

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. E037 OF 2023

SOFI'S GALLERY LIMITED

PLAINTIFF

VERSUS

ANANAS CONSOLIDATED GROUP LIMITED

DEFENDANT

RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated 27th June 2025 where it seeks the following Orders:

a) Spent.

b) Spent.

c) That this Honourable court be pleased to issue an order to consolidate the instant suit with ELCLC E365 OF 2024 Ananas Consolidated

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Group Limited v Sofi's Gallery Limited & Tomoca Coffee Kenya Limited and be heard together.

d) That the Honourable Court do make such other and

further orders as it may deem fit, necessary and expedient in the interest of justice.

d) That the costs of this application be in the cause.

2. The application is premised on grounds on its face and on the Supporting Affidavit of Amir Yusuf, a director of the Plaintiff. He avers that the claim in this suit and in **ELCLC E365 OF 2024** substantially involve similar parties, the same cause of action, facts and issues of law.

3. He points out that the dispute is anchored on a tenancy relationship between the Plaintiff and the Defendant relating to a premises known as Ananas Mall, ground floor situated on **LR NO. 1870/1/219**. The tenancy was for a term of five

(5) years and one (1) month commencing on 1st January 2020 by which the Plaintiff allegedly took possession of the aforementioned premises and established a furniture retail and coffee bistro business. He claims that the dispute raises issues on whether the Plaintiff was in occupation of the suit premises, whether the Defendant breached the Tenancy Agreement between them by restricting access to the Plaintiff and if the Plaintiff is entitled to compensation among others.

4. He claims that consolidation is necessary to avoid duplication of proceedings and save judicial time.

Response

5. In opposition, the Defendant filed Grounds of Opposition and a replying affidavit sworn by its director, Yaacov Maimon. He contends that in **ELCLC E365 OF 2024**, the Plaintiff herein filed an application to have the said suit struck out for being sub judice this suit and vide a Ruling delivered on 22nd May 2025, the Court (Hon. Judge Charles Mbogo) determined that

the cause of action and issues herein are not similar to the issues raised in the aforementioned suit. Further, that in **ELCLC E365 OF 2024**, the Plaintiff herein did not file a defence within the statutory timeline and as a consequence, the Defendant herein has sought interlocutory judgement against it, thus the instant application is meant to forestall interlocutory judgement in **ELCLC E365 OF 2024** and delay determination of this matter, which has been adjourned three times at the instance of the Plaintiff.

6. The application was canvassed by way of written submissions.

Submissions

7. The Plaintiff submits that this suit and **ELCLC E365 OF 2024** raise

The Plaintiff submits that this suit and **ELCLC E365 OF 2024** raise identical facts and issues of law founded in the tenancy relationship between the Defendant and itself concerning the suit premises, to the extent that the defence

in one matter constitutes the cause of action in the other. It argues that consolidation, which this Court has discretion to order promotes judicial economy and prevents inconsistent findings. Further, that the Defendant will not suffer any prejudice.

8. To buttress its averments, the Plaintiff relied on the following decisions: **Nyati Security Guards & Services Ltd v Municipal Council of Mombasa [2004] eKLR; Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others [2014] eKLR; Stumberg & Another v Potgeiter [1970] EA 32; Francis Mwangi v Consolidated Bank of Kenya [2018] eKLR and Selecta Kenya GmbH & Co. KG v Chase Bank (Kenya) Limited (In Receivership) [2020] eKLR.**
9. On its part, the Respondent submits that the questions of law and fact are different in both cases and therefore, consolidation of the suits would not be justified. He points

out that **ELCLC E365 OF 2024** is a liquidated claim and that the Plaintiff herein has never filed a defence denying it owes the arrears claimed, prompting the Defendant to apply for interlocutory judgement, which is pending endorsement by the Court thus allowing consolidation at this point would be inconsistent with the Court's duty to deal with cases justly, efficiently, expeditiously and would also occasion a great disadvantage on the Defendant as he would be driven from the seat of judgement.

10. To buttress its averments, the Defendant relied on the following decisions: **Environment and Land Case No. 61 of 2020, Humphrey Kombe Kithi and Land Registrar, Kilifi County, The Attorney General, Ashok Doshi & Ali Taib.**

Analysis and Determination

11. 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 **ELCLC E365 OF 2024**.

12. The Plaintiff contends that the facts and issues raised in this suit and the aforementioned suit are similar. The Defendant avers that this Court (Hon. Judge Charles Mbogo) delivered a Ruling in **ELCLC E365 OF 2024** on 22nd May 2025, in which he found that the issues in the said matter and in this matter are not similar. It also contends that a consolidation order would prejudice them and eject them from the seat of justice since they await their application for interlocutory judgement in **ELCLC E365 OF 2024** to be endorsed.

13. From the Plaint in this matter, the Plaintiff claims damages for alleged constructive eviction as well as special and general damages for wrongful eviction among other prayers; whereas **ELCLC E365 OF 2024** is a case filed by Ananas Consolidated Group Ltd seeking outstanding rent arrears, future rent and interest on outstanding rent. In **ELCLC E365**

OF 2024, vide a Notice of Motion dated 27th September 2024, the Defendants therein sought to strike out the said suit on the basis that it is subjudice the instant suit.

14. In a Ruling delivered on 22nd May 2025, this Court (Mbogo C Judge) at paragraph 16 stated that:

“.....it would only be fair that each party is given a chance to ventilate its issues. In this case the parties may agree on consolidation of the files so that the issues are determined once and for all.”

15. 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;..”

16. 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.”

17. 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.”

18. Further, in **Abdalla v. Hassan & 15 Others (Civil Suit No. 210 of 2021) [2022] KEELC 13582 (KLR) (5 October 2022) (Ruling)**, it was stated that:

“From these cases and precedents, the legal ratio and holdings are that, the essence of consolidation essentially are;(a) to facilitate the efficient and expeditious disposal of disputes and(b) to provide a framework for a fair and impartial dispensation of justice to the parties. At all costs and as a matter of principle, consolidation of cases should never be meant to confer any undue advantage upon the party nor should it be intended to occasion any disadvantage towards the party that opposes it.”

19. On perusal of the Court record in the two matters, I note the fulcrum of the dispute in both suits revolves around a tenancy agreement on LR No. 1870/1/219. While the Plaintiff herein seeks for a declaration that its eviction was unlawful and for general and special damages, the Plaintiff in **ELCLC E365 OF 2024** prays for judgement to be entered against

the Plaintiff herein. Further, it seeks to be paid outstanding rent, future rent and interest.

20.Based on the facts as presented while relying on the legal provisions I have quoted and associating myself with the cited decisions, at this juncture I find that consolidation of these suits is necessary. I opine that there are common questions of law and fact and it will be pertinent if the said related matters were to be disposed off at the same time as it will save precious judicial time. Further, it will facilitate the efficient and expeditious disposal of dispute herein.

21.It is against the foregoing that I find the instant application merited and will allow it.

22.Costs will be in the cause.

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
19TH DAY OF FEBRUARY, 2026**

**CHRISTINE OCHIENG
JUDGE**

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Ruling

In the presence of:

Hasham for Plaintiff/Applicant

Mutwiri for Defendant/Respondent

Court Assistant: Joan

ORIGINAL