

REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

CIVIL CASE NO. 78 OF 2011 (O.S)

ANNE OLAWO KIMARUAPPLICANT

=VERSUS=

NICHOLAS MAYERI OKOMBO 1ST RESPONDENT

JOHN PETER OTHIENO 2ND RESPONDENT.

R U L I N G.

By notice of motion dated 6th June, 2012, the applicant through her advocates M/S. Balongo and company advocates prays for the consolidation of Busia HCCC. No's 9 of 2011, 61 of 2011 and 79 of 2011(OS) and costs. The application is brought under Order 51 Rule 1 and Order 2 Rule 3 (h) of the Civil Procedure Rules and sections 1A and 3A of the Civil Procedure Act. The application is supported by the affidavit of Erick Jumba sworn on 6th June, 2012. The application is opposed by the respondents. Their advocates M/S. Gabriel Fwaya filed a statement of grounds of opposition dated 20th June, 2012.

During the hearing, Mr. Jumba and Mr. Fwaya advocates for the applicant and respondents respectively appeared and made their submissions. Mr. Jumba submitted that the three cases are related in that the parties are the same and they all relate to land parcel Bukhayo/Mundika/1852 and two other parcels No's 6797 and 6798 which are sub divisions from parcel 1852. He therefore submitted that it only fair if the three suits should be consolidated and heard together to avoid a situation where the court will come to different decisions over the same subject matter. In his submissions, Mr. Fwaya indicated that the subject matters in three suits are different. He referred the plaint in HCCC. No. 9 of 2011 which shows the subject matter his land parcel Bukhayo/Mundika/8915 and the plaint in HCCC. No. 61 of 2011 where the subject matter is indicated as Bukhayo/Mundika/8914. He submitted that the applicants have not shown how these two parcels are related to parcel No. 1852 he further submitted from bar that HCCC. NO.9 of 2011 is pending for judgment and should be unavailable for consolidation.

The court has gone through the supporting affidavit and the annexure thereto and also carefully considered the submissions by both counsel and are of the view that as case No. HCCC. No.9 of 2011 is reportedly pending for judgment it should not be possible to consolidated with that case with any other pending one. Secondly, from the plaint annexed to the supporting affidavit in relation to HCCC. No.61 of 2011 it is obvious that the subject matter is land parcel Bukhayo/Mundika/8914. The applicant has not shown any connection between parcel No.8914 with parcels mentioned in this particular file, that is, Parcels No. 1852, 6797 and 6798.

For the reasons shown above, the court finds the application dated 6th June, 2012 is without merit and the same is dismissed with costs.

S. M. KIBUNJA,

JUDGE.

6TH JUNE, 2013.