



**Rubis Energy Kenya PLC (Formerly Known as Kenol Kobil PLC)  
v Trustees of Seif Bin Salim & 2 others (Environment & Land Case  
128 of 2021) [2024] KEELC 1496 (KLR) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1496 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 128 OF 2021  
NA MATHEKA, J  
MARCH 19, 2024**

**BETWEEN**

**RUBIS ENERGY KENYA PLC (FORMERLY KNOWN AS KENOL KOBIL  
PLC) ..... PLAINTIFF**

**AND**

**TRUSTEES OF SEIF BIN SALIM ..... 1<sup>ST</sup> DEFENDANT**

**THE SEVEN TRUST GENERAL TRADING LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LANDS REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The application is dated 4<sup>th</sup> August 2023 and is brought under Rule 3(2) of the High Court Procedure Rules, *Judicature Act* (Cap.8), Under Sections 7 A, 1B, 3A, 18 and 63 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, Order 57 Rule I of the Civil Procedure Rules, 2010, Article 40 and 159 of *the Constitution* 2070, Section 101 of the *Land Registration Act*, 2012, Section 13 and 19 of the Environment and *Land Act* Number 19 of 2011 seeking the following orders;
  1. Spent.
  2. That pending the hearing and determination of this application there be a stay of proceedings in CMCC 632 OF 2020 (Mombasa)- SAS General Trading Limited v Rubis Energy Kenya PLC.
  3. That there be an order:
    - a. Withdrawing CMCC 632 OF 2020 (Mombasa)-SAS General Trading Limited vs Rubis Energy Kenya PLC from the Magistrate’s Court; and



- b. This Court do hear and determine CMCC 632 OF 2020 (Mombasa)- SAS General Trading Limited v Rubis Energy Kenya PLC.
4. That there be an order consolidating ELC 128 of 2021-Rubis Energy Kenya PLC v Trustees of Seif Bin Salim Trust & 2 Others and CMCC 632 of 2020 (Mombasa)- SAS General Trading Limited v Rubis Energy Kenya PLC with the lead file being ELC 128 OF 202- Rubis Energy Kenya PLC v Trustees of Seif Bin Salim Trust & 2 Others.
  5. That the costs of this application be costs in the provided for: and
  6. That this Honourable Court be pleased to make and give any such further orders and give such directions as may be just and fair in the interest these proceedings.
  7. The 2<sup>nd</sup> defendant in their replying affidavit dated 30<sup>th</sup> August 2023 opposed the application and stated because the suit property in this suit is different from the suit property in the lower court i.e. the suit property in this suit is MSA/Block XVI/300 and L.R No. 1149. It also opposed on the ground that it was not a party to the lower court suit. The 2<sup>nd</sup> defendant alleged that the plaintiff's intention was forum shopping and further that the prayers sought in the 2 suits are against different parties.
  8. The 1<sup>st</sup> defendant filed grounds of opposition dated 18<sup>th</sup> October 2023 and a replying affidavit sworn on 11<sup>th</sup> November 2023 and opposed the application on grounds as summarized below:
    1. The application is incapable of being granted as it has been overtaken by events. The events however have not been explained by the same.
    2. This suit and the lower court suit have different causes of action and the 1<sup>st</sup> defendant explained the cause of action in the lower suit is anchored on commercial/contract relationship. Further, the 1<sup>st</sup> defendant stated that the lower suit case has different parties from this suit and thus is not ripe for consolidation under Order 11 Rule 3 (1) (h) of the Civil Procedure Rules.
    3. The application is a delay tactic and an abuse of the court process.
    4. The 1<sup>st</sup> defendant does not have privity of contract with either the plaintiff or SAS General Trading Ltd who is the plaintiff in the lower court file.
    5. The magistrate court has jurisdiction to listen to the lower court suit and that this court would be acting in ultra vires if it withdraws the lower court suit from the magistrate's court and also that it would be against spirit of Order 11 Rule 3 (1) (h) of the Civil Procedure Rules.
  9. The plaintiff filed a further affidavit sworn by one Richard Ngonyo on 29<sup>th</sup> November 2023 stated that the suit property is a portion of L.R 1149 thereby linking the lower court suit and this suit and also that the petrol station is a subject matter in both cases. The plaintiff also informed the court that after filing of the application the lower court suit was adjourned to 28<sup>th</sup> February 2024 pending the outcome of this application. However, no further update has been given considering that this court did not issue any temporary orders pending hearing of the suit.
  10. The history of the dispute is that the 1<sup>st</sup> defendant has always been the registered owner of Msa/Block XVI/300 hereafter suit property leased to the plaintiff's predecessor Mobil Oil East Africa for a term of 99 years starting from 1<sup>st</sup> October 1962. Sometime in 2021, the 1<sup>st</sup> defendant terminated the said lease and leased the suit property to the 2<sup>nd</sup> defendant for a term of 27 years starting from 1<sup>st</sup> July 2021. No proceedings for the lower court suit have been attached by any of the parties, however from the pleadings and the numerous applications filed herein, the plaintiff in CMCC 632 of 2020 (Mombasa)- SAS General Trading Limited v Rubis Energy Kenya PLC, was operating as a sublessee of the plaintiff



in a parcel of land known as L.R. 1149 and it seems the plaintiff terminated their sub lease agreement. The plaintiff also stopped the possession and operation by SAS General Trading Limited of a petrol station on the suit property in the current suit.

11. Counsel for the plaintiff filed in their submissions dated 29<sup>th</sup> November 2023 submitted that Mombasa/Block XVI/300 is a sub division of L.R. 1149. They submitted that this application has not been overtaken by events and that the lower court file had been stayed until the next mention date of 28<sup>th</sup> February 2024. Counsel is apprehensive that it would be prudent to allow the application to avoid conflicting decisions. Consequently, counsel submitted that it would be in the interest of justice that the lower court suit is consolidated with the instant to suit for purposes of finalizing the matter and relied on the case of *Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 Others [2014]* eKLR. Counsel relied on section 1A, 1B and 18 of the *Civil Procedure Act*.
12. In his submissions dated 2<sup>nd</sup> February 2024, counsel for the 1<sup>st</sup> defendant referred to Order 11 Rule 3 (1) (h) and the case of *Selecta Kenya Gmbh & Co. KG v Chase Bank Kenya Limited & 2 Others [2018]* eKLR where the court detailed the requirements for consolidation. They contend that the application has failed all the requirements and elaborated as follows:
  - i. The parties are not the same in the two suits.
  - ii. The advocates are different in both suits and mentioned the firm of John Bwire & Associates as representing the plaintiff in the lower court suit and not representing anyone in the lower suit.
  - iii. The causes of action in the lower court suit was based on breach of contract while the cause of action in this suit is about a contract to which the plaintiff is not privy to and the counterclaim by the 1<sup>st</sup> defendant is a claim for trespass.
  - iv. The application is inviting the high court in usurping the jurisdiction of the Magistrates Court and referred to the pecuniary jurisdiction of each court.
13. 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 Nahata & Anor v Chandi 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.”
14. 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.”



15. 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.”

16. 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 in CMCC.632 OF 2020 (Mombasa) SAS General Trading Limited vs Rubis Energy Kenya PLC and find that it concerns a dealership license agreement between the parties and the plaintiff therein is challenging a letter purporting to terminate the said agreement. They seek a permanent injunction and damages among other orders against the defendants. In the current suit I find that the 1<sup>st</sup> defendant is not a party to that suit. The 1<sup>st</sup> defendant stated that they only had privity of contract with Mobile East Africa Ltd and Kobil Petroleum Ltd and not the plaintiff nor SAS General Trading Ltd who are both strangers to it. Further the 1<sup>st</sup> defendant has filed a counterclaim seeking to evict the plaintiff from its property and general damages for trespass among other prayers. I also note that the said SAS General Trading Ltd is not a party to this application. I find that this application is not merited and I dismiss it with costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 19<sup>TH</sup> DAY OF MARCH 2024.**

**N.A. MATHEKA**

**JUDGE**

