



**Chishenga & 3 others (Representing Over 150 Residents on Land Parcel No. 176/IV/MN CR.No.27920) v Estate of Onesmus Nyamae Kyengo & 3 others (Environmental and Land Originating Summons E094 of 2022) [2025] KEELC 5473 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5473 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**  
**ENVIROMENTAL AND LAND ORIGINATING SUMMONS E094 OF 2022**

**JO OLOLA, J**  
**JULY 24, 2025**

**BETWEEN**

**DAVID CHOME CHISHENGA ..... 1<sup>ST</sup> PLAINTIFF**  
**NZINGO KATANA GOERICK KAZUNGU MZUNGU (MWAMBIRE) .... 2<sup>ND</sup> PLAINTIFF**  
**ALI WAJANI KABAYA ..... 3<sup>RD</sup> PLAINTIFF**  
**KATANA KAHINDI NGA'MBO ..... 4<sup>TH</sup> PLAINTIFF**  
**REPRESENTING OVER 150 RESIDENTS ON LAND PARCEL NO. 176/IV/MN CR.NO.27920**

**AND**

**ESTATE OF ONESMUS NYAMAE KYENGO ..... 1<sup>ST</sup> DEFENDANT**  
**LAND REGISTRAR MOMBASA ..... 2<sup>ND</sup> DEFENDANT**  
**OFFICER IN CHARGE KIJIPWA POLICE STATION ..... 3<sup>RD</sup> DEFENDANT**  
**KILIFI COUNTY POLICE COMMANDER ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 25<sup>th</sup> February 2025, the 1<sup>st</sup> Defendant prays for orders:
  1. Spent;
  2. Spent;
  3. That for purposes of case management and in order to achieve the overriding objective to facilitate the just, expeditious, proportionate and affordable resolution of the dispute herein,



and in the interest of justice, the Honourable Court be pleased to issue an order that this suit be heard and case managed together with the suit filed in Mombasa ELC Case No. E028 of 2021; [George Mwachiru Mwangi & 57 Others v Daniel Katumo Nyamai](#);

4. That the Honourable Court be pleased to issue an order for the consolidation of this suit and the suit filed in Mombasa ELC Case No. E028 of 2021; [George Mwachiru Mwangi & 57 Others v Daniel Katumo Nyamai \[sued as the Administrator of the Estate of Onesmus Nyamai Kyengo \(deceased\)\]](#); and
  5. That the costs of this motion and those of the consolidated suits to abide the outcome of the consolidated suits.
2. The application is supported by an Affidavit sworn by the 1<sup>st</sup> Defendant's Advocate Nancy Gitari and is premised on the grounds *inter alia*, that:
- i. On 11<sup>th</sup> February, 2021, the Plaintiffs in ELC Case No. 28 of 2021 filed the suit seeking a declaration that their eviction from land parcel No. CR 27920 sub-division No. 176 which is registered in the name of the Defendant is time barred under Section 7 of the [Limitation of Actions Act](#) and that they had acquired their portions of the land by way of prescription;
  - ii. On 23<sup>rd</sup> August, 2022 while the earlier suit was still pending, the Plaintiffs commenced this Originating Summons seeking a declaration that they had acquired title to Land Parcel No. 176/IV/MN, CR No. 27920 by [Limitation of Actions Act](#) and by the doctrine of adverse possession and urging the court to restrain the Defendant by way of a permanent injunction from entering the suit land or demolishing the Plaintiffs houses and structures or from evicting the Plaintiffs therefrom;
  - iii. A number of the Plaintiffs are listed as plaintiffs in both suits which are yet to be prosecuted; and
  - iv. It is prudent for the two suits to be consolidated or case managed, heard and determined together before the same judge.
3. The Plaintiffs are opposed to the application. In an Affidavit Sworn on their behalf by David Chome Chisenga (the 1<sup>st</sup> Plaintiff), they aver that the application is misconceived, premature and constitutes an abuse of the court process as it does not meet the threshold for consolidation. It is the Plaintiff's case that consolidation can only be granted where there are common questions of law or fact arising in the respective suits and they assert that is not the case herein.
4. The Plaintiffs avers that although the 1<sup>st</sup> Defendant purports that there is an overlap of the parties in the instant suit and ELC Case No. E028 of 2021, the parties are not the same and each suit involves distinct Plaintiffs represented by different Advocates on record. It is further the Plaintiff's case that the reliefs sought in each of the two matters arise from different and unrelated transactions. This suit is grounded upon the doctrine of adverse possession while the other is based on contractual claims of ownership.
5. I have carefully perused and considered the application by the 1<sup>st</sup> Defendant as well as the response thereto by the Plaintiffs. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.



6. The jurisdiction to consolidate suits is donated by Order 11 Rule 3 of the *Civil Procedure Rules*. As was stated by the Supreme Court of Kenya in *Law Society of Kenya v Centre for Human Rights and 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.”

7. In *Nyati Security Guards & Services Ltd v 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 or matters pending in the same court where:-

1. some common question of law or fact arises in both or all of them; or
2. the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or
3. for some other reason it is desirable to make an order for consolidating them.”

8. From the foregoing, it is clear that the Court has a wide discretion in deciding whether or not to order 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 objectives set out in the *Civil Procedure Act*, Cap 21, Laws of Kenya.

9. The grounds upon which the present application has been made is that the two suits relate to the same subject parcel of land, that the Defendant in both suits is one and the same person and that there are common questions of fact and law arising in both suits. The Plaintiffs have opposed the application on account that the claimants in the two suits are seeking different reliefs, that the two suits arise from different transactions, that the parties are not the same and there are no common questions of law or fact arising from the suits.

10. I have looked at the copy of the Complaint as filed in the said Mombasa ELC No. E028 of 2021 as well as the Originating Summons in the instant suit. It was apparent from my perusal thereof that the subject matter in both suits is the parcel of land known as CR. 27920 sub-division No. 176 (original Number 163/1 of Section IV Mainland North). That property is registered in the name of one Onesmus Nyamai Kyengo (now deceased). It was also apparent that Daniel Katuma Nyamai who is sued as the Defendant in Mombasa ELC. Case No. E028 of 2021 is the Legal Representative of the estate of the deceased 1<sup>st</sup> Defendant in the Originating Summons herein.

11. It was also clear to me that in both suits, there were common facts arising as all the claimants allege to have acquired some form of rights over the property registered in the name of the Defendant. At Paragraphs 15 and 17 of the earlier case, the Plaintiffs plead as follows:

“15. The Plaintiffs aver that in any event the *Limitation of Actions Act* give a Limitation period of 12 years in any action to recover land by the defendant .....; and



17. The Plaintiffs pray for a declaration that any eviction in relation to the Plaintiffs herein in relation to Land Parcel CR 27920 sub-division No. 176 (Original Number 163/1 of Section IV Mainland North) which is registered in the names of the Defendant is time barred as per the provisions of Section 7 of the *Limitation of Actions Act* Cap 22.”
12. That assertion is indeed similar to the claim made by the Plaintiffs in the instant matter where they pray for a declaration that they have acquired title to Plot No. 176/IV/MN CR 27920 by the *Limitation of Actions Act* and by the doctrine of adverse possession.
13. As it were, the main purpose for consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. In the matter herein I was persuaded that the two matters are related and that the consolidation of the two suits will facilitate the efficient and expeditious disposal of the dispute as the two suits will be heard together and be determined by one judgment. Consolidation of the two suits will assist the court in saving on precious judicial resources and avoid conflicting decisions being rendered by the same court over the same subject matter.
14. In the premises, I find merit in the Motion dated 25<sup>th</sup> February 2025. I allow the same in terms of prayer No. 4 thereof with Mombasa ELC Case No. E028 of 2021 as the Lead File.
15. The costs of the application shall abide the outcome of the consolidated suits.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 24<sup>TH</sup> DAY OF JULY, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Ambutsi holding brief for Mkanzi Advocate for the Plaintiffs
- c. Mr. Amakobe Advocate for the Defendant

