



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KERICHO**

**CIVIL APPEAL NO. E031 OF 2021**

**PASCAL OTIENO AMOKE.....APPELLANT/APPLICANT**

**VERSUS**

**ABIGAEI AYUMA OSOTSI.....RESPONDENT**

**RULING**

1. The Application coming for consideration in this ruling is the one dated 29/10/2021 seeking the following orders;

**(i) SPENT**

**(ii) This court be pleased to order a stay of further proceedings vide Kericho CMCC number E25 of 2020, E22 of 2020, E24 of 2020, E29 of 2020, E28 of 2020, E22 of 2020 and E23 of 2020 pending the hearing and determination this application inter partes.**

**(iii) This Honourable court be pleased to consolidate Kericho HCCA numbers 31/2021, 32/2021, 33/2021, 34/2021, 35/2021, 36/2021, 37/2021, 38/2021 for purposes of hearing and determination.**

**(iv) Upon prayer three above granted, this Honourable court be pleased to order a stay further proceedings vide Kericho CMCC numbers E25 of 2020, E22 of 2020, E24 of 2020, E29 OF 2020, E28 of 2020 and E23 of 2020 pending the hearing and determination Kericho HCCA numbers 31/2021, 32/2021, 33/2021, 34/2021, 35/2021,36/2021,37/2021,38/2021.**

**(v) THAT the costs of this application be provided for.**

2. The Application is based on the grounds on the face of it and supported by the Affidavit of **PASCAL OTIENO OMOKE** in which it is deposed as follows that his advocates filed an application dated 17/8/2021 vide Kericho CMCC No. E26 of 2021 seeking to vary orders of the trial court which reverted interlocutory judgment in the suit, he further stated that the trial court declined to issue directions, dismissed the application summarily and ordered that the matter proceed for formal proof and was fixed for judgment on 17/11/2021.

3. The applicant stated that he was aggrieved by the ruling dismissing the application dated 17/8/2021, he lodged an appeal vide Kericho HCCA. 31 of 2021 and that he stands to suffer irreparable damage should the trial court proceed to deliver judgment and /or with formal proof without the defence being heard on merit or allowed to cross examine the plaintiff's witnesses.

4. The applicant stated that consolidation of the appeals herein will save judicial time given that the issues in the appeals are similar and that in the event there are no orders staying proceedings and/or delivery of judgment in the trial court, he was apprehensive that the trial court will proceed to deliver judgment thus allowing the respondent to proceed and proclaim his goods which would be detrimental as he would suffer irreparable loss and damage.

5. The Respondent opposed the Application and filed a replying affidavit dated 4/11/2021, in which she stated that she instituted the claim on 29/9/2020 seeking compensation for the injuries she sustained as a result of a road accident that occurred on 3/3/2020, the applicant failed to enter appearance within the stipulated time period and an interlocutory judgment was entered against him.

6. The Respondent averred that she would be greatly prejudiced if the application by the applicant is allowed as the appellant has been granted numerous opportunities to have the interlocutory judgment set aside and/or refused to comply with consent orders setting it aside and was unjustly prolonging her matter in court, she said that she had not been served with a memorandum of appeal concerning her claim or any of the lower court claims in the application, she sought to have the application dismissed and that she be allowed to proceed with prosecution of her claim.

7. The parties filed written submissions which I have duly considered.

8. The Applicant submitted that he was seeking a stay of proceedings in the lower court in a series of related files namely Kericho CMCC numbers E25 of 2020, E22 of 2020, E24 of 2020, E29 OF 2020, E28 of 2020 and E23 of 2020 pending the hearing and determination of Kericho HCCA No. 31/2021 in the High Court.

9. The Applicant submitted that the subject matter of the appeal in Kericho HCCA numbers 31/2021, 32/202, 33/2021, 34/2021, 35/2021, 36/2021, 37/2021, 38/2021 arose from the same transaction namely a road accident which occurred on 3/3/2020 and sought that the court grants an order for consolidation of the files in order to expedite the conclusion of the appeals.

10. The Applicant submitted that if orders for stay were not granted in the trial court and the respondent goes ahead to obtain judgment and execute the judgment, the applicant's appeal would be rendered nugatory and the applicant would suffer irreparable loss and damages.

11. The Respondent submitted that there were no orders seeking to stay proceedings in her case which is Kericho CMCC No. E026 of 2021 Abigael Ayuma Osotsi vs. Pascal Otieno Amoke rather than the orders sought by the applicant concern suits that the Respondent is not party to and as such she should not be bound by orders made in other independent cases or claims before any other court.

12. The Respondent cited the case of *Re Estate of Lean Nyawira Njega (Deceased)* where the court laid down considerations to be taken before the court can order stay of proceedings to wit whether applicant has a prima facie arguable case, whether the application was filed expeditiously and whether the applicant has established sufficient cause that it is in the interest of justice to grant the orders sought.

13. The Respondent submitted that the instant application for stay of proceedings by the appellant had not met the threshold prescribed in the *Lean Nyawira Njega case (supra)* and further that the Respondent had not been served with the memorandum of appeal and that the appeal was important in order for the court to consider the nature of the appeal and whether the grounds therein meet the threshold for the discretionary orders sought by the appellants.

14. The Respondent was opposed to consolidation and submitted that a party ought not to be forced to consolidate their claim before court or an appeal filed before court with any other claim or appeal without being privy to the particulars of those other claims or appeals.

15. The issues for determination are as follows;

*(i) Whether this court should order stay of further proceedings in Kericho CMCC No. E25 of 2020, E22 of 2020, E24 of 2020, E29 OF 2020, E28 of 2020 and E23 of 2020*

*(ii) Whether the court should consolidate KERICHO HCCA No. 31 of 2021 to 38 of 2021.*

*(iii) Whether stay of proceedings should be ordered in the matters listed in no (i) above pending the hearing and determination of the consolidated appeals.*

*(iv) Who pays the costs of this Application.*

16. On the issue as to stay of further proceedings in Kericho CMCC No. E25 of 2020, E22 of 2020, E24 of 2020, E29 OF 2020, E28 of 2020 and E23 of 2020, I find that the parties in E25 of 2020, E22 of 2020, E24 of 2020, E29 of 2020, E28 of 2020 and E23 of 2020 are not parties to this Application and I find that the Application for stay of proceedings is not merited.

17. In *KENYA WILDLIFE SERVICES VS. JAMES MUTEMBEI [2019] eKLR* it was held that: *"...Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent..."*

18. On the issue of consolidation of the appeals in Kericho HCCA No. 31 of 2021 to 38 of 2021. I find that the issues for determination are similar and arose from a similar transaction a road accident which occurred on the 3/3/2020 and the appeals may be consolidated to save on judicial time, the Court of Appeal in *MUCHANGA INVESTMENTS LIMITED VS. SAFARIS UNLIMITED (AFRICA) LTD & 2 ORS CIVIL APPEAL NO. 25 OF 2002 [2009] KLR 229* stated as follows: *"Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice."*

19. In the Supreme Court case of *LAW SOCIETY OF KENYA VS. CENTRE FOR HUMAN RIGHTS & DEMOCRACY & 12 ORS [2014] eKLR* the judges enunciated the general principles to be applied when considering consolidation as follows: *"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 meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it."*

20. The practical principles which the Courts use in the consideration for consolidation were stated and applied by Maraga, J. (as he then was) in *NYATI SECURITY GUARDS & SERVICES LTD VS. MUNICIPAL COUNCIL OF MOMBASA [2004] eKLR*: *"Consolidation is a process by which two or more suits or matters are by order of court combined or united and treated as one suit or matter. The main purpose of consolidation is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action. The situations in which consolidation can be ordered include where there are two or more suits or matters pending in the same court where:- 1. some common question of law or fact arises in both or all of them; or 2. the rights or relief claimed in them are in respect of, or arise out of the same transaction or series of transactions, or 3. for some other reason it is desirable to make an order for consolidating them."*

21. Similarly in *KOREAN UNITED CHURCH OF KENYA & 3 ORS VS. SENG HA SANG (2014) eKLR* it was observed that: ***“Consolidation of suits is done for the purpose of achieving the overriding objectives of the Civil Procedure Act, that is, for the expeditious disposal of Civil disputes. The main purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”***

22. On the issue of stay of proceedings in the matters listed in no. (i) pending the hearing and determination of the consolidated appeals, I find that this court already made a finding that stay of proceedings is not merited.

23. The costs of the Application will abide the appeal filed herein.

**DELIVERED, DATED AND SIGNED AT KERICHO THIS 17TH DAY OF DECEMBER 2021.**

**A. N. ONGERI**

**JUDGE**