



REPUBLIC OF KENYA



KENYA LAW
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**Northwest Capital Limited v Ohuru (Environment and Land Case
E213 of 2023) [2025] KEELC 7339 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7339 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E213 OF 2023**

TW MURIGI, J

OCTOBER 24, 2025

BETWEEN

NORTHWEST CAPITAL LIMITED PLAINTIFF

AND

WILSON OHURU DEFENDANT

RULING

1. Before me for determination are three applications. The first application is dated 8th July 2024, brought under Order 51 Rule 1 of the Civil Procedure Rules and Sections 3A, 6, and 8 of the [Civil Procedure Act](#), in which the Defendant/Applicant seeks the following orders:
 - a. Spent.
 - b. Spent.
 - c. That the instant suit be consolidated with ELCOS No. E024/2024 Wilson Ohuru Omwange v Northwest Capital Apartments Limited and Orbit Chemical Industries Limited for purposes of hearing and determination.
 - d. That the Defendant be granted leave to amend his defence and counter-claim dated 28th March 2024 as per the annexed draft.
 - e. That there be no order as to costs.
2. The application is based on the grounds appearing on its face together with the supporting affidavit of Wilson Ohuru sworn on even date.



The Applicant's Case

3. The Applicant argues that the two suits should be consolidated because they both relate to L.R. No. Nairobi/Block 263/1036 and Nairobi/Block 263/1037 (hereinafter referred to as the suit properties). He also indicated his intention to amend his defence and counterclaim to strike out some parties as ordered by the Court on 20th May 2024.

The Respondent's Case

4. The Plaintiff/Respondent filed a replying affidavit dated 14th August 2024, sworn by its director, Evanson Kamau Waitiki, in opposition to the application. The deponent averred that Judge Angote, who had conduct of ELCOS No. E024 of 2024 directed the file to be placed before Judge Mogeni for further directions. However, this was not an order for consolidation.
5. He further averred that the hearing of the instant suit has been concluded, and therefore introducing ELCOS No. E024 of 2024 would amount to rehearing the matter, which was addressed in the Defendant's counterclaim that was dismissed by the Court.
6. The second application is a Notice of Motion dated 27th March 2025 brought under Order 51 Rule 1 of the Civil Procedure Rules, Sections 1, 2A, 3A, 6 and 8 of the *Civil Procedure Act*, in which the Defendant seeks the following orders:
 - a. That this Honourable Court be pleased to order that this matter commences De Novo and the proceedings taken in this matter by Judge Mogeni be set aside.
 - b. That an order directing that this suit and ELCOS No. E024 of 2024 Wilson Ohuru Omwange v Northwest Capital Apartments Limited and Orbit Chemical Industries Limited be placed before the presiding judge of this Court for directions on consolidation and disposal.
 - c. That there be no order as to costs.
7. The application is premised on the grounds appearing on its face together with the supporting affidavit of Wilson Ohuru sworn on even date.

The Applicant's Case

8. The Applicant averred that on 8th July 2024, he filed an application to consolidate this case with ELCOS E024 of 2024. He further averred that he had filed a motion for Hon. Lady Justice Mogeni to recuse herself, citing bias and partiality due to her actions which included scheduling a hearing while a consolidation application was pending, directing that ELCOS E024 of 2024 be heard alongside this case without formal consolidation, and forcing him to surrender his property to avoid contempt proceedings.
9. He asserted that his application for the judge's recusal was not heard due to her transfer. He further stated that, arising from his lack of confidence in the proceedings taken by the previous judge, it is in the interest of justice that the proceedings be heard de novo.
10. In conclusion, he maintained that it is only just that the proceedings be set aside.

The Plaintiff/Respondent's Case

11. The Plaintiff filed a replying affidavit of Evanson Kamau Waitiki, sworn on 15th April 2025, in opposition to the application. The deponent averred that the Defendant's allegations of bias were



- unfounded. He argued that there is no reasonable basis for the matter to be heard de novo since Judge Mogeni has already been transferred,
12. The deponent asserted that the Plaintiff would be prejudiced if the hearing starts de novo, as this would cause unnecessary delay, and the Defendant would continue collecting rent from the suit properties. He further stated that the Defendant filed another suit similar to his counterclaim, despite his counterclaim having been dismissed. The deponent averred that the application for consolidation was filed after the hearing had been concluded, and that it is intended to derail the judgment.
 13. In conclusion, the deponent stated that the application is a backdoor attempt by the Defendant to cure deficiencies in his case.
 14. The third application is a Notice of Motion dated 2nd April 2025 brought under Sections 1A, 1B, and 3A of the *Civil Procedure Act*, Order 26 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules, in which the Plaintiff seeks the following orders:
 - a. Spent.
 - b. That the Honourable Court be pleased to order that the Defendant deposits the rental income derived from Nairobi/Block 263/1037 and Nairobi/Block 263/1036, the suit properties herein, into Court pending hearing and determination of the suit.
 - c. That this Honourable Court direct that the Registrar of Estate Agents Registration Board appoint a Property Manager from the roll to manage, collect, and deposit net rental proceeds into a court collection account in the names of the Plaintiff and Defendant herein or their respective acting advocates as stakeholder pending judgement.
 - d. That this Honourable Court direct the tenants to pay any rent due to the court collection account mentioned above.
 - e. That the fees for the appointed agent be withdrawn on a monthly basis from the collection account mentioned above.
 - f. That the costs be awarded to the Plaintiff.
 15. The application is premised on the grounds appearing on its face together with the supporting affidavit of the Plaintiff's director, Evanson Kamau Waitiki sworn on even date.

The Applicant's Case

16. The deponent averred that he is the beneficial and registered owner of the suit properties, having purchased them at a public auction in 2023 for Kshs. 63,000,000/=. He further averred that he has never gained vacant possession of the property due to the Defendant's trespass. He explained that the Defendant has filed numerous applications and a separate suit, which have delayed this matter and prevented the Plaintiff from realizing a monthly rental income of Kshs. 1,224,000/=.
17. He further averred that it would be prejudicial to allow the Defendant to continue benefiting from the rental income to his detriment.
18. In conclusion, the deponent stated that the defendant will continue to unjustly benefit from the suit properties if the orders sought are not granted.



The Defendant's Case

19. The Defendant filed a replying affidavit dated 5th May 2024 and grounds of opposition dated 25th April 2025 in opposition to the application. He deposed that the application is incompetent, misplaced and an abuse of the court process.
20. He averred that on 5th March 2024, the Court issued orders to maintain the status quo, meaning the Defendant continues to have quiet possession and exclusive use of the suit properties. He asserted that the application is made in bad faith because the Plaintiff has never possessed the suit properties or had tenants or collected rent therefrom.
21. The applications were canvassed by way of written submissions.

The Plaintiff's Submissions

22. The Plaintiff filed his submissions dated 13th June 2025. On behalf of the Plaintiff, Counsel outlined the following issues for the court's determination:-
 - a) Whether the suit should be heard de novo?
 - b) Whether the court should allow the consolidation of this suit with ELCOS E024 of 2024.
 - c) Whether the Defendant should be ordered to deposit the rental income of the suit properties in court pending the hearing and determination of this suit?
 - d) Who should bear the costs of these applications?
23. Regarding the first issue, Counsel submitted that the Defendant did not demonstrate bias, irregularity, or a fundamental breach of justice that would justify setting aside the proceedings conducted by Justice Mogeni.
24. Counsel further submitted that allowing the matter to start de novo would delay justice and continue to exclude the Plaintiff from the suit properties. To support this argument, reliance was placed on Order 18 Rule 8 of the Civil Procedure Rules and on the case of *Wycliffe Mwavali Ondari v County Council of Narok & another* [2022] KEHC 2541 (KLR).
25. Regarding the second issue, Counsel submitted that the suits should not be consolidated because ELC E024 OF 2024 was filed to circumvent the ruling delivered by Judge Mogeni, which dismissed the Defendant's counterclaim that sought to introduce new parties and causes of action.
26. Regarding the third issue, it was submitted that the Plaintiff purchased the suit properties in July 2023 through a public auction for Kshs. 63,000,000/=. It was further submitted that the Defendant has continued collecting rent from the suit properties despite the Court's order to maintain the status quo and refrain from interfering with the Plaintiff's quiet possession of the suit properties. It was proposed that the rent be deposited with a neutral holding party pending judgment, thereby ensuring that no party gains an unfair advantage over the other. To support this point, reliance was placed on the case of *Waruingi & another v Allied Group for Business Investment Limited & 3 others* [2024] KEELC 77 (KLR).
27. On the issue of costs, Counsel relied on Section 27 of the [*Civil Procedure Act*](#) to submit that the Defendant should bear the costs due to his delaying tactics.



The Defendant's Submissions

28. The Defendant filed two sets of submissions. In his submissions dated 5th May 2025, Counsel outlined the following issues for the court's determination:-
 - a) Whether the proceedings should be set aside and this matter be heard de novo
 - b) Whether this file should be placed before the presiding judge for consolidation with ELCOS No. E024 of 2024
29. On the first issue, Counsel submitted that the hearing should start de novo because the proceedings taken by Judge Mogeni have been impugned.
30. Counsel further submitted that Judge Mogeni forced the hearing of the case and denied the Defendant the opportunity to prosecute his application for amendment of his defence and counterclaim. It was also submitted that the Defendant filed a recusal application, which became moot after Judge Mogeni was transferred
31. Regarding the second issue, Counsel submitted that ELCLOS No. E024 of 2024 was filed after Judge Mogeni had ruled that the Defendant could not join new parties to his counterclaim. Counsel further submitted that after filing that suit and before the matter was set down for hearing, the Defendant made an application for consolidation that was not heard, and was therefore compelled to proceed with the hearing in this suit. It was submitted that although the latter suit was marked as closed on the CTS, both files should be placed before the Presiding Judge for directions.
32. In his submission dated 12th June 2025, Counsel addressed the issue of whether rent collected from the suit property should be deposited in Court. It was argued that the Court's order to maintain the status quo implies that the Defendant, who has controlled the suit properties for the past twenty years, should continue to do so.
33. It was further submitted that the Plaintiff had not demonstrated the basis for depositing rent in Court, as the Plaintiff has no tenants on the suit properties, has never collected rent from them, and did not seek damages or mesne profits in the Plaintiff.
34. It was argued that the Plaintiff has no legal basis to claim that the rent be deposited in court because he fraudulently acquired the suit properties through an illegal auction. It was further noted that the Plaintiff did not indicate the average rent collected to assist the Court in making a decision. To support this argument, reliance was placed on the case of *Mungai & another v Cheska Agencies Limited & another* [2023] KEELC 21768 (KLR).
35. Counsel argued that the issue of appointing estate agents is misplaced, as it typically depends on the success of the prayer for deposit of rent.

Analysis and Determination

36. Having considered the application in light of the pleadings, the respective affidavits, and the rival submissions, the following issues fall for determination:-
 - a) Whether this suit should be consolidated with ELCOS EO24 of 2024?
 - b) Whether the hearing should start de novo?
 - c) Whether the rent collected from the suit properties should be deposited into a Joint Account?



37. Regarding the first issue, the Defendant argued that the two suits should be consolidated because they both relate to the suit properties. The Plaintiff, on the other hand, argued that they should not be consolidated since the hearing of the instant suit has already been concluded. It was also noted that consolidation of the two suits would amount to rehearing the Defendant's counterclaim, which had already been dismissed.
38. In the case of *Law Society of Kenya vs The Centre for Human Rights and Democracy and 12 Others* (2014) eKLR, the Supreme Court of Kenya had this to say;
- “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 a disadvantage towards the party that opposes it”.
39. The principles of consolidation were set out in the case of *Nyati Security Guards and Services Ltd vs Municipal Council of Mombasa* (2004) eKLR as follows:
- “The situation in which consolidation can be ordered includes 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 arises 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.”
40. In deciding whether or not to order for consolidation of suits, the following factors must be taken into consideration:-
- 1) Whether common questions or issues of law or facts arise.
 - 2) Whether the claimed right to relief arises out of the same or similar transactions or series of transactions.
 - 3) Whether the interest of justice favours consolidation.
 - 4) Whether the suit can be consolidated as cross actions between the same parties arising out of the same subject matter.
41. Turning to this case, after reviewing the pleadings in both matters, I am of the opinion that they do not involve common questions of law. While both cases relate to the same properties, they are based on different legal principles. The current suit concerns an auction in which the Plaintiff claims to have acquired the properties. Conversely, the Defendant argues that the auction was illegal. The second case involves a claim of adverse possession, in which the Defendant asserts that he acquired the properties through adverse possession. The legal issues presented are distinct and do not warrant consolidating the cases.
42. The Defendant admitted in his submissions that the second suit was filed following his dissatisfaction with the decision of Judge Mogeni, which denied him the opportunity to add parties to his counterclaim. It is my considered view that the Defendant should have filed an appeal, not another suit in the same Court. This court is of the view that the matter is *res judicata*. Based on the foregoing, the prayer for consolidation is hereby denied.



43. Regarding the second issue, the Defendant argued that the hearing should start de novo because Judge Mogeni was biased. The Plaintiff contended that the claims of bias were unsubstantiated and would prejudice its case.

44. In *Musili v Scania East Africa Limited* [2023] KEHC 24598 (KLR), the Court stated as follows:

The test on whether or not to proceed with a matter from the stage at which the Trial Judge left it or start the hearing de novo was laid down by the Court in the case of *Mandavia v Rattan Singh* [1968] EA 146 as hereunder –

“...the proper test is whether the successor judge is in a good position as his predecessor would have been to evaluate the evidence and submissions which have been put forward and to continue the hearing on that basis.”

46. The Defendant claimed that Judge Mogeni’s conduct was biased because she insisted on the case proceeding for a hearing, ignored the application to consolidate the two cases, and compelled him to surrender the suit properties. However, there is no evidence on record showing that the Defendant was compelled to participate in the proceedings. When the Court scheduled the hearing for 11:30 a.m., the Defendant and his advocate did not object and took part in the proceedings. The Defendant’s advocate cross-examined the Plaintiff’s witnesses, and the Defendant testified. Furthermore, on 15th July, 2024, before the hearing, Judge Mogeni directed that issues from the second case be addressed during the current hearing. There is no evidence that she forced the Defendant to relinquish ownership of the suit properties; she only ordered him to comply with the Court rulings, including refraining from interfering with the Plaintiff’s quiet possession of the properties.

47. In light of the foregoing, I find that the allegations of bias have not been proven. Since the Defendant has not demonstrated any omissions or gaps in the proceedings, I find that the current judge is well-positioned to evaluate the evidence and submissions and to make a decision. The request for the hearing to start de novo is therefore denied.

48. Regarding the third issue, the Plaintiff argued that the rent from the suit properties should be deposited into a neutral account. The Defendant argued that the Plaintiff has no basis to request that rental income be deposited in a joint account because the Plaintiff has no tenants on the suit properties, did not seek mesne profits in its Plaint, and did not provide the Court with an average rental rate to consider.

49. It is not in dispute that both parties are claiming ownership over the suit properties. At the interlocutory stage, the court is not supposed to determine the issue of ownership.

50. Based on the materials presented before me, it would be unfair to let the Defendant enjoy rental income from a property whose ownership is yet to be determined.

The ownership of the suit property having not been resolved, it will be fair that the rental income be deposited in an interest earning account as the dispute is being sorted.

51. In the end, I find that the application dated 8th July 2024 and 27th March 2025 are devoid of merit and are hereby dismissed with costs. The Application dated 2nd April 2025 partially succeeds in the following terms:-

- a. The tenants are hereby directed to pay rent due to the court collection account to be held in the joint names of the Plaintiff and Defendant or their respective advocates pending the judgment.
- b. The Applicant is awarded costs of the application.



RULING SIGNED, DATED, AND DELIVERED VIA MICROSOFT TEAMS THIS 24TH DAY OF OCTOBER, 2025.

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HON. T. MURIGI

JUDGE

In the Presence of: -

Karwanda for the defendant

Ahmed – Court Assistant

