



**Kerich & another v Ngoge Peter Odiwuor t/a O.P. Ngoge & Associates Advocates & another  
(Civil Case 390 of 2011) [2023] KEHC 21459 (KLR) (Civ) (14 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21459 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL  
CIVIL CASE 390 OF 2011**

**AN ONGERI, J  
AUGUST 14, 2023**

**BETWEEN**

**CHARLES KERICH ..... 1<sup>ST</sup> PLAINTIFF**

**KELEKYE MUMO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**NGOGE PETER ODIWUOR T/A O.P. NGOGE & ASSOICATES  
ADVOCATES ..... 1<sup>ST</sup> DEFENDANT**

**ERIC ORINA ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. The application coming for consideration in this ruling is the one dated May 8, 2023 seeking the following orders;
  - i. That this application be certified as urgent service be dispensed with and heard ex-parte in the 1<sup>st</sup> instance.
  - ii. That the honourable court be pleased to issue orders seeking for stay of the suit pending the hearing and determination of Petition 125 of 2019.
  - iii. That the honourable court be pleased to issue an order seeking that this matter be transferred to the Constitutional and Human Rights Division for consolidation with high Court Petition no 125 of 2019.
2. The application is based on the ground that the plaintiff is seeking transfer of this suit to the Constitutional and Human Rights Division of the High Court where the respondents petition no 20



- of 2018 and 125 of 2019 pending determination and further that the plaintiff is seeking stay of this suit pending the determination of petition no 125 of 2019.
3. The 1<sup>st</sup> Defendant/respondent filed grounds of opposition (GOO) opposing the application in which he stated that the plaintiff/ applicants filed this suit maliciously seeking the setting aside of a judgment in his favor issued on March 29, 2011 in Nairobi
  4. The parties filed written submissions which I have duly considered.
  5. The sole issue for determination in this application is whether this suit should be stayed pending the determination of Petition no 125 of 2019.
  6. The court proceeded with the hearing of the counter claim against the plaintiff applications on July 6, 2021 in the absence of the plaintiffs and a judgment date was slated for October 18, 2021.
  7. However, before the delivery of judgment, the plaintiff filed an application dated July 28, 2021 which was allowed in the ruling on December 9, 2022 on the following terms;
    - i. That the order closing the case was set aside.
    - ii. That the case is re opened for the plaintiffs to be heard on the counter claim.
    - iii. The suit was fixed for further hearing on March 14, 2023.
  8. The hearing was slated for May 15, 2023 but before that date, the plaintiff/applicant filed the application dated May 8, 2023.
  9. I find that the orders of the court are clear that the hearing of the counter-claim proceeds.
  10. The applicant ought to have raised the issues he is raising before the court gave its ruling on December 9, 2022.
  11. This case has been pending before this court since the year 2011 the prayers sought in the Application dated May 8, 2023 will only serve the purpose of further delaying the suit.
  12. Article 159 of the Constitution of Kenya has provided principles to guide all courts and Tribunals in dispensing justice and one of them is that justice should not be delayed.
  13. The other principle is that courts should rise above technicalities of procedure and deliver substantive justice between parties.
  14. I find no reason why this suit be stayed or transferred to the JR Division when this court is seized with the jurisdiction to hear the same.
  15. The application dated May 8, 2023 lacks in merit and the same is dismissed.
  16. The costs of the Application to abide the outcome of this case.
  17. The hearing to proceed on December 19, 2023 as directed by the court.

**DATED, SIGNED AND DELIVERED ONLINE VIA MICROSOFT TEAMS AT NAIROBI THIS 14<sup>TH</sup> DAY OF AUGUST, 2023.**

.....  
**A. N. ONGERI**  
**JUDGE**

