



**Tugboat Enterprise Limited & 11 others v Ngolo & 12 others; Casuarina Self Help Group (Interested Party) (Official suing on behalf of Casuarina Self Help Group) (Environment & Land Case E026 of 2020) [2024] KEELC 5672 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5672 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE E026 OF 2020  
FM NJOROGE, J  
JULY 31, 2024**

**BETWEEN**

**TUGBOAT ENTERPRISE LIMITED & 11 OTHERS & 11 OTHERS & 11 OTHERS & 11 OTHERS ..... PLAINTIFF**

**AND**

**RASHID KAJELA NGOLO & 12 OTHERS & 12 OTHERS & 12 OTHERS & 12 OTHERS ..... DEFENDANT**

**AND**

**SAMMY REMADHAN CHEMBE ..... INTERESTED PARTY  
OFFICIAL SUING ON BEHALF OF CASUARINA SELF HELP GROUP**

**RULING**

1. In a notice of motion application dated 14<sup>th</sup> March 2023, brought under sections 1A, 1B, 3, 3A and 63 (e) of the *Civil Procedure Act*, Order 11 rules 1 and 2 and Order 51 of the *Civil Procedure Rules*, the Defendants seek an order for consolidation. They seek that this suit be consolidated with Malindi ELC Petition No. 6 of 2015 (the petition) on grounds set out as follows: -
  - a. That the parties are the same.
  - b. The property involved is the same.
  - c. Similar questions of law and fact are involved in the above noted suits which are both pending before this environment and land court in Malindi.
  - d. Consolidation of the above noted suits is necessary to avoid duplication of proceedings and multiplicity of suits and to save time for parties and court.



- e. It would therefore be just, convenient and expedient for all parties involved if the above noted suits were consolidated and heard as one.
2. The application is supported by the affidavit sworn on 14<sup>th</sup> March 2023 by Rashid Kajela Ngolo, the 1<sup>st</sup> Defendant herein.
3. In opposition, Mr. Ole Kina, counsel for the Plaintiffs filed a Replying Affidavit on 16<sup>th</sup> March 2023 stating that the parties, issues, and orders sought in the two suits are not entirely the same as stated in the application. He deposed that the 1<sup>st</sup> Defendant herein had sought similar orders in the said petition Malindi ELC Petition No. 6 of 2015 that is before the Hon. Justice Evans Makori; that the said prayer, together with another prayer for amendment of the petition was denied. According to Mr. Ole Kina, the present application is an attempt to circumvent this court's orders issued while it was differently constituted, hence it should be dismissed with costs.
4. In another replying affidavit by Professor Abdullah Naji Said sworn on 19<sup>th</sup> July 2023 on behalf of the Plaintiffs, it was stated that the suit properties herein are Parcel Nos. 5465 and 5466 amalgamated to LR 6461 and later subdivided into plot nos. 6462, 6463, 6465-6467, 6470, 6471, 6472, 6473, 6474, 6483, 6484, 6487, 6488, 6502, 6098, 6099, 6477, 6478, 6479, 6480-6486, 6490- 6495, 6489, 6503, 6469, 6500, 6501, 6468, 6475, 6476, 6496-6499. The deponent added that the suit properties in the Petition are plot nos. 5469, 5468, 5167, 5143, 4416, 4417, 431, 546, 956, 5465, 5455 and 5598. According to the deponent, the two suits do not raise similar questions of law and fact, thus the reason they were filed in different courts.
5. The application was canvassed by way of written submissions filed on 4<sup>th</sup> April 2023 on behalf of the defendants and on 20<sup>th</sup> July 2023 on behalf of the Plaintiffs. I have carefully read and understood the same. The sole issue for determination is whether this suit should be consolidated with the petition.

### **Analysis And Determination**

6. The jurisdiction to consolidate suits is founded on Order 11 Rule 3 of the *Civil Procedure Rules*. In *Law Society of Kenya vs Center for Human Rights & Democracy & 12 Others* [2014] eKLR, the Supreme Court of Kenya held: -

“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.”
7. In *Nyati Security Guards & Services Ltd v Municipal Council of Mombasa* [2000] eKLR, the court held: -

“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.”



8. From the foregoing, it is trite that consolidation will only 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 and to avoid multiplicity of suits.
9. The grounds upon which the present application is made are inter alia that the parties and suit properties are the same in both suits, and that both suits involve similar questions of fact and law.
10. I have looked at copies of the plaint, statement of defence and counterclaim herein and the Amended Petition. It is clear that the suit properties in ELC E026 OF 2020 (this suit) fall within Plot Nos. 6462 – 6496. As per the Plaint, these plots were, before subdivision, comprised in Parcel No. 6461 which was amalgamated from Plot No. 5465 and 5466. This means that the initial or original plot numbers before amalgamation and subdivision were 5465 and 5466.
11. It must also be noted that the Defendants filed a counterclaim in this suit. In the said counterclaim, the plaintiffs are some of the petitioners in the petition; the defendants therein include the Respondents in the petition and the plaintiffs in this suit. There is mention of Plot No. 5465 both in the amended petition and the counterclaim. The basis of and reliefs sought in the counterclaim appears to be similar to the facts raised and reliefs sought in the Petition. It is evident therefore that some common questions of law and fact may arise in both suits and the determination of one may in one way or another affect the other suit to some extent.
12. I have however noted that as the petition is pending before my brother Hon Justice E. Makori who is sitting in this same station and that it is an old matter, and he being seized of the matter is able to give proper directions as to consolidation.
13. I therefore order that this suit shall be placed the Hon Justice E. Makori on 26<sup>th</sup> September 2024 for his directions as to whether the matter should be consolidated with the petition or heard together or otherwise and therefore the decision on those issues is accordingly deferred.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 31<sup>ST</sup> DAY OF JULY 2024.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI**

