

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELCLC. CASE NO. E103 OF 2024

DOMINIC

KILONZI

MUNENE:.....PLAINTIFF/APPLICANT

(Suing as the personal representative of the Estate of the

PAUL MUNENE KAVUNGO (deceased)

VERSUS

MUENI KAMOYA KAVUNGO:.....1ST DEFENDANT/RESPONDENT

NICODEMUS KAKULI KAMOYA:.....2ND DEFENDANT/RESPONDENT

RULING

The first application is dated 12th November 2024 and is brought under Article 40 of the Constitution of Kenya, Section 26 and 68 of the Land Registration Act, Order 40 Rule 1 and 51 of the Civil Procedure Rules seeking the following orders;

1. The court be pleased to grant an order restraining the 1st and 2nd Respondents/Defendants jointly or severally by themselves, their servants or agents or otherwise howsoever from transferring, selling, wasting or disposing the suit property the parcel of land L.R. No. Mbiuni/Kabaa/46 pending the hearing and determination for this case.

2. The court be pleased to compel the 1st and 2nd Respondents' grant the Plaintiff and his family access to the pass way connecting their home to the main road as the 1st Defendant has denied them access making it difficult for the minors of the Plaintiff's family to get to school on time.
3. The costs of this application be provided for.

It is supported by the annexed affidavit of DOMINIC KILONZI MUNENE and grounds that the 1st and 2nd Respondents obtained a grant and a Certificate of Confirmation in relation to the parcel of land LR No. Mbiuni/Kabaa/46. That the 1st and 2nd Respondents have already started the process of sub-dividing the parcel of land LR. No. Mbiuni/Kabaa/46. That the 1st Respondent/Defendant is intimidating, harassing and threatening the Applicants/Plaintiffs and his family with the objective of dispossessing them their rightful and legal ownership. That the 1st Respondent has also denied the current dwellers and the genuine beneficiaries access to the pass way connecting the homestead to the main road making it impossible for the school bus to access the homestead to pick up the minors for school.

That the 1st Respondent/Defendant is in the process of transferring, selling disposing and/or wasting the suit property hence causing an irreparable damage to the Applicant/Plaintiff and his family. The 1st Respondent/Defendant may again allow the fraudulent, unprocedural and/or illegal transfer of the suit property to

another party which in turn may result in rendering the Applicant and his family homeless causing them psychological harm.

This court has considered the application and submissions therein. In the case of *Giella vs Cassman Brown & Co Ltd (1973) EA 358* the principals for granting an injunction are stated as follows:

- 1. First an applicant must show a prima facie case with a high probability of success;*
- 2. An interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages;*
- 3. If the Court is in doubt, it will decide an application on the balance of convenience.*

It is a finding of fact that the Applicant herein does not dispute that, the 1st and 2nd Respondents have obtained a grant and a Certificate of Confirmation in relation to the parcel of land LR No. Mbiuni/Kabaa/46. Applicant states that the 1st and 2nd Respondents have already started the process of sub-dividing the parcel of land LR. No. Mbiuni/Kabaa/46. That the 1st Respondent/Defendant is intimidating, harassing and threatening the Applicants/Plaintiffs and his family with the objective of dispossessing them their rightful and legal ownership. That the 1st Respondent has also denied the current dwellers and the genuine beneficiaries access to the pass way connecting the homestead to the main road making it

impossible for the school bus to access the homestead to pick up the minors for school. The suit property is registered in the name of Kamoyo Kavungo according to the annexed search certificate dated 19th May 2025. I find that the Plaintiff/Applicant has established a *prima facie* case. I find this application is merited and order that status quo be maintained pending hearing and determination of this case. Costs to be in the cause.

The second application is dated 2nd June 2025 and is brought under Section 3A and 18 of the Civil Procedure Act seeking the following orders;

1. The application herein be certified as extremely urgent and heard on a priority basis.
2. The Honourable be pleased to transfer Civil Suit 166 of 2015 from the Magistrate Court to itself and try and/or dispose the same.
3. The Honourable be pleased to consolidate Civil Suit 166 of 2015 Kithimani Magistrate Court with the current main suit ELC Case Number E013 of 2014 which is before this Honourable Court.
4. The costs of this application be provided for.

It is supported by the annexed Affidavit of DOMINIC KILONZI MUNENE and grounds that the Civil Suit 166 of 2015 before Kithimani Magistrate Court was erroneously filed in the said court. The market value of the said Estate Mbiuni/Kabaa/46 exceeds the subordinate's pecuniary jurisdiction so that the said court cannot entertain the case. The suit was however not fully litigated upon

owing to the demise for the deceased (Paul Munene Kavungo). The expenses and difficulties of trial will be so great if the Civil Suit 166 of 2015 is allowed to proceed in the Principal Magistrate Court Kithimani and it will occasion prejudice on the part for the Applicant. There will be no prejudice to all parties involved should the Honourable Court order sought in this Application be granted. The Civil Suit 166 of 2015 before Kithimani Magistrate Court is in direct relation to the ELC Case Number E103 of 2024 which is before this court.

This court has considered the application and the submissions therein. The jurisdiction to consolidate suits is provided by order 11 Rule 3 of the Civil Procedure Rules. In the case of Prem Lala Nahata & Anor vs Chandi Prasad Sikaria (2007) 2 Supreme Court Case 551, the India Supreme Court held that;

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases.... The main purposes of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common questions of law or fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions; or that for some other reasons it is desirable to make an order consolidating the suit.”

In the case of *Law Society of Kenya vs Center for Human Rights & Democracy & 12 Others* (2014) eKLR, the Supreme Court of Kenya 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 intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”

In *Nyati Security Guards & Services Ltd vs Municipal Council of Mombasa* (2000) eKLR, the court held that;

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where: -

- a. Some common questions of law or fact arises in both or all of them.*
- b. The rights or reliefs claimed in them are in respect of the same transactions;*
- c. For some other reasons, it is desirable to make an order for consolidating them.”*

The Court has a wide discretion in ordering consolidation. Consolidation will be ordered if there is a common question of law or fact in the suits, the reliefs or rights sought arise from the same or a series of transactions, or for any other reason such as for convenience, avoiding multiplicity of suits, expedition and in order to meet the overriding objective set out in the Civil Procedure Act, Cap 21 Laws of

Kenya. The Applicant states that Civil Suit 166 of 2015 before Kithimani Magistrate Court is in direct relation to the ELC Case Number E103 of 2024 which is before this court. That it was erroneously filed in the said court. The market value of the said Estate Mbiuni/Kabaa/46 exceeds the subordinate's pecuniary jurisdiction so that the said court cannot entertain the case. The suit was however not fully litigated upon owing to the demise for the deceased (Paul Munene Kavungo).

The Respondent submitted that the said matter Civil Suit 166 of 2015 before Kithimani Magistrate Court abated due to operation of the law and the Plaintiff did not take any steps to pursue the matter. That on the 16th October 2019 the matter was marked as abated and they have attached the said ruling by Hon Gilbert Shikwe SRM and marked as MKK-3. I find that Civil Suit 166 of 2015 before Kithimani Magistrate Court abated and does not exist. I find that it is not possible to consolidate this case with one which is not there. I find the application is not merited and is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 26TH DAY OF NOVEMBER 2025.

N.A. MATHEKA

ORIGINAL