

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL SUIT NO. E084 OF 2024

ADAM MOHAMED ADAM.....PLAINTIFF/RESPONDENT

VERSUS

SHIRAZ MOHAMED ADAM YUSUF.....DEFENDANT/APPLICANT

RULING

1. The Defendant filed a Notice of Motion application dated 24th March 2025 pursuant to Sections 1A, 1B, 3 & 3A of the Civil Procedure Act, Order 10 Rule 11 of the Civil Procedure Rules, and any other relevant provisions of the law.
2. The Defendant seeks for orders that the suit herein be consolidated with HCCC No. E068 of 2024, Adam Mohamed Adam v Shiraz Mohamed Adam Yusuf which is related to the matter herein, and that costs of the application be provided for.
3. The application is premised on grounds on the face of the application and the Supporting Affidavit of Shiraz Mohamed Adam Yusuf that contents of the Complaint dated 25th September 2024 together with the Defence and Counterclaim dated 30th October 2024 herein arise from the same averments and between the same parties in HCCC No. E068 of 2024. That it is necessary for the two files to be consolidated for proper hearing and disposal on merit to save on court's time and resources.

4. The Plaintiff in opposition to the application filed a Replying Affidavit sworn on 27th March 2025 and stated that HCCC No. E068 of 2024 is a different suit from the instant one.
5. The Plaintiff stated that in the present suit, the Plaintiff claims for recovery of monies advanced to the Defendant over a period of time with mutual understanding and oral agreement that the same would be refunded upon the sale of a prime parcel of land in Kilifi owned by the Defendant. That the Defendant sold the said parcel of land in 2023 but despite several reminders, he refused and neglected to refund the sums advanced to him prompting institution of the suit herein. That the Counterclaim in the suit raises issues of a debt advanced in 2000 which was time barred at the time of filing the Counterclaim while the rest are demands for refund of gifts given to the Plaintiff by the Defendant. That the suit in HCCC No. E084 of 2024 relates to a completely different transaction in which the Plaintiff is seeking for profits from a joint business venture in Ocean Engineering Works where the Defendant ran the business while the Plaintiff supplied machinery for operation.
6. The Plaintiff stated that while parties in both cases may be the same, the factual matrix, legal questions, documents, witnesses and reliefs sought are entirely different. That there is a risk that consolidation would complicate the trial, confuse issues for determination and prejudice fair and expeditious hearing of the case.
7. The application was canvassed by way of written submissions. The Defendant in their submissions dated 14th January 2025 argued that consolidation of suits is provided for under Order 11 Rule 3 (1) (h) of the Civil Procedure Rules and that

Sections 1A and 1B of the Civil Procedure Act require courts to facilitate the just, expeditious, proportionate and affordable resolution of disputes, and to avoid multiplicity of proceedings, duplication of evidence and the risk of conflicting judgments. The defendant relied on the holdings in *Law Society of Kenya v Center for Human Rights and Democracy & 12 others* [2014] eKLR, *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* (2014) eKLR and *Stumberg & another v Potgeiter* [1970] EA 323.

8. The Defendant stated that while the causes of action are presently different, pleadings and affidavits reveal that facts, transactions and the subject matter are linked. That while in HCCC No. E068 of 2024 the Plaintiff seeks recovery of monies allegedly advanced to the Defendant where the Defendant filed a Counterclaim contending that the Plaintiff is indebted to him for sums advanced, properties transferred and machinery used, in HCCC No. E084 of 2024, the Plaintiff claims unpaid profits and proceeds arising from Ocean Engineering Works which is a joint venture operated using machinery belonging to the Plaintiff and allegedly managed by the Defendant, and that the profits and assets overlap with the same financial dealings in E068 of 2024.
9. The Plaintiff in their submissions dated 19th January 2026 cited the cases of *Mbogo & another v Shah*, Civil Appeal No. 5 of 1967, *Patel v Cargo Handling Services Limited*, Civil Appeal No. 2 of 1974, *Africa Management Communications Limited v Airtel Kenya Limited*, Nairobi CA No. 211 of 2016, *Thomas Odhiambo Okello v Peter Wanyama*, HCA Appeal No. 22 of 2015, *Francis Mutinda Mutula & 3 others v Stephen Kivanda Kamula & 5 other*, Makueni ELC No. 09 of 2019, *Norah Odwesso v Johnson Nguu Nyaga & another*, Milimani HCA No. E031 of 2020, and *Nicholas Kariuki Ndungu &*

Real People Kenya Ltd & another, Nakuru HCA No. E023 of 2021, and argued that the Defendant is not entitled to setting aside of the regular and lawful judgment entered on 25th February 2025 since the Defendant did not attach a draft defence to show that he has triable issues to go on full trial, including addressing the issue of consolidation.

10. The Plaintiff further cited the cases of *Ruth Wangari Wanyoike v Fransicar Onyango Oola*, Nakuru Misc. Civil Appeal No. 26 of 2023, *Francis Kamau v Joel Kimotho Njoroge*, Thika HCA No. 6 of 2023, *Nyali International Beach Hotel v Mpe Shindo Bundi & 145 others*, Mombasa ELRC No. 960 of 2016, and *Michael Mbugua Kuria v Joseph Kingori Wanjohi & another*, Nairobi ELC No. 068 of 2024 and submitted that the Defendant's application is an abuse of the court process, lacks merit and ought to be dismissed.

11. This court has considered the Notice of Motion application dated 24th March 2025, the Replying Affidavit sworn on 27th March 2025 and submissions by the parties. The issues for determination are: -

- (a) Whether the suits should be consolidated
- (b) What orders on costs should issue

12. The law on consolidation of suits is well settled. Under Order 11 Rule 3 of the Civil Procedure Rules, the Court has discretion to consolidate suits where appropriate.

13. In *Law Society of Kenya v Centre for Human Rights and Democracy & 12 others* [2014] KESC 29 (KLR), the Court 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 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. In the matter at hand, this court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”

14. Similarly, in *Stumberg & another v Potgeiter* [1970] EA 323, the Court emphasized that: -

“Where there are common questions of law or facts in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should be ordered.”

15. Further, in *Nyati Security Guards & Services Limited v Municipal Council of Mombasa* [2004] KEHC 1896 (KLR), the Court held that: -

“There are however situations where consolidation is undesirable like where in two action a plaintiff in one is a defendant in the other unless the claim in one is to be treated as a counterclaim in the other. The other situation where consolidation is undesirable is where the plaintiffs in two or more actions are represented by different advocates. In such situation the

hearing will be longer than take long and the purpose of saving time will be defeated.”

16. In the case herein, it is not disputed that the parties in both suits are the same. However, sameness of parties alone is not sufficient ground for consolidation. The present suit concerns profits from a joint business venture while HCCC No. E068 of 2024 concerns recovery of a debt allegedly advanced and tied to sale of land while.

17. While the Defendant contends that the financial dealings overlap, this court notes that the causes of action arise from distinct transactions, the legal issues differ (debt recovery v business profit accounting), and the evidentiary burden and witnesses are likely to be different.

18. On whether consolidation would serve the interest of justice, Sections 1A and 1B of the Civil Procedure Act enjoin the Court to facilitate expeditious and proportionate resolution of disputes. In the present case, consolidation would introduce multiple and unrelated issues into one trial, complicate proceedings and delay determination of each distinct claim.

19. This court is therefore persuaded by the Plaintiff’s argument that consolidation may lead to confusion rather than efficiency.

20. On whether prejudice will be occasioned, this court finds that consolidation would likely prejudice the Plaintiff by delaying resolution of a straightforward debt claim and mixing unrelated claims and defences.

21.As stated in *Nyati Security Guards & Services Limited v Municipal Council of Mombasa (supra)*, consolidation should not be ordered where it leads to embarrassment or prejudice.

22.The upshot is that the Defendant’s Notice of Motion dated 24th March 2025 is hereby dismissed. The prayer for consolidation with HCCC No. E068 of 2024 is declined. Costs of the application are awarded to the Plaintiff.

Dated and delivered virtually at Mombasa this 19th day of March, 2026

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HON. F. WANGARI

JUDGE OF THE HIGH COURT

In the presence of: -

N/A by the Plaintiff

Ms. Mukoya Advocate for the Defendant

Ms. Getrude, Court Assistant