



**Wideview Properties Limited v Yongo & 3 others (Environment and Land Case E246 of 2023) [2026] KEELC 1945 (KLR) (19 March 2026) (Ruling)**

Neutral citation: [2026] KEELC 1945 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE E246 OF 2023  
LG KIMANI, J  
MARCH 19, 2026**

**BETWEEN**

**WIDEVIEW PROPERTIES LIMITED ..... PLAINTIFF**

**AND**

**BRIAN YONGO ..... 1<sup>ST</sup> DEFENDANT**

**NEPTUNE CREDIT MANAGEMENT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**YASMIN SUMAR ..... 3<sup>RD</sup> DEFENDANT**

**FINE DIAMOND PROPERTIES LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup> Defendant/Applicant has filed a Notice of Motion dated 2<sup>nd</sup> June 2025 under sections 3A and 3B of the [Civil Procedure Act](#) and Order 11 Rule 3 (1) (h). The Applicant prays:
  - i. That an order do issue consolidating the instant suit with Nairobi ELC No. 12 of 2014; Neptune Credit Management versus Invesco Assurance Company Limited and which ought to be the lead file;
  - ii. That upon consolidation, the Defendants/Applicants be granted subsequent leave to amend their Statements of Defence/Pleading if need be in the respective suits;
  - iii. That this Honourable court do make such other and further orders as it may deem fit, necessary and expedient in the interest of justice; and
  - iv. Costs of this Application be in the cause.
2. The motion is supported by grounds and the Affidavit sworn by the Applicant. He claims that the issues of fact and law arising in Neptune Credit Management Ltd v Invesco Assurance Co. Ltd and Wideview Properties Limited v Neptune Credit Management Limited & 3 Others are inextricably



intertwined, as both suits concern the alleged collusion in the sale and illegal transfer of the suit property.

3. The Applicant stated that a central figure in both transactions is Joseph Gitau Mburu, who served as a director in the entities involved and executed the agreement forming the basis of the earlier dispute. The ruling delivered by Justice Mutungi on 6<sup>th</sup> February 2015 in the 2014 matter demonstrates that the issues in that case substantially overlap with those in the present suit.
4. Given the common parties, transactions, and legal questions, consolidating the two suits would save judicial time and costs, expedite determination, and prevent the risk of inconsistent or conflicting decisions.

### **The Plaintiff/Respondents case**

5. Joseph Mburu a Director of the Plaintiff Wideview Properties Limited swore a replying affidavit in response. He stated that the application does not meet the legal threshold for consolidation under Order 11 Rule 3(1)(h) of the Civil Procedure Rules and Sections 1A, 1B and 3A of the [Civil Procedure Act](#) because the two suits lack a common identity of parties, reliefs, and substantial questions of law or fact necessary to justify a joint trial.
6. In particular, Invesco Assurance Co. Ltd is not a party to the present suit, while Wideview Properties Ltd is not a party in ELC No. 12 of 2014, and consolidation would improperly introduce strangers to the respective proceedings and involve the Plaintiff in disputes to which it was never a party. The causes of action and reliefs are also materially different: the 2014 suit concerns dealings between Neptune and Invesco, whereas the present matter concerns the Plaintiff's proprietary rights and the Defendants' conduct and occupation relating to L.R. No. 209/4517 (Fine Diamond Apartments).
7. He deponed that the alleged overlap relied upon by the Applicant merely relates to an individual's purported involvement across transactions and does not amount to similarity of parties or reliefs sufficient to justify consolidation. Further, the 2014 suit is a long-running matter with its own established record and rulings, including a 2015 ruling, whereas this suit was filed in 2023; consolidation would therefore prejudice the Plaintiff by causing delay, increased costs, and by importing an extensive record from proceedings in which the Plaintiff was not heard.
8. He further complained that the Applicant's additional request for leave to amend after consolidation would also confer an unfair advantage by permitting the Defendants to re-plead within a consolidated forum to the Plaintiff's detriment. In keeping with the overriding objective of the [Civil Procedure Act](#), the efficient, proportionate, and affordable resolution of disputes is best achieved by allowing each suit to proceed independently, with any limited evidential overlap addressed through case management directions rather than consolidation.
9. There is no compelling reason for consolidation, and the risk of inconsistent outcomes is minimal. Accordingly, the Notice of Motion dated 2nd June 2025 is misconceived, prejudicial, and an abuse of the court process and should be dismissed with costs.

### **The 4<sup>th</sup> Respondent's case**

10. The 4<sup>th</sup> Defendant Fine Diamond Properties Limited filed Grounds of Opposition dated 3<sup>rd</sup> October 2025 stating that:
  - i. The application is an afterthought solely meant to delay the hearing and determination in this suit;



- ii. There is no commonality of parties between this suit and Nairobi ELC No. 12 of 2014; Neptune Credit Management Company Limited versus Invesco Assurance Company Limited; and
  - iii. The application will overburden the 4<sup>th</sup> Defendant with additional proceedings in which the 4<sup>th</sup> Defendant claims no ownership or possession.
11. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any responses to the motion.

### **The 1<sup>st</sup> Defendant/Applicant's submissions**

12. The Applicant filed submissions dated 6<sup>th</sup> October 2025, submitting that both suits sought to be consolidated were pending before different courts. He contended that consolidating the two suits would save the Honourable Court's time and resources, reduce the parties' costs, expedite the hearing and determination of the matters, and ultimately lead to a common order that would not embarrass the judicial process, as opposed to the suits being handled separately.
13. The Applicant relied on Order 11 Rule 3(1)(h) of the Civil Procedure Rules, which provides that provides for consolidation as part of case management.
14. In that regard, the Applicant cited the case of Korean United Church of Kenya & 3 Others v Seng Ha Sang. He further relied on Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 Others, where the court set out the guiding principles on consolidation of suits as suitable where there are common questions of law or fact 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.
15. The Applicant also cited Law Society of Kenya v Centre for Human Rights and Democracy, where the court stated 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. The Court further stated that consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage to the party opposing it.
16. Based on the above authorities, the Applicant outlined the guiding principles for consolidation of suits as follows:
  - i. Whether the suits involve common questions of law or fact;
  - ii. Whether the reliefs sought arise from the same transaction or series of transactions; and
  - iii. Whether any party will suffer prejudice or whether consolidation would confer an undue advantage on any party.
17. The Applicant further submitted that the term "consolidation", according to Black's Law Dictionary (8th Edition), means to combine, through a court order, two or more actions involving the same parties or issues into a single action ending in a single judgment, or sometimes separate judgments."
18. On the principle that the issues must arise from similar questions of law or fact, the Applicant relied on the cases of Stumberg & Another v Potgieter and P. P. Gupta v East Asiatic Company, among other authorities.
19. The Applicant further submitted that the court has broad discretion to order consolidation of suits even on its own motion where the relevant principles are satisfied, citing the case of Tommie v La Chance.
20. The Applicant argued that both suits revolve around the suit property, and therefore ought to be heard simultaneously to determine the alleged sale to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by Invesco Assurance



Company Limited, and whether Joseph Gitau Mburu, a director of the 1st Respondent, facilitated the sale and executed the Sale Agreement between the 3rd Respondent and Invesco Assurance Company Limited, as evidenced by Annexure BY-2 in the Supporting Affidavit.

21. The Applicant also relied on the decision in HC ELC No. 347 of 2012 and ELC No. 223 of 2011 (unreported), where the court allowed consolidation of five cases in order to hear the evidence once rather than repeatedly in separate suits, and to avoid conflicting decisions concerning the same subject matter.
22. The Applicant further submitted that there are no strict timelines for bringing an application for consolidation and even a part heard case can be consolidated with a recent case. In support of this position, he relied on *Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 Others*, which analysed the rationale in the appellate decision of *Ngumbao v Mwatate & 2 Others*, where the court observed that:

Finally, the Applicant submitted that failure to consolidate the suits would prejudice him by conferring an undue advantage upon the Plaintiff. He argued that consolidation would not significantly alter the nature or substance of the suits and that failure to consolidate would substantially compromise his right to a fair trial.

### **The Plaintiff/Respondent submissions**

23. The 1st Respondent filed written submissions dated 15<sup>th</sup> December 2025 opposing the application. Counsel identified two issues for determination: whether the Applicant had met the threshold for consolidation under Order 11 Rule 3(1)(h) of the Civil Procedure Rules and the overriding objective, and whether leave should be granted to amend pleadings after consolidation. Counsel submitted that consolidation is discretionary and intended to facilitate efficient disposal of disputes without conferring undue advantage or causing prejudice to any party. The relevant considerations, Counsel noted, are whether the suits raise common questions of law or fact, whether the reliefs arise from the same transaction, and whether consolidation would occasion prejudice or confer an undue advantage.
24. Counsel argued that the court must consider whether consolidation is practicable and just in light of the pleadings, parties, and reliefs in the two suits. It was submitted that consolidation would improperly introduce strangers into the proceedings because there was no common identity of parties. In particular, Invesco Assurance Company Limited was not a party to the present suit, while Wideview Properties Limited was not a party in ELC Case No. 12 of 2014. Counsel further contended that there was insufficient commonality between the two matters, as the causes of action and the reliefs sought were materially different. According to Counsel, the present suit concerns the Plaintiff's proprietary rights and the conduct or occupation of the Defendants in relation to the suit property.
25. Counsel also submitted that the Applicant's reliance on the involvement of the same director in both suits was insufficient to justify consolidation, since the individual did not constitute a common party to the proceedings even if both disputes related to the same property. In Counsel's view, such a broad connection did not meet the threshold for consolidation. Additionally, Counsel argued that consolidation would occasion prejudice, delay, increased costs, and procedural confusion. It was noted that the 2014 suit is an older matter with an extensive record and procedural history, while the present suit was filed in 2023. Consolidating the two, Counsel argued, would import an aged record and collateral disputes into the present proceedings and would delay the determination of the current suit, thereby prejudicing the 1st Respondent.
26. Counsel further submitted that there was no basis for invoking the doctrine of sub judice and that the risk of inconsistent outcomes was minimal. The existence of a ruling in the other suit, Counsel



argued, was not sufficient justification for consolidation. In conclusion, Counsel maintained that the Applicant had failed to establish a proper basis for consolidation and urged the court to dismiss the application with costs.

#### **4<sup>th</sup> Defendant/Respondent's submissions**

27. The 4<sup>th</sup> Respondent similarly opposed the motion through submissions dated 3<sup>rd</sup> October 2025. Counsel submitted that the suits lacked commonality of parties, noting that in the 2014 case only the Plaintiff and the 2<sup>nd</sup> Defendant were involved, whereas none of the Defendants in the present suit were parties to that matter.
28. Counsel further argued that the application for consolidation was an afterthought and a tactic aimed at delaying the hearing and determination of the present case, particularly since the parties had already complied with pre-trial requirements. The 4<sup>th</sup> Respondent maintained that it had been joined in the present proceedings merely in its capacity as a property management company and had no substantive claim to the suit property. Counsel also emphasized that the earlier case was over ten years old and that consolidation would unfairly burden the 4<sup>th</sup> Respondent with additional costs and proceedings unrelated to its interests.
29. In conclusion, Counsel submitted that the threshold for consolidation had not been met and suggested that, if necessary, it would be more appropriate to stay the present proceedings pending the determination of the earlier suit.

#### **1<sup>st</sup> Defendant/Applicants rejoinder**

30. In response, the Applicant filed further submissions dated 9<sup>th</sup> February 2026 reiterating his support for consolidation. The Applicant argued that the sale of the suit property occurred while an injunction and an ongoing dispute were in place and was therefore governed by the doctrine of Lis Pendens, which provides that any transfer of property during the pendency of litigation is subject to the outcome of that litigation.
31. The Applicant contended that the Plaintiff's present suit sought eviction and that if the court in Nairobi ELC Case No. 12 of 2014 were to find that the sale to the 1st and 2nd Defendants was valid, the Plaintiff would lose locus standi in the present suit.
32. According to the Applicant, consolidation would ensure that all issues relating to ownership of the suit properties were determined comprehensively in a single forum and that a consistent judgment would be issued. The Applicant further submitted that consolidation would enable the court to determine the validity of the sale agreement involving Invesco Assurance Company Limited, which was a substantive party in the earlier suit. In support of his position, the Applicant relied on *Kinuthia v Nderitu* [2024] eKLR to argue that challenges relating to the root of title must be determined by the court.
33. The Applicant also cited *Chesinende Farmers Co-operative Society Limited v Joel K. Bett & 25 others* [2018] eKLR, where the court held that consolidation is appropriate where suits raise common questions of fact and law arising from the same transaction, and further relied on *Joseph Okoyo v Edwin Dickson Wassuna* [2014] eKLR and *Benson G Mutathi v Raphael Gichovi Munene Kabutu & 4 others* [2014] eKLR, in which courts ordered consolidation where the issue of ownership of the suit property was common to the suits despite differences in the form of proceedings or remedies sought.



## Analysis of Determination

34. The Court has carefully considered the Notice of Motion, the supporting affidavit, the affidavits in opposition, the written submissions by the parties, and the authorities cited. The central issue for determination is whether the application to consolidate Nairobi ELC No. 12 of 2014, Neptune Credit Management Ltd v Invesco Assurance Company Ltd with the instant suit, Milimani ELCC E246 of 2023, Wideview Properties Ltd v Brian Yongo, Neptune Credit Management Ltd, Yasmin Sumar & Fine Diamond Properties Ltd, has merit.
35. Consolidation of suits is a discretionary process, guided by both statutory provisions and judicial principles. Sections 1A, 1B, and 3A of the *Civil Procedure Act* emphasize the overriding objective of civil litigation: to achieve a just, expeditious, proportionate, and affordable resolution of disputes.
36. The Court is mandated to manage proceedings efficiently, avoid multiplicity of litigation, and ensure that the resolution of disputes is not unduly delayed or rendered costly. These objectives extend to case management powers, including the inherent jurisdiction to make orders necessary for the ends of justice or to prevent abuse of the court process.
37. The case of *Mungai v Housing Finance Company (K) Limited & 5 others (Civil Appeal (Application) 9 of 2015) [2017] KESC 47 (KLR) (26 January 2017) (Ruling)* adequately describes what consolidation is;
- “Consolidation is a legal process done by a court of competent jurisdiction when it is seized of more than one matter, which matters spring from the same cause of action but filed by different parties or involves other parties too. The matters are consolidated and heard together so as to save judicial time and also avoid the courts giving connecting judgements in similar matters.”
38. When considering an application for consolidation, this court will bear in mind the guiding principles pronounced in the case of *The Law Society of Kenya v Centre for Human Rights & Democracy & 12 others, SC Petition No 14 of 2013, [2014] eKLR*, 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.”
39. The case of *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa (2004) eKLR* presents instances where consolidation is infelicitous;
- “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.”
40. In considering whether to make an order for consolidation the Judge has the latitude to exercise its discretion in the interest of justice while following the principles set out in law as follows:
- i. Where there are common questions of law and fact;



- ii. Where the suits arise from the same transaction or series of transactions; i.e. the same events or closely related events;
  - iii. where consolidation will save costs, time, other resources and will avoid multiplicity of proceedings and conflicting decisions;
  - iv. the stage at which proceedings have reached; and
  - v. whether the consolidation will cause prejudice to any parties.
41. On the issue of commonality of parties and reliefs, the Applicant argues that Joseph Gitau Mburu’s involvement in both matters links the transactions in the two cases and consolidation ensures consistent determination of ownership and related disputes. The Respondents on the other hand argue that Wideview is not a party in the 2014 suit and Invesco Assurance is not a party in the present suit. They state that the reliefs sought are materially different where one concerns proprietary rights, the other contractual dealings.
42. On this issue, the Plaintiff argued that consolidation would introduce parties who were not involved in one of the suits. However, the Court finds that the core issue, the determination of ownership and related rights over the suit property outweighs this concern. The Court is of the view that while not all parties are identical, courts have recognized that partial overlap of parties and central factual issues can justify consolidation, especially where property ownership is at stake. In the case of *Chesinende Farmers Co-op v Joel Bett*, 2018 [2018] KEHC 7759 (KLR), the Court held that;
- “From the foregoing, it is my finding that there are common questions of fact and law arising in the two suits and the reliefs claimed arise out of the same transaction. A strong case has therefore been made out for consolidation of the two suits. In arriving at this conclusion I am guided by the case of *Joseph Okoyo V Edwin Dickson Wassuna* (2014) eKLR where *Nyamweya J* faced with a situation where the issue of ownership of the suit property was common to the two suits though the parties were seeking different remedies, held that the suits be consolidated”
43. In the instant matter, the Court observes that both suits concern disputes arising from the ownership, sale, and transfer of the same property, L.R. No. 209/4517 (Fine Diamond Apartments). Although the parties in the two suits are not identical, the involvement of Joseph Gitau Mburu a director in both companies at relevant times creates a factual and legal connection between the disputes. Both cases raise overlapping questions regarding the validity of the sale, the transfer of rights, and the conduct of parties in relation to the property.
44. On the issue of efficiency and saving of judicial time, the Applicant argues that consolidation will save time and costs, reduce repetitive hearings, and allow a comprehensive determination of property ownership. On the other hand the Respondents contend that consolidation would import old records and prolong proceedings.
45. The Court agrees with the Applicant that consolidating the suits will promote judicial efficiency, avoid the risk of inconsistent judgments, and allow the issues to be comprehensively addressed in a single forum. The Court also notes that allowing the parties leave to amend their pleadings post-consolidation will ensure that no party suffers unfair disadvantage and that all relevant facts and claims are properly pleaded.
46. The Court has also considered risk of prejudice or undue advantage by looking at the stage of proceedings. The 2014 suit is long-running with an established record, whereas the 2023 suit is



relatively recent. Nonetheless, the overlap in questions of law and fact, as well as the need to determine the ultimate ownership of the suit property, justifies consolidation. Further, the risk of inconsistent judgments is a strong factor favoring consolidation, given the overlapping ownership issues.

47. The Court is satisfied that the consolidation will save time, reduce costs, and prevent multiplicity of proceedings, while any potential prejudice can be mitigated through proper case management.
48. Having regard to the foregoing, the Court finds that the application to consolidate the two suits is meritorious. Consolidation is in the interest of justice, efficiency, and the proper administration of civil litigation.
49. The final orders of the Court are;
  1. Nairobi ELC No. 12 of 2014, Neptune Credit Management Ltd v Invesco Assurance Company Ltd, is hereby consolidated with Milimani ELCC E246 of 2023, Wideview Properties Ltd v Brian Yongo, Neptune Credit Management Ltd, Yasmin Sumar & Fine Diamond Properties Ltd, with Nairobi ELC No. 12 of 2014 designated as the lead file.
  2. The parties are granted 30 days to amend their pleadings if necessary.
  3. Case management conferences and scheduling of the hearing shall be expedited to ensure timely determination of the consolidated matters.
  4. Costs shall abide the outcome of the consolidated suit.

**DELIVERED, DATED AND SIGNED VIA MICROSOFT TEAMS AT NAIROBI THIS 19<sup>TH</sup> DAY OF MARCH, 2026.**

**HON. L. G. KIMANI**

**JUDGE ENVIRONMENT AND LAND COURT**

Ruling is read in the presence of-

No appearance for the 1<sup>st</sup> Defendant/Applicant

M/s Kimere for the Plaintiff/Respondent

No appearance for the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant/Respondents

No appearance for the 4<sup>th</sup> Defendant/Respondent

