

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MALINDI**  
**ELCLC NO. E054 OF 2024**

**JONATHAN NGUMBAO KATA .....**  
**PLAINTIFF**

**VERSUS**

**STELLA MONTI, T/A CITY SEVEN INVESTMENTS LIMITED....**  
**DEFENDANT**

**RULING**

1. The Notice of Motion dated 27<sup>th</sup> of January 2025 seeks the following orders:
  - a. That this suit be consolidated with Malindi ELCLC NO E011 of 2026 for hearing and determination by this court;***
  - b. That the costs of the application be in the cause.***
2. The grounds on which the motion is premised are that the both suits concern ownership validity of title and occupation of land parcels arising from Chembe Kibabamshe, including **Chembe/Kibabamshe/2646, 414, 708, and 709** and that the parties in both matters are substantially the same.
3. The application is opposed. In their submissions the advocates for the plaintiff has urged that the case ***Malindi ELCLC NO E011 of 2026*** was disposed of in ***Malindi ELC No 2 OF 2004*** as between the same parties and a judgment was delivered by a court of competent jurisdiction; that the reopening of that case was for the limited purpose of determining the rights of an interested party, and did not reopen the dispute between the plaintiff and the defendant; that subsequently a consent order was recorded between the parties thus entirely resolving the issues in that matter; that since the said older suit is no longer pending, and consolidation is only for pending suits, then the issue of its consolidation with the present suit does not arise. That the proposed consolidation if effected would offend the twin doctrines of *res judicata* and *functus officio*.
4. **Section 7** of the Civil Procedure Act, 2010, stipulates that:

*“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of the claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”*

5. In the case of **Johnson Kinyua Gichigi v Francis Mugo Kangure [2021] KECA 935 (KLR)** the Court of Appeal stated as follows:

*“Relying on the case of Kenya Commercial Bank Limited case (supra) to address the question of whether or not a case was heard on its merits when a consent judgment was entered, in the case of Julius Muthoka Ndolo vs Park Towers Limited & 2 others [2019] eKLR this Court observed that;*

*“Those issues cannot be re-litigated. On that point this case falls on all fours with Kamunge & Others vs Pioneer General Assurance Society Ltd [1977] EA 263 at pg. 265” where this Court stated as follows on the issue of res judicata.*

*“It does not matter that the judgment was by consent and not on merit after trial. It is as binding as if the judgment was one after evidence had been called.”*

*This Court has also stated in the case of Pop-in (Kenya) Ltd and 3 Others vs Habib Bank, A. G. Zurich C. A. No. 80 of 1988 that a matter will be res-judicata not only on points upon which the court was actually required by parties to form an opinion and pronounce a judgment but also on every point which properly belonged to the subject matter of litigation.”*

6. It is clear from the foregoing that if there is a judgment whether by reasoning of court or by consent of the parties in the case **Malindi ELC No 2 OF 2004**, then its consolidation with the present suit would not be possible. It behoves this court to ascertain by way of perusal of the cases cited whether there occurred such closure as is alleged.
7. I have perused the file record for **Malindi ELCLC NO E011 of 2026**. It is a relatively new piece of litigation that has hardly moved an inch. Other than the plaint filed on **27/1/2026**, I find nothing else in the file. There is no order closing that file. There is no judgment therein. There is no consent therein. The parties therein are as follows:

**SAMUEL KANOGO RITHO**

**(SUING THROUGH HIS ATTORNEY IN FACT  
GEOFFREY AVUGWI RITHO) .....**  
**.....PLAINTIFF**

**VERSUS**

**JONATHAN NGUMBAO KATA .....1<sup>ST</sup>  
DEFENDANT**

**THE ATTORNEY GENERAL .....2<sup>ND</sup>  
DEFENDANT**

**THE LAND REGISTRAR MALINDI. ....3<sup>RD</sup>  
DEFENDANT**

**AND CITY SEVEN INVESTMENTS LIMITED. ....INTERESTED  
PARTY**

8. I have equally perused the original file record for **Malindi ELC No 2 OF 2004**. It is surprising that the plaintiff states in his reply, without providing any evidence to substantiate his claim, that **Malindi ELCLC NO E011 of 2026** was disposed of inside **Malindi ELC No 2 OF 2004** for that is not the case according to the two original court records.
9. The plaint in the present suit has Chembe/Kibabamshe/2646 as the subject matter. The defence in this matter has stated that Chembe/Kibabamshe/2646 is a strange number since the plaintiff herein was allocated plot no Chembe/Kibabamshe/414 in the year 2020, yet that plot never existed after the year 2000 when it was, according to the 1<sup>st</sup> defendant, subdivided into two portions; further, that the plaintiff has not explained what happened to Chembe/Kibabamshe/414 or accounted for how plot no Chembe/Kibabamshe/2646 came about.
10. The defence in the present suit indicates that plot no Chembe/Kibabamshe/414 was initially allocated to Samuel Kanogo Ritho on 30<sup>th</sup> May 1978. Samuel is the plaintiff in **Malindi ELCLC NO E011 of 2026**
11. I find that if the defendant herein claims that it is in possession of plot no Chembe/Kibabamshe/414 in her defence, and the plaintiff claims that the defendant is in occupation of plot Chembe/Kibabamshe/2646, it is for the plaintiff to demonstrate how that can be the case. Also, in so far as the plaintiff in **Malindi**

**ELCLC NO E011 of 2026**, Samuel Kanogo Ritho, is claiming ownership of plot no Chembe/Kibabamshe/414, then that makes the two cases so inextricably intertwined that there would be a waste of much valuable judicial time and a great risk of arriving at conflicting decisions if they were not consolidated. Therefore, the whole puzzle surrounding all the mentioned parcel numbers ought to be resolved in one hearing.

12. The upshot of the foregoing is that the application dated **27/1/26** has merit and is hereby allowed in terms of **prayers nos 3 and 4** thereof. The present suit shall be the lead file.
13. Parties shall file documents in their respective files and witnesses shall follow the normal routine of testifying only once while addressing their respective cases in both files. All witness statements shall be comprehensive and shall cross reference the intended exhibits and their location in the bundles. Parties shall file and serve their trial bundles within **21 days** from today in both files and both matters shall be listed on **17<sup>th</sup> June 2026** for pretrials. On the same date, **Malindi HCCC 2 of 2004** shall be listed for hearing and brought up alongside these two files. A copy of this ruling shall be placed in **Malindi HCCC 2 of 2004**

**Dated, signed and delivered at Malindi on this 12<sup>th</sup> May 2026.**



**MWANGI NJOROGE  
JUDGE, ELC MALINDI.**