa – Versus - Municipal Council of Mombasa [2004] eKLR that: -
- ‘Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.
- The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where: -
1. some common question of law or fact arises in both or all of them; or



2. the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
 3. for some other reason it is desirable to make an order for consolidating them”.
23. Upon close scrutiny of the pleadings and submissions, it is evident that both ELC (OS) No. E001 of 2021 and ELCLC E041 of 2024 relate to the same parcel of land, namely Land Reference No. KWALE/MAJORENI/1289 (“the Suit Property”). While the former suit is premised on adverse possession by forty-six (46) occupants claiming prescriptive rights over a portion measuring approximately 2.02 hectares, the latter suit is founded upon alleged fraudulent transfers of ownership of the same property from the late Stephen Flavian Mwangi to the 1st and 2nd Defendants.
 24. The Court observes that the underlying questions in both matters revolve around the validity of title, ownership, use, occupation and the effect of registration over the said land. The reliefs sought—whether declaration of ownership through adverse possession or nullification of fraudulent transfers—cannot be determined in isolation without risking inconsistent or contradictory findings by the same Court over the same property.
 25. Both suits also share overlapping parties: Mbiu Waiharo and Zakayo Muriuki Mbogori appear as Defendants in both matters; the Registrar of Lands, Kwale County is a common statutory Defendant; and the law firm of M/s Mungai Kamau & Company Advocates features in both files. These overlaps demonstrate that the two suits stem from the same transaction and chain of title.
 26. Further, both suits have attracted interim preservative orders maintaining status quo over the Suit Property, signifying that consolidation will promote uniformity in orders and prevent conflicting directions over the same land.
 27. The Court has also noted that the suits are at comparable procedural stages, and consolidation will not occasion any delay or prejudice. On the contrary, it will save time, judicial resources, and costs, in line with Sections 1A and 1B of the *Civil Procedure Act*, Cap. 21 on the overriding objective.
 28. Guided by the reasoning in the case of:- “Law Society of Kenya v. Centre for Human Rights & Democracy (supra) and Joseph Okoyo v. Edwin Dickson Wasunna (supra)”, this Court finds that the consolidation of these suits will serve the ends of justice by enabling one coherent and comprehensive determination on ownership and occupation rights over Kwale/Majoreni/1289.
 29. Therefore, the Honourable Court holds that both suits raise common questions of law and fact, arise from the same transaction concerning ownership and possession of the Suit Property, and involve overlapping parties. Consolidation will ensure consistency, avoid duplication, and facilitate expeditious resolution without prejudice to any party.

V. Conclusion & Directions

30. Ultimately, the upshot of this in-depth and elaborate analysis and based on the inherent powers vested in me under the provisions of Sections 1, 1A, 3, 3A of the *Civil Procedure Act*, Section 3 of *Environment and Land Court Act*, No. 19 of 2011, Section 101 of the Land Registration No. 3 of 2012, Sections 128 and 150 of the *Land Act* No. 6 of 2012, I proceed to make the following orders/directions: -
 - a. That the two suits, ELC (OS) No. E001 of 2021 and ELCLC E041 of 2024, be and are hereby consolidated as they relate to the same subject matter;
 - b. That the file ELCLC E041 of 2024 be the lead file where all the filings of pleadings will be done and the proceedings be recorded from henceforth.



- c. That the Originating Summon in ELCOS E001 of 2021 be deemed as the Reply and Defence to ELCLC E041 of 2024 unless the applicant feels he needs to file a substantive defence to the plaint in ELCLC E041 of 2024.
- d. That the Plaintiff granted 7 days leave from this date hereof to have amended, filed and served Amended Plaint from this day.
- e. That thereafter, the Defendants to be at liberty of 14 days to file and serve Amended Defence and replies.
- f. That otherwise in general terms parties to be at liberty to exchange the pleadings. _____
- g. That for expediency's sake the matter to be mention on 10th December, 2025 taking elaborate and further directions with regard to the disposal of the matter and fixing of a hearing date which should be at least within the next 180 days from this date hereof – hearing on 15th April, 2026.
- h. That an order be and is hereby made directing the Land Registrar, Kwale to register an inhibition against pending the hearing and final determination of the consolidated suit in order to preserve the said suit properties thereof.

It Is So Ordered Accordingly.

**DIRECTIONS DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS
SIGNED & DATED AT KWALE THIS 29TH DAY OF OCTOBER 2025**

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**HON. MR. JUSTICE L.L NAIKUNI
ENVIRONMENT & LAND COURT AT
KWALE**

Directions delivered in the presence of:

Mr. Daniel Disii, the Court Assistant.

Mr. Mungai Kamau for the 1st Defendant in OS E001 of 2021 and for the 2nd Defendant in ELCLC E041 of 2024

Mr. Philip Adede for the Plaintiff/ Applicant in OS E001 of 2021

Mr. Penda for the 2nd and 3rd Respondents in OS E001 of 2021 and for the 1st Defendant in ELCLC E041 of 2024.

Mr. Ngugi Kariuki for the Plaintiff in ELCLC E041 of 2024.

Mr. King'ang'i for the 1st Defendant in ELCLC E041 of 2024.

