



Lukorito v Siror (Being Sued as the Guardian Ad Litem of Micheal Bett Siror) (Environment and Land Case 26 of 2019) [2025] KEELC 5490 (KLR) (23 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5490 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 26 OF 2019**

**CK NZILI, J
JULY 23, 2025**

BETWEEN

VERONICA TERIGI LUKORITO PLAINTIFF

AND

DAVID KIPCHUMBA SIROR DEFENDANT

BEING SUED AS THE GUARDIAN AD LITEM OF MICHEAL BETT SIROR

RULING

1. The plaintiff/applicant has asked the court for orders of consolidation of this file with ELC Civil Suit No.117 of 2016 -Jeremiah Cheruiyot -vs- Michael Bett Siror, ELC Civil Suit No.EO33 of 2024 - Estate of Jackson Koech(Represented by the personal representative Luka Kirui) -vs- Michael Bett Siror and Betham Investment Co. Ltd and 3 others and ELC Civil Suit No.96 of 2015 - Jackson Koech -vs- Michael Bett Siror, hereinafter the suit files, for purposes of being heard and determined together. The applicant also prays that ELC Civil Suit No.26 of 2019, ELC Civil Suit No. EO33 of 2024 and ELC Civil Suit No.96 of 2015, be subsumed in ELC Civil Suit No.117 of 2016.
2. The grounds, as set out on the face of the application dated 3/2/2025 and in the affidavit sworn by Veronica Terigi on even date. They are that; the suits relate to the same subject matter; they involve the same defendant; the parties are seeking similar prayers and are litigating over the same suit property, being L.R No. 6614/6 Kitale.
3. The applicant deposes that the suits raise similar questions of law and fact and are therefore related. Further, the applicant avers that the prayer sought to consolidate the suits is necessary, to avoid duplication of suits and multiplicity of proceedings; the cause of action in all the suits is based on a claim of ownership or beneficial interest over the suit property and lastly that it would be just, convenient and expedient to consolidate and hear the suits together.



4. When the application for consolidation came up, Miss Waweru advocate, opposed the application on the basis that the suits sought to be consolidated are at various stages of their prosecution, where orders have been granted in favour of some parties, in the course of their hearing. Learned counsel submitted that the proposed consolidation will prejudice some of the parties who have had their cases closed or evidence tendered, since they will be subjected to the re-opening of their cases to have their matters start de novo, to accommodate the new entrant to the dispute.
5. Further, learned counsel submitted that the application is brought too late in the day, especially for the closed files, where parties would suffer gravely if the matters, once consolidated, ought to start de novo. Learned counsel alluded to having filed a replying affidavit, which the court has not been able to trace.
6. Looking at the suits, in ELC No. 26 of 2019, vide a plaint dated 27/3/2019, the plaintiff is seeking revocation of titles, specific performance, and a permanent injunction over the suit property. The defendant in that suit has termed the suit as res judicata, Kitale HCCC No.136 of 2000(OS) and is statute-barred, given that the suit property has already been subdivided and lease certificates issued.
7. In ELC Civil Suit No.117 of 2016, the plaintiff, through a plaint dated 28/7/2016, prays to be declared the owner of 36 acres under his occupation, to be excised out of the suit property and that the defendants transfer the same to him. Further, the plaintiff avers that upon sale of the 36 acres, he paid part of the consideration to Agricultural Finance Corporation to offset the defendant's loan facility that was in arrears. There are a total of 13 witnesses to the suit.
8. The defendant, through a statement of defence dated 30/8/2016, termed the suit as res judicata, time-barred, an abuse of the court process, founded on perjury and contempt of court, non-suited and an abuse of the court process. The court record indicates that parties were directed to comply with Order 11 of the Civil Procedure Rules.
9. Regarding ELC No. 96 of 2015, the plaintiff prays for a declaration that the defendant was holding 300 acres in trust for him and those claiming under him. He sought the subdivision of the suit property and transfer of the said 300 acres, costs and interests in his plaint dated 17/7/2015. The defendant filed a statement of defence dated 14/9/2015. He averred that the suit was time-barred and an abuse of the court process, in view of various suits stated therein.
10. On 27/4/2016, the court dismissed an application by the defendant seeking to have the suit struck out for lack of consent from the land control board, for being statute-barred and an abuse of the court process. The matter was last mentioned on 16/9/2019 and has since been inactive. Mr. Kiarie, counsel for the plaintiff in that suit, stated that it had since abated and that it went up to the Court of Appeal.
11. In ELC Civil Suit No. EO33 of 2024; there is an application due for directions before this court on 7/8/2025. The main suit is based on the plaint dated 6/9/2024, where the plaintiff prays inter alia, that the 1st defendant holds the suit parcel in trust for 21 persons, cancellation of the subdivisions, permanent and temporary injunction. The plaint has since been amended and parties are yet to comply with Order 11 of the Civil Procedure Rules.
12. Section 80(h) of the *Civil Procedure Act* and Order 11 Rule 3(1)(b) of the Civil Procedure Rules provide for the consolidation of suits. In Benson G. Mutahi -vs- Raphael Gichovi Munene Kabutu & 4 others [2014] KEELC 660 (KLR), the court observed that consolidation of suits is aimed at a comprehensive examination of all questions of law and facts, which would expedite the resolution of all related issues. Consolidation of suits also minimizes the risk of conflicting judgments if the matters are handled independently.



13. InLaw Society of Kenya -vs- Centre for Human Rights and Democracy & 12 others (Petition 14 of 2013) [2014] KESC 29 (KLR) (8 April 2014) (Ruling), the court held that consolidation allows for a holistic consideration of the evidence and the arguments, it enables the court to make informed and concise decisions on matters at hand.
14. Similarly, it was observed that consolidation aims at bringing about savings of resources and costs, which serve the interests of all parties involved. See Korean United Church of Kenya & 3 others -vs- Seung Ho Song [2014] KEHC 7634 (KLR).
15. The principles to consider are;
 - a. Whether similar questions of law or facts arise in both cases.
 - b. Whether the right or relief claimed in the two matters or more arises out of a similar transaction or series of transactions.
 - c. Whether any party will be disadvantaged or prejudiced, or conferred with undue advantage.
16. InPrem Lala Nahata & Anor -vs- Chandi Prasad Sikaria (2007) 2 SCC 551, the Supreme Court of India held that the court has powers to consolidate appropriate suits to save costs, time, effort and to make the conduct of several actions more convenient by treating them as one action.
17. Expeditious disposal of cases in a cost-effective manner is what Articles 159 of *the Constitution*, Sections 1A, 1B, and 3 and 3A of the *Civil Procedure Act* envisage. It promotes judicial economy, so long as no party is prejudiced.
18. From the case law cited above, my finding is that justice of the suits does not call for their consolidation. Parties stand to suffer grave prejudice if the suits are consolidated since, despite involving one common defendant over the same suit property, the causes of action are evidently different and some suits involve different parties, issues for determination and are at advanced stages.
19. The application dated 3/2/2025 is therefore dismissed.
20. Orders accordingly.

RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 23RD DAY OF JULY 2025.

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Dennis

Onyango for the plaintiff in ELC No. 117 of 2016 present

Kipruto for Lagat for plaintiff in ELC No. 26 of 2019 present

Miss Waweru for Katwa for the defendants in ELC No. 117 of 2016 present

Wasilwa for plaintiffs in ELC No.26 of 2019.

Mr. Wainaina for Mr. Momanyi for the defendants in ELC No. 26 of 2019.

