



**Original Wependa Afya Bidii Housing Co-operative Society Limited  
(OWAB) v Vuti & 4 others (Environment & Land Case 513 of 2016)  
[2024] KEELC 13896 (KLR) (18 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13896 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 513 OF 2016  
MD MWANGI, J  
DECEMBER 18, 2024**

**BETWEEN**

**ORIGINAL WEPENDA AFYA BIDII HOUSING CO-OPERATIVE SOCIETY  
LIMITED (OWAB) ..... PLAINTIFF**

**AND**

**JOHN NGEI VUTI ..... 1<sup>ST</sup> DEFENDANT  
GILBERT THUO MACHARIA ..... 2<sup>ND</sup> DEFENDANT  
SIMON WAMUGUNDA ..... 3<sup>RD</sup> DEFENDANT  
GEORGE W. MUNGAI ..... 4<sup>TH</sup> DEFENDANT  
PETER KIHARA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

(In respect of the 1st Defendant’s amended application dated 8th July,2024)

**Background**

1. Vide the amended Notice of Motion application dated 8th July, 2024 the 1st Defendant seeks substantively for orders that:
  - a. The Honourable Court be pleased to transfer from the Chief Magistrate’s Court Ruiru the following cases to the Environment and Land Court Thika for determination;
    - i. Ruiru Elc No. E027 Of 2021; Teresa Wambui Kamau –vs- Original Wapenda Afya Bidii Co-operative Society Ltd, Zipporah Nduta Wairimu & Jeremiah Maina Mwangi.



- ii. Ruiru ELC No. E087 of 2023 Rose Wangui Macharia –vs- Original Wapenda Afya Bidii Co-operative Society Ltd., Joseph Muchoki Kinyua, Peninah Njeri & Lydia N. Nyambura- coming for hearing on 27 th July, 2024.
  - iii. Milimani ELC No. 513 of 2016 Owab Housing Co-operative Society Ltd. –vs- John Ngei Vuti, Gilbert Thuo Macharia, Simon Wamugunda, George Mungai and Peter Kihara.
- b. The Honourable Court be pleased to grant an order to consolidate and/or hear together the following suits;
- i. Milimani ELC No. 513 of 2016 Owab Housing Co-operative Society Ltd. –vs- John Ngei Vuti, Gilbert Thuo Macharia, Simon Wamugunda, George Mungai and Peter Kihara.
  - ii. Thika Elc No. 338 of 2018 (formerly Elc No. 1221 of 2016 Nairobi) Eutyclus Maina Thiongó & John Ngei Vuti –vs- Original Wapenda Afya Bidii Housing Co-operative Society Ltd. (O.W.A.B.).
  - iii. Ruiru Elc No. E027 Of 2021; Teresa Wambui Kamau –vs- Original Wapenda Afya Bidii Co-operative Society Ltd, Zipporah Nduta Wairimu & Jeremiah Maina Mwangi.
  - iv. Ruiru ELC No. E087 of 2023 Rose Wangui Macharia –vs- Original Wapenda Afya Bidii Co-operative Society Ltd., Joseph Muchoki Kinyua, Peninah Njeri & Lydia N. Nyambura- coming for hearing on 27th July, 2024.
- c. That costs of the application be provided for.
2. The application is premised on the grounds on the face of it and the Supporting Affidavit of John Ngei Vuti deposed on the 8th July, 2024. The 1st Defendant/Applicant avers that he was the agent of the Plaintiff herein and was given the mandate to sub-divide L.R. No. 4148/307 and 4148/308 and thereafter sold the plots on behalf the Plaintiff to the 2nd, 3rd, 4th and 5th Defendants in this suit. In the suits pending before the Ruiru Magistrate’s court, the 1st Defendant is the key witness together with the Advocate who drew the sale agreements. The Applicant therefore seeks consolidation of the two suits at the Ruiru Magistrate’s Court and their transfer thereafter to the Thika ELC Court. He avers that at the time of filing the suits, the Thika ELC Court within whom geographical jurisdiction the sit properties are situated was yet to be established.
  3. The Plaintiff and the Defendants oppose the application vide the various replying affidavits.
  4. The main contention as stated in the Replying Affidavits is that the transfer and consolidation of the suit will delay the hearing and disposal of the suit.
  5. I have read the Notice of Motion, Supporting Affidavit, the rival Replying Affidavits thereto and the submissions of the parties.
  6. Section 18 of the *Civil Procedure Act* empowers this court to withdraw any suit or other proceedings pending in any court subordinate to it and thereafter transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same.
  7. The court should at all times act to ensure just and timely disposal of proceedings. The power to transfer and consolidate cases is one of the mechanisms available to the court to achieve the overriding objective as spelt out in Sections 1A and 1B *Civil Procedure Act*.



8. The suit properties in this case are located within the geographical jurisdiction of the Environment and Land Court, Thika. It is evident that the respective suits were filed before the said ELC Court was operationalized. Since Thika ELC Court is now fully operational and functional, it is only fair, just and expedient that this case be transferred to that court. Apparently, there are other cases in relation to the suit property. They should be determined by one court even to avoid the possibility of conflicting decisions from different courts.
9. Whatever expense the Defendants may have incurred by reason of the case having been filed in this Court at Nairobi Milimani Law Courts in the first instance, may be addressed by an award of costs by the trial court.
10. Regarding the issue of consolidation, it is evident that there are other matters pending in other Courts as disclosed in the Notice of Motion dated 20th June, 2022 annexed to the Replying Affidavit of Zipporah Nduta Wairimu deponed on the 13th September, 2024. Bearing in mind that I have not had the occasion of perusing all the mentioned files, I will leave it to the Thika ELC Court to determine on the issue of consolidation once seized of the matter. Parties shall be at liberty to move the Court for Consolidation if need be.
11. I hereby make the following orders;
  - a. This suit; ELC 513 of 2016 is hereby transferred to Environment and Land Court at Thika.
  - b. The costs of this application shall be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 18<sup>TH</sup> DAY OF DECEMBER 2024**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Mbai h/b for Mr. Moindi for the 1<sup>st</sup> Defendant/Applicant

Mr. Mbabu for the Plaintiff/Respondent

Mr. Evans Ochieng for the 2<sup>nd</sup> – 5<sup>th</sup> Defendants

Mr. Muema for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Interested Parties

Ms. Gakaria for the 1<sup>st</sup> Interested Party

Court Assistant: Joan

**M.D. MWANGI**

**JUDGE**

