



Njoroge (Suing as Co-administrator of the Estate of the late Margaret Wanjiru Njoroge) v Waiharo & 4 others (Land Case E165 of 2024) [2025] KEELC 8532 (KLR) (8 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8532 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E165 OF 2024
CA OCHIENG, J
DECEMBER 8, 2025**

BETWEEN

FRANCIS MUNGAI NJOROGE (SUING AS CO-ADMINISTRATOR OF THE ESTATE OF THE LATE MARGARET WANJIRU NJOROGE) PLAINTIFF

AND

**DAVID NJONJO WAIHARO 1ST DEFENDANT
AUTO SPARES LIMITED 2ND DEFENDANT
HUMPHREY GITAU NJOROGE 3RD DEFENDANT
THE CHIEF LANDS REGISTRAR 4TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 5TH DEFENDANT**

RULING

1. What is before the Court for determination is the 1st and 2nd Defendants Notice of Motion application dated 23rd October 2024 where they seek the following Orders:
 - a. That the High Court Civil Suit No.406 of 2011 filed at Milimani Law courts in Nairobi be consolidated with the present suit.
 - b. That the costs of this application be in the cause.
 - c. That this Honourable court does issue any other order that it may deem fit in the circumstances.
2. The application is premised on grounds on its face and on the 1st Defendant's supporting affidavit. He avers that High Court Civil Suit No. 406 of 2011 filed by the 2nd Defendant herein against the Plaintiff is in relation to the Lease over LR No. 209/8675, entered into on 2nd May 2006 and that subsequent to filing of the said matter, a temporary injunction was issued against the Plaintiff, restraining him



from interfering with the said parcel. Further, that this suit surrounds extension of the aforementioned Lease, which is the same question of law and fact raised in the former suit thus no prejudice will be occasioned to any party if the matters are consolidated.

3. The application is opposed by the Plaintiff who filed a replying affidavit. He avers that this Court does not have jurisdiction to consolidate this suit with a matter filed in the High Court, Civil Division. Further, that the instant suit has been initiated on behalf of the Estate of the Late Margaret Wairimu Njoroge while High Court Civil Suit 406 of 2011 was initiated against an individual, Francis Njoroge Boro Mungai. He insists that the substratum of both suits differs, with this suit seeking to recover the title to the suit property, while High Court Civil Suit 406 of 2011 seeks to recover specific and general damages. He also avers that an order for consolidation would prejudice the Plaintiff given that the matters sought to be consolidated have an age difference of over ten (10) years.
4. The 3rd to 5th Defendants did not participate in the application.
5. The application was canvassed by way of written submissions.

Submissions

6. The 1st and 2nd Defendants submit that the instant suit and High Court Civil Suit No. 406 of 2011 have common /similar facts and similar parties. Further, that in the High Court matter, the Plaintiff claims for special damages and legal costs resulting from leasing LR No. 209/8675 whereas in the instant matter, the Plaintiff seeks rendering of accounts in relation to the rent collected from the said property, thus the reliefs sought in both matters are in respect of the same transaction and both suits should hence be consolidated.
7. To buttress their averments, the 1st and 2nd Defendants relied on the following decisions: Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others [2014] eKLR and Lakhamshi Khimji Shah & Another v Ajay Shantilal Shah & 2 Others [2010] eKLR.
8. On his part, the Plaintiff submits that the application does not meet the threshold for consolidation of suits as set out in the case of Stanberg and Another v Potgeiter 1970 E.A. 323. Further, that consolidating this suit and the one filed in the High Court does not serve the purpose for which consolidation should be sought and it does not meet the ends justice.

Analysis and Determination

9. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether this suit should be consolidated with High Court Civil Suit No. 406 of 2011.
10. On consolidation of suits, Order 11 Rule 3 (1) (h) and (i) of the Civil Procedure Rules provides 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;
 - h) consider consolidation of suits;..”



11. The Supreme Court stated as follows in *Omoke v Kenyatta & 83 Others* (Petition 11 (E015) of 2021) [2021] KESC 27 (KLR):

“Consolidation of suits or appeals will be ordered where there are common questions of either law or fact in two or more suits or appeals and where it is desirable that all the related matters be disposed of at the same time.”

12. The same Court stated as follows in *Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others* [2014] eKLR:

“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.”

13. In this instance the fulcrum of the dispute herein and the one in High Court Civil Suit No. 406 of 2011 revolves around LR No. 209/8675. The 1st and 2nd Defendants argue that this suit surrounds extension of the Lease to the aforementioned land, while the Plaintiff insists that this Court does not have jurisdiction to consolidate this suit with a matter filed in the High Court, Civil Division. Further, that the substratum of both suits differs, with this suit seeking to recover the title to the suit property, while High Court Civil Suit 406 of 2011 seeks to recover specific and general damages. He argues that an order for consolidation would prejudice him given that the matters sought to be consolidated have an age difference of over ten (10) years.

14. Based on the facts before me, while relying on the legal provisions cited and associating myself with the decisions quoted, I find that even though there are common questions of law revolving around both suits, but since Order 11 Rule 3 of the Civil Procedure Rules makes it mandatory that the Court shall within thirty days after the close of pleadings convene a Case Conference in which it shall decide to consolidate suits, I find that the instant application has been filed too late in the day and no plausible explanation has been provided. I further opine that this Court does not have jurisdiction to consolidate this suit with a matter filed in the High Court, Civil Division.

15. In the circumstances, I find the instant Notice of Motion application unmerited and will dismiss it.

16. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF DECEMBER, 2025

CHRISTINE OCHIENG

JUDGE

In the presence of:

Gwembere holding brief for Nyongesa for Plaintiff

Simiyu holding brief for Kyongera for the 1st and 2nd Defendants

Court assistant: Vena

