

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLC NO. E053 OF 2024

MAURICE JULIUS PULLE & ANOTHER
PLAINTIFF

VERSUS

KASSIM ABDALLA MOHAMED & ANOTHER
DEFENDANT

RULING

1. The application dated 3rd October 2025 is seeking orders that the court be pleased to consolidate this suit with **MALINDI ELC No 87 of 2025** and the two suits be heard together. The grounds relied on are that both suits deal with the same subject matter land owned by the applicant and that they contain common issues and hearing them together will avert a multiplicity of cases in court touching on the same subject matter.
2. The application is opposed by the respondents who have filed their reply through the sworn affidavit of the 2nd respondent dated 21st October 2025.
3. In that affidavit the deponent states that the description of the applicant does not comply with the provisions of Order 19 Rule 4 of the Civil Procedure Rules and the provisions of the Oaths and Statutory Declarations Act Cap 15 Of The Laws of Kenya; that the suit Malindi ELC No 087 does not comply with the provisions of Sections 12 and 13A of the Government Proceedings Act and Order 1 rule 10, Order 4 Rule (1)(1) (f) and Order 7 Rule 7, 9 and 10 CPR; that the 1st defendant alone and without involving the 2nd defendant herein filed the case Malindi ELC E087 of 2025 in order to create confusion, delay, defeat and circumvent the plaintiff's present suit;

that the plaintiffs do not have any objection to the amendment of the counterclaim to include the new parties in this case.

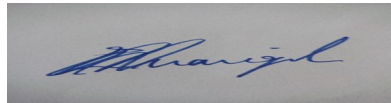
Analysis and determination

4. Malindi ELC E087 of 2025 was filed after this suit had been lodged by the present plaintiffs. In that suit the present 1st defendant alone has sued three defendant namely, National Land Commission, Director Of Surveys And The Attorney General and has not joined the present plaintiffs. in this court's view, that was a wrong approach since he knew that the present suit is still pending and that those matters therein could have been heard and determined alongside the issues arising between him and his co-defendant on the one side and the plaintiffs on the other in the present suit.
5. This court also takes note that various objections based on legal technicalities have been raised regarding that suit whereas none have been raised in the present suit so far.
6. This court is also aware of its mandate to, *inter alia*, stay proceedings in a subsequent suit to enable the conclusion of a suit in which similar issues have been raised in respect of the same subject matter. Stay of proceedings is a preferable alternative to consolidation if the consolidation will mess up the litigation and cause it to drag.
7. It is with that in mind that this court finds that carrying over the technical objections in the suit Malindi ELC E087 of 2025 into this suit by way of consolidation may not augur well for expedition in the present suit and may indeed delay it as those issues are thrashed out between the parties.
8. On the other hand, if that suit is stayed, it would be possible for the plaintiff in that suit who is a defendant in the present suit to commence a counterclaim to include the parties that he has named in that Malindi ELC E087 of 2025. In this court view that will be the

more orderly way of resolving this dispute since all the issues involving all the parties will be dealt with in only one suit without reference to any other suit.

9. For the above reasons I dismiss the application dated 3rd October 2025 and I order as follows:
- a. **All the proceedings in Malindi ELC No E87 of 2025 are hereby stayed pending the hearing and determination of the present suit;**
 - b. **The defendants in the present suit shall jointly amend their defence dated 10th December 2024 to include a counterclaim against the persons named as defendants in Malindi ELC E087 of 2025 to enable the issues raised in that suit to be determined conclusively in an orderly way in the present suit rather than have two suits running parallel to each other;**
 - c. **The costs of the application shall be in the cause;**
 - d. **This suit shall be mentioned on 22nd April 2026 for further directions after the defendants have complied with the orders here in above.**

Dated, signed and delivered at Malindi on this 18th February 2026.



**MWANGI NJOROGE
ELC JUDGE, MALINDI**