



REPUBLIC OF KENYA



**Ethics and Anti-Corruption Commission v Kensko Agro Produce Limited & 4 others
(Environment & Land Case E051 of 2023) [2024] KEELC 969 (KLR) (28 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 969 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E051 OF 2023
NA MATHEKA, J
FEBRUARY 28, 2024**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

KENSKO AGRO PRODUCE LIMITED 1ST DEFENDANT

FRANCIS WAIGANJO KIMANGA 2ND DEFENDANT

LUCY WANJIRU KIMANGA 3RD DEFENDANT

SILVER CLOUDS INVESTMENT LIMITED 4TH DEFENDANT

WILSON GACHANJA 5TH DEFENDANT

RULING

1. The application is dated 7th June 2023 and is brought under section IA, 1B, & 3A of the [Civil Procedure Act](#), order I rule 3(1) (a) and order 51 rule I of the [Civil Procedure Rules](#) seeking the following orders;
 1. The application be certified as urgent and service thereof upon the Defendants/Respondents be dispensed with in the first instance.
 2. This Honorable Court be pleased to issue an order of consolidation of the instant suit with, ELC Case No. 196 of 2021 [Kenya Broadcasting Corporation v Kensko Agro Produce Limited & 2 Others](#).
 3. This Honorable Court be pleased to issue an order that the instant suit be designated as the lead file for purposes of taking evidence and writing Judgment.
 4. This Honorable Court be pleased to issue an order that the instant suit be mentioned together with ELC Case No. 196 of 2021 [Kenya Broadcasting Corporation v Kensko Agro Produce](#)



Limited 2 Others, the former slated for hearing of the main suit and the latter, for hearing of the injunction application on 13th June 2023.

5. The costs of this application be provided for.
2. It is based on the affidavit of Stephen Ivuvu and on the grounds that there is a suit ELC Case No. 196 of 2021 Kenya Broadcasting Corporation v Kensko Agro Produce Limited & 2 Others similar to the instant suit, both relating to Mombasa Municipality/Block XXI/583 and 584 against the 1st Defendant and others. The Plaintiffs in their respective suits contend that the parcel of land Mombasa Municipality/Block XXI/577 begetting the subject parcels Mombasa Municipality/Block XXI/583 and 584 was alienated and reserved for public Utility and was, therefore, unavailable for allocation for private use. The reservation aforesaid was vide an approved Part Development Plan No. 198 Ref. CT/12/1 1/88/1 dated 16th February 1988. The PDP shows that the land was reserved for. extension of Voice of Kenya (presently Kenya Broadcasting Corporation). The parcels were illegally allotted to Kensko Agro Produce Limited who is the 1st Defendant in both suits. Both Plaintiffs rely on similar evidence and the same witnesses to prove their case against the Defendants in both suits. Neither of the suits has taken off save that ELC Case No. 196 of 2021 Kenya Broadcasting Corporation v Kensko Agro Produce Limited & 2 Others is scheduled for hearing of the main suit on 13th June 2013. The consolidation and or hearing/ adjudication of these suits before the same Court will avoid inconsistencies in the determination of the matters, absurdity and/ or different decisions on the same set of facts, transactions and or issues of law arising from the same set of facts.
3. This court has considered the application and the submissions therein. The jurisdiction to consolidate suits is provided by order 11 Rule 3 of the Civil Procedure Rules. In the case of Prem Lala Nabata & Anor v Chandhi Prasad Sikaria (2007) 2 Supreme Court Cases 551, the India Supreme Court held that;

“It cannot be disputed that the Court has power to consolidate suits in appropriate cases.... The main purposes of consolidation is therefore to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The jurisdiction to consolidate arises where there are two or more matters or causes pending in the court and it appears to the court that some common questions of law or fact arises in both or all the suits or that the rights or relief claimed in the suits are in respect or arise out of the same transactions or series of transactions; or that for some other reasons it is desirable to make an order consolidating the suit.”
4. In the case of Law Society of Kenya v Center for Human Rights & Democracy & 12 Others (2014) eKLR, the Supreme Court of Kenya 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 intended to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party who opposes it.”
5. 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 for matters pending in the same court where: -

 - a. Some common questions of law or fact arises in both or all of them.



- b. The rights or reliefs claimed in them are in respect of the same transactions;
- c. For some other reasons, it is desirable to make an order for consolidating them.”

6. The Court has a wide discretion in ordering 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 objective set out in the *Civil Procedure Act*, Cap 21 Laws of Kenya. I have perused the pleadings in ELC Case No. 196 of 2021 *Kenya Broadcasting Corporation v Kensko Agro Produce Limited & 2 Others* and the instant suit and find that both relate to Mombasa Municipality/Block XXI/583 and 584 against the 1st Defendant and others. None of the suits have been heard and ELC Case No. 196 of 2021 *Kenya Broadcasting Corporation v Kensko Agro Produce Limited & 2 Others*, had been slated for hearing of the main suit on 13th June 2023. I find that common questions of law and fact arises in both the cases and the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions and hence I find it is desirable to make an order consolidating the suits. I find that the application has merit and make the following orders;

1. That the instant suit be consolidated with ELC Case No. 196 of 2021 *Kenya Broadcasting Corporation v Kensko Agro Produce Limited & 2 Others*.
2. That the instant suit be designated as the lead file for purposes of taking evidence and writing Judgment.
3. The costs to be in the cause.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 28TH DAY OF FEBRUARY 2024.

N.A. MATHEKA

JUDGE

