



Neswa Investments Ltd & 2 others v Chengo & another (Environment and Land Case E029A of 2023) [2026] KEELC 703 (KLR) (11 February 2026) (Ruling)

Neutral citation: [2026] KEELC 703 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND CASE E029A OF 2023
FM NJOROGE, J
FEBRUARY 11, 2026**

BETWEEN

NESWA INVESTMENTS LTD & 2 OTHERS & 2 OTHERS PLAINTIFF

AND

JOSEPH RUA CHENGO & ANOTHER & ANOTHER DEFENDANT

RULING

1. This matter has come up for directions of this court on deconsolidation and withdrawal of suit.
2. Due to delay in prosecution Malindi ELC 53 of 2018 had come up earlier on 16/9/2024 for dismissal for want of prosecution when Mr. Mwanzia informed the court that the subject titles had been cancelled by the National Land Commission. However, as none of the other counsel representing the opposite parties in the case were aware of that fact, the court declined to issue a dismissal order that day and scheduled it for a mention on 29/10/2024.
3. On 7/10/2025, the matter came up for mention when counsel for the other parties stated that they were not aware of the consolidation order made by Makori J. on 27/9/2023 in Malindi ELC E029A consolidating these two matters. Mr Gakuo in particular stated that he was not aware of Malindi ELC E029A. On that day the court confirmed that there is an order of consolidation of both matters and the hearing of the consolidated matter was adjourned. The matter was adjourned to 24/11/2025 to enable parties who had not been served with the consolidation application to peruse the consolidation application and order and make their stance thereon be known.
4. On 17/12/25, Mr. Mwanzia for the plaintiffs in Malindi ELC 53 of 2018 indicated to the court that the suit had been withdrawn by his clients. On 17/12/25 Mr. Gakuo declared the withdrawal of the suit mischievous and opposed the same. Mr. Omollo was not averse to the withdrawal of the suit subject to costs thereof. Mr. Maundu opposed the withdrawal too, and concurred with Mr. Gakuo's submission.



This court is called upon to issue directions on the way forward in respect of the consolidation and withdrawal.

5. These are two separate cases. A perusal of the physical files shows that there is also a consolidation order issued on 27/9/2023 issued in ELC E029A of 2023 I have not seen any application for deconsolidation in any of the files.
6. I find that there is an indication that the plaintiffs in Malindi ELC 53 of 2018 desire to withdraw their case on the basis that the dispute that had brought them to court had been rendered moot by cancellation of titles by the authorities.
7. A case belongs to the parties and not the court and in matters of withdrawal the filer of the case is the most concerned party, for he would be abandoning his claim. The court can only ensure that the appropriate procedure on withdrawal is complied with. No matter how much objection the other parties raise to a withdrawal of suit, the court can still allow it since compelling the claimant to proceed would be flogging a dead horse.
8. This matter had been set down for hearing before withdrawal. The withdrawal of a matter that has already been set down for hearing should be by consent of the court and it cannot be done unilaterally. However, in the present case I find no reason why the claimants should be barred from withdrawing their suit. Consequently, I issue the following orders:
 - a. The withdrawal of the suit Malindi ELC 53 of 2018 is allowed and the defendants are hereby awarded costs upon of the suit;
 - b. Unless any order be made in future that suit be consolidated with any other related suit, it shall proceed as though there was never any deconsolidation with Malindi ELC 53 of 2018 in the first place;
 - c. This matter shall be mentioned on 23rd April 2026 for pretrial.

DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 11TH FEBRUARY 2026.

**MWANGI NJOROGE,
JUDGE, ELC, MALINDI.**

