

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC CASE NO. E013 OF 2023

JADAVJI GOVIND VARSANI:.....1ST APPLICANT

PREMBAI JADAVJI VARSANI:.....2ND APPLICANT

VERSUS

SALAT SOMO AHMED:.....1ST

RESPONDENT

THE CHIEF LAND REGISTRAR:.....2ND RESPONDENT

THE REGISTRAR FOR LAND MAVOKO:.....3RD RESPONDENT

RULING

The application is dated 12th March 2025 and is brought under Orders 11 Rule 3 and 51 Rule 1 of the Civil Procedure Rules and Sections 1A, 1B, 3 and 3A of the Civil Procedure Act seeking the following orders;

1. That this Honourable Court be pleased to order a consolidation of this suit with ELC CASE NO. E019 2024; SALAT SOMO AHMED VS JADAVJI GOVIND VARSANI & OTHERS and ELC CAUSE NO. E051 OF 2023; MISTRY JADVA PARBAT & COMPANY LIMITED VS SOMO SALAT AHMED & OTHERS
2. That further proceedings in this suit be stayed until further orders.
3. That costs of this application be provided for.

It is premised on the following on the grounds that before this Court are three matters; the instant matter ELC Case No. E013 OF 2023; ELC Case No. E019 OF 2024 filed vide a Plaint dated 5th April 2024 and ELC Cause No. E051 OF 2023 filed vide a Plaint dated 5th June 2023.

The major parties in the two suits are the same and the all the suit properties are from the same mother title (Original Number 12715/110/2). In ELC Case No. E019 OF 2024 the suit property is LR No. 12715/14286 (Original Number 12715/110/2) and in ELC Cause No. E051 OF 2023 the suit property is LR No. 12715/1109 and LR. No. 12715/1110. From these three matters before Court, similar questions of law and fact arise in both of them which include the Proprietorship of the suit properties; Orders of injunction sought against trespass and the damages sought for trespass.

That the three matters seek the same reliefs and rights that had been claimed/sought in the substantive pleadings of the respective matters even though the reliefs sought are on different transactions emanating from different suit properties. Given that the major parties are similar seeking similar reliefs from this Court with a similar issue of the ownership of the suit properties presented before this Court, it is highly desirable to consolidate these matters so as to simplify them and save this Court's precious time to deal with other matters. In the circumstances, it is in the best interests of administration of justice that the prayers sought in the Notice of Motion filed herein be allowed.

The Defendant/Respondent will suffer no prejudice whatsoever should the orders sought herein be granted.

A similar application dated 16th September 2024 and is brought under Order 11, Rule 3, Order 51 Rule 1 of the Civil Procedure Rules 2010, Section 3A of the Civil Procedure Act, 2010 seeking the following orders that ELC Cause No. E019 of 2024 Salat Somo Ahmed vs Jadavji Govind Varsani & Others be consolidated with the instant suit.

This court has considered the applications and the submissions therein. The jurisdiction to consolidate suits is provided by Order 11 Rule 3 of the Civil Procedure Rules. In the case of Prem Lala Nahata & Anor vs Chandi Prasad Sikaria (2007) 2 Supreme Court Cases 551, the India Supreme Court held that;

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases.... The main purposes of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common questions of law or fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions; or

that for some other reasons it is desirable to make an order consolidating the suit.”

In the case of *Law Society of Kenya vs Center for Human Rights & Democracy & 12 Others* (2014) eKLR, the Supreme Court of Kenya held that;

“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 intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”

In *Nyati Security Guards & Services Ltd vs Municipal Council of Mombasa* (2000) eKLR, the court held that;

“The situations in which consolidation can be ordered include where there are two or more suits for matters pending in the same court where: -

- a. Some common questions of law or fact arises in both or all of them.*
- b. The rights or reliefs claimed in them are in respect of the same transactions;*
- c. For some other reasons, it is desirable to make an order for consolidating them.”*

The Court has a wide discretion in ordering consolidation. Consolidation will be ordered if there is a common question of law or fact in the suits, the reliefs or rights sought arise from the same or a series of transactions, or for any other reason such as for convenience, avoiding multiplicity of suits, expedition and in order to meet the overriding objective set out in the Civil Procedure Act, Cap 21 Laws of Kenya. I have perused the pleadings in Machakos ELC Case Nos. E019 of 2024 and ELC Case No. E051 of 2023 and I find that in ELC Case No. E019 of 2024 the suit property is LR No. 12715/14286 (Original Number 12715/110/2) and in ELC Case No. E051 of 2023 the suit property is LR No. 12715/1109 and LR. No. 12715/1110.

I have perused the court files in ELC Cause No. E019 of 2024 and the instant case and I find that the said suits involve the same and/or similar questions of fact and/or law. That the two suits arise out of the claim of the same subject matter being the piece of land known as LR. No. 12715/110, IR No. 44472 (Deed Plan No. 121279) which have been subdivided to the pieces of land described in the Plaint in this suit as LR. No. 12715/14287, (Deed Plan No. 435868) and in ELC Cause No. E019 of 2024 as LR. No. 12715/14286, (Deed Plan No. 435865) (original number 12715/110/2). That the parties in the two suits are the same and currently being represented by the same advocates. I find that the orders emanating from the Court will affect the subject matter mentioned in ELC. Cause No. E019 of 2024. I find that the consolidation of

these two files will facilitate the efficient and expeditious disposal of issues between the parties and I grant the same.

Be that as it may, I have perused the file in ELC Case No. E051 of 2023 and vide a Plaint filed in in Court on the 9th June 2023 the subject matter is described as LR No. 12715/1109 and LR. No. 12715/1110 situate at Syokimau Mavoko Sub County of Machakos. I concur with submissions by the 3rd and 4th Respondents and I find that though some of the parties are similar the subject matter is different and hence the same cannot be consolidated with the other two matters. I find that the application succeeds in part and I grant the following orders;

1. That this suit be consolidated with ELC Case No. E019 of 2024 Salat Somo Ahmed vs Jadavji Govid Varsani & Others.
2. That ELC Case No. 13 of 2023 Salat Somo Ahmed vs Jadavji Govid Varsani & Others to be the lead file.
3. Costs of this application to be in the cause.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MACHAKOS THIS 24TH DAY
OF FEBRUARY 2026.**

N.A. MATHEKA

JUDGE

ORIGINAL