



**ELC No. E008 of 2023(Enforce Limited vs Tatai Ole Muntet, both pending before this court.**

**b) Upon prayer (1) above being granted, the lead file be ELC No.E008 of 2023(Enforce Limited vs Tatai Ole Muntet).**

**c) The costs of this Application be in the cause.**

2. The application is premised on the grounds *inter alia* that the two suits (**ELC NO. E004 of 2024 and ELC E008 of 2023**) involve the same suit property being **Cis-Mara/Oldonyo-Rasha/527**, and by extension the same parties, the Plaintiffs in **ELC No. E004 of 2024** are wives of the 1<sup>st</sup> Defendant in the same suit who is also the Defendant in **ELC No. E008 of 2023**. Further, that the transactions leading to the cause of actions/issues in both cases are similar.
3. The application is supported by the Affidavit of **Nemuta Ene Muntet**, 1<sup>st</sup> Plaintiff/Applicant sworn on **9<sup>th</sup> October 2025**, on behalf of herself and of 2<sup>nd</sup> Plaintiff/Applicant. The Plaintiffs/Applicants deposed that they both got married to **Tatai Ole Muntet**, 1<sup>st</sup> Defendant in the **years 1993** and **1996** respectively.
4. They deposed that their husband acquired the suit property **Cis-Mara/Oldonyo-Rasha/527**, in the year 2013 wherein, they developed and have been living together with their children.

5. Further, that the Plaintiff in **ELC No.E008 of 2023**, sued the Defendant for breach of Contract and seeks for orders to compel the Defendant to transfer portions of the suit property to it, while on the other hand, the Plaintiffs/Applicants herein filed this suit seeking that the 2<sup>nd</sup> Defendant be prohibited from dealing with the suit property since the same is matrimonial property, and the Plaintiffs did not give consents as the wives/spouses of the 1<sup>st</sup> Defendant to have it sold, subdivided or transferred.
6. The application is opposed by the 2<sup>nd</sup> Respondent vide a Replying Affidavit sworn by **Peter Leshao Tunai**, a Director of the 2<sup>nd</sup> Defendant Company, who averred that at the inception of this suit, the 2<sup>nd</sup> Respondent raised a Preliminary Objection, arguing that the matter was sub judice to **ELCLC E008 of 2023**, which involves substantially the same property. In response, the Applicants categorically denied that the instant suit had any bearing on **ELCLC No. E008 of 2023**, and filed a Replying Affidavit sworn on **4<sup>th</sup> June 2024**, asserting that the matters did not involve the same parties and the orders sought were distinct.
7. It is therefore contradictory and disingenuous for the Plaintiffs/ Applicants to now seek consolidation of the matters they previously denied were connected. In fact, in the matter they now seek to have consolidated, the 1<sup>st</sup> Respondent, who is the husband to the Applicants, failed to enter appearance

until a judgment was entered against him, which was subsequently set aside after he came on record.

8. In the present suit, the Plaintiffs/ Applicants have sued their husband, the 1<sup>st</sup> Respondent, who has not entered appearance to date, and given their pattern of conduct, it is only a matter of time before he resurfaces to seek the setting aside of the proceedings. The Applicants and the 1st Respondent's conduct amounts to an attempt to manipulate the court process, adopting positions as and when convenient, thereby undermining the integrity and orderly administration of justice.
9. The deponent further stated he verily believes that the present application for consolidation is **frivolous, vexatious**, and intended **to trivialize the process** of this Court and ought to be dismissed for being an abuse of the court process.
10. The Plaintiffs/ applicants filed a supplementary affidavit and addressed the 2<sup>nd</sup> Respondent's preliminary objection, which claimed that the current matter was sub judice to **ELC Number E008 of 2023**. She argued that at the time of the objection, the court lacked evidentiary evidence, testimonials, and documents to establish the facts leading to the ruling. The ruling stated that the preliminary objection was defeated as it required the court to ascertain evidence

outside the pleadings, which is contrary to the nature of a preliminary objection.

11. The Plaintiffs/Applicants deponed that the 1<sup>st</sup> Defendant; **Tatai Ole Muntet**, has now entered an appearance in both cases through the Law Firm of **Odiria and Company Advocates**. The applicant refuted the 2<sup>nd</sup> Respondent's claim that the Plaintiffs and the 1<sup>st</sup> Defendant were misusing the court process, asserting that the claim in **ELC Case No. E004 of 2024** is serious and warrants consolidation with **ELC Number E008 of 2023**. She concluded by stating that it is in the interest of justice to consolidate the two cases.
12. The Application was canvassed through written submissions. The Applicants filed their submissions dated **11<sup>th</sup> November 2025**, through **M/s Nchoko & Co Advocates**, and urged the court to allow their Application for consolidation.
13. The Plaintiffs/Applicants submitted that the only issue for determination is whether the court should exercise its discretion and consolidate the two cases.
14. The Plaintiffs/Applicants relied on **Order 11 Rule 3(1)(h)** of the **Civil Procedure Rules (CPR)**, which empowers the court to consolidate cases for efficient use of judicial resources. They relied on the cases of **Law Society of Kenya v Centre for Human Rights and Democracy and 12 others (2013) eKLR** and **Nyati Security Guards and**

***Services Ltd v Municipal Council of Mombasa (2004) eKLR.***

15. The Plaintiffs/Applicants submitted that the suit property in both cases is the same, and the issues raised in the two cases are interconnected. The Applicants argued that separate hearings would lead to duplication of evidence, unnecessary costs, and a risk of inconsistent decisions.
16. In conclusion, the Plaintiffs/Applicants requested the court to allow the consolidation of ***ELC Case No. E004 of 2024 and ELC Case No. E008 of 2023***, designate ***ELC No. E008 of 2023***, as the lead file and make any other orders deemed just and expedient. They also sought for an award of costs, which they note is at the court's discretion under ***Section 27*** of the ***Civil Procedure Act***.
17. The 1<sup>st</sup> Defendant did not file his submissions stating in the court proceedings on ***12<sup>th</sup> November 2025*** that he is not opposing the application.
18. The 2nd Respondent filed its written submission and raised two issues for determination: -
  - i. Whether the Applicants have made a proper case for consolidation of suits;***
  - ii. Whether the Application is an abuse of court process.***

19. ***On whether the Applicants have made a proper case for consolidation of suits***, the 2<sup>nd</sup> Respondent argued that the Applicants failed to establish a proper case for consolidation. They highlighted that the Plaintiffs/ Applicants had previously denied any connection between the two suits, ***ELCLC No. E004 of 2024 and ELCLC No. E008 of 2023***, and now sought consolidation, which the 2<sup>nd</sup> Respondent deemed contradictory and disingenuous.
20. The 2<sup>nd</sup> Respondent emphasized that consolidation is a procedural tool to enhance efficiency and should not be used to rectify inconsistent pleadings or procedural irregularities caused by a party's conduct. They cited the case of ***Law Society of Kenya v. Centre for Human Rights & Democracy & 12 others [2014] ekr***, which established that consolidation should not confer undue advantage or cause injustice to any party.
21. ***On whether the Application is an abuse of court process***, the 2<sup>nd</sup> Respondent submitted that the Applicants' Notice of Motion dated ***9<sup>th</sup> October 2025***, constitutes an abuse of court process. It argued that the Applicants deliberately failed to admit that the matters involved the same subject property to avoid the effect of an interlocutory judgment already entered against the 1<sup>st</sup> Respondent in the related matter.

22. The 2<sup>nd</sup> Respondent cited the case of ***Muchanga Investments Ltd vs Safaris Unlimited (Africa) Ltd & 2 others [2009] KECA 453 (KLR)***, which defined abuse of court process as the dishonest use of legal proceedings to achieve an ulterior purpose, causing irritation, annoyance, or prejudice to the opposing party and hindering the efficient administration of justice.
23. In conclusion, the 2<sup>nd</sup> Respondent urged the court to dismiss the Applicants' Notice of Motion, asserting that it was inconsistent with their earlier position, brought in bad faith, and intended to delay the orderly progress of the suit.
24. The above are the arguments for and against the instant Application for consolidation of the two matters being ***ELC NO E004 of 2024*** and ***ELC NO.E008 of 2023***. This application has been opposed by the 2<sup>nd</sup> Respondent, who averred that the Application is an abuse of the court process, since initially the Plaintiffs/ Applicants had vehemently denied that the two suits were related. It was its submissions that the plaintiffs cannot approbate and reprobate at the same time.
25. Both the Applicants and 2<sup>nd</sup> Respondent relied on the case of ***Law society of Kenya vs Centre for Human Rights &***

**Democracy & 12 others [2014]eklr** on the essence of consolidation of suits, where the court held;

***“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 that opposes it.”***

26. The Plaintiffs/ Applicants also relied on the case of ***Nyati Security Guards and Services Ltd vs Municipal Council of Mombasa [2004]eklr*** where it was held;

***“Consolidation is a process by which two or more suits or matters are by order of the 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.”***

27. The main issue herein for determination is whether the court should allow consolidation of the two suits or not.

28. It is trite that Consolidation of cases is done (**Order 11, Rule 3**) of the **Civil Procedure Rules**, and is a discretionary power of the court. Further, consolidation is a tool for justice and efficiency, not a right; and the court balances convenience against potential prejudice.
29. Further, consolidating of cases is hinged on whether there are common questions of law/fact which arise or stems from the same transaction, and is aimed at **judicial efficiency** and **fairness**, with courts considering **expediency**, preventing conflicting judgments, saving costs, and ensuring justice.
30. The common issues to be considered in an application for consolidation are; **Commonality of Issues**, whether there is the existence of common questions of law or fact in the pending suits. **Same Transaction/Series**, the rights or reliefs sought must arise from the same transaction or a series of transactions. **Expediency & Efficiency**, further, it must be expedient in the interest of justice for a joint trial to avoid multiplicity of proceedings and save time/costs. **Avoid Conflicting Judgments**: it is evident that consolidation prevents contradictory decisions in similar matters. **Fairness & Justice**: the main interest of the court is to deliver justice efficiently, ensuring parties are not unduly burdened.

31. For a court to allow or not to allow an application for consolidation, it must consider the above key aspects, which key aspects are;
- i) The suits involve the same parties, subject matter, or reliefs.*
  - ii) The evidence in one case would be relevant to the other.*
  - iii) To streamline evidence presentation and arguments.*
32. The Applicants must establish that the two suits involve the same suit property and the transaction leading to the cause of action are the same, and that no one would suffer prejudice if consolidation is allowed.
33. The application for consolidation is opposed by the 2<sup>nd</sup> Defendant/Respondent and the Applicants needed to avail sufficient evidence to convince this court to exercise its discretion, and allow the said Application for consolidation.
34. The court has considered the **application** dated **9<sup>th</sup> October 2025**, and the annexures thereto. though the Applicants alleged that the two suits have commonality and the suit property is the same, the proceedings for **ELC NOE008 of 2023**, were not annexed to the Application. This court cannot hold with certainty that the suit property is the same, and that the issues raised are the same.

35. Indeed, court can decline and or deny consolidation if such consolidation would cause **confusion, embarrassment, or injustice to a party**, if there are no common questions of law/fact, or if the suits require separate determinations, even if they stem from similar events, as consolidation is discretionary and aims for efficiency, not to merge distinct legal rights.
36. Having not seen the pleadings in **ELC NO E008 of 2023**, this court cannot confirm whether, the two suits require separate determination or not. Consolidation being a discretionary issue, the court finds and holds that the Applicants herein have not established or convinced this court why it should use its discretion to allow consolidation of the two suits.
37. For the above reasons, the instant Notice of Motion Application is found not **merited**, and the same is **dismissed** entirely with costa being in the cause.

**It is so ordered.**

***Dated, signed, and delivered virtually at Narok this 18<sup>th</sup> Day of December 2025***

***L. Gacheru***  
***Judge***

***Delivered online in the presence of***  
***Elijah Meyoki - Court Assistant***

**Mr Lepore holding brief Nchoko for Plaintiffs/Applicants  
N/A for 1<sup>st</sup> Defendant**

**Ms Mwendwa holding brief Kithinji for 2<sup>nd</sup>  
defendant/Respondent**

**L. Gacheru  
Judge**