



REPUBLIC OF KENYA



**Eroni v Sokoni & 4 others (Environment & Land Case
189 of 2017) [2022] KEELC 95 (KLR) (9 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 95 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT & LAND CASE 189 OF 2017
AA OMOLLO, J
JUNE 9, 2022**

BETWEEN

PATRICK DOMIANO ERONI APPLICANT

AND

PATRICK MOSISI SOKONI 1ST RESPONDENT

FLORENCE AMUSUGUT SOKONI 2ND RESPONDENT

DIANA SANDE KALORI 3RD RESPONDENT

WILBRODA SOKONI 4TH RESPONDENT

VINCENT ORONO OMANYALA 5TH RESPONDENT

RULING

1. The Applicant brought an application dated 15th October 2021 under Section 1A, 1B, 3A and 63(e) of the [Civil Procedure Act](#) and Order 51 Rule 1, 3, 4, 8 and 10(1) of the [Civil Procedure Rules](#) 2010 seeking for the following orders;
 - a) Spent.
 - b) That there be and is hereby issued an order staying further proceedings in Busia CMC ELC No. 002 of 2021 Patrick Domiano Eroni v Florence Amusugut Sokoni & Another pending hearing and determination of this application.
 - c) That this Honourable Court do issue an order transferring Busia CMC ELC No. 002 OF 2021 Patrick Domiano Eroni v Florence Amusugut Sokoni & Another to this Honourable Court for hearing and determination.



- d) That upon grant of prayer 3 above, this Honourable Court do issue an order consolidating Busia CMC ELC No. 002 of 2021 Patrick Domiano Eroni v Florence Amusugut Sokoni & Another with the suit herein for hearing and determination.
 - e) That costs of this application be in the cause.
2. The application was by grounds on the face of it and the affidavit of Patrick Domiano Eroni *inter alia*;
- i) That the suit herein was filed in 2017 seeking for the eviction of the defendants from L.R. Bukhayo/Lupida/2266 and a permanent injunction restraining the defendants from interfering with the plaintiff's occupation and use of the suit parcel.
 - ii) That the defendants duly entered appearance and filed defence and the suit was slated for hearing on 27th October 2021.
 - iii) That during the pendency of the said suit, the 1st to 4th defendants lost their relative one Mary Sokoni (deceased) and the said defendants began burial arrangements with the intention of interring her remains on L.R. Bukhayo/Lupida/2266.
 - iv) That the plaintiff herein filed a burial dispute in Busia CMC ELC No. 002 OF 2021 against the 1st and 2nd defendants herein for an injunction stopping the said burial on L.R. Bukhayo/Lupida/2266.
 - v) That upon service, the 1st and 2nd defendants filed a counterclaim in Busia CMC ELC No. 002 of 2021 claiming ownership, occupation and use of L.R. Bukhayo/Lupida/2266 which is also the suit parcel in this suit.
 - vi) That it is now clear that there exists two similar suits touching on the ownership, occupation and use of L.R. Bukhayo/Lupida/2266.
 - vii) That it is therefore prudent that the two suits be consolidated for hearing and determination of all issues touching on L.R. Bukhayo/Lupida/2266 in one forum.
3. The Defendants/Respondents requested for 7 days to put in their reply to oppose the application but at the time of writing this ruling, there was no reply in the file.
4. The Plaintiff/Applicant filed his submissions on 10th January 2022 and submitted that based on the on the facts that there exists two similar suits touching on the ownership, occupation and use of L.R. No. Bukhayo/Lupida/2266. He submitted that the power of courts to make orders for consolidation is enshrined under Order 11 Rule 3(1)(h) which mandates the Honourable Court to consider consolidation of suits with a view of furthering expeditious disposal. He urged the court to allow his application date 15th October 2021 and in doing so, the court will be mindful of upholding the overriding objectives of ensuring the just, expeditious, proportionate and affordable resolution of the civil disputes as enshrined under Section 1A and 1B in the [Civil Procedure Act](#). He relied on the following authorities; [Joseph Okoyo v Edwin Dickson Wasunna](#) [2014] eKLR, [Benson G. Mutahi v Raphael Gichovi Munene Kabutu & 4 others](#) [2014] eKLR, [Law Society of Kenya v Center For Human Rights and Democracy & 12 Others](#) [2014] eKLR.
5. The Defendants/Respondents filed their submissions on 2nd February 2022 and submitted that the issue in Busia CMC ELC No. 002 OF 2021 is purely about the burial of Mary Sokoni and the substantive orders sought are a permanent injunction against the burial of the deceased on parcel no. Bukhayo/Lupida/2266 and an order for exhumation of the deceased body. In the instant suit, the prayers sought is one of eviction of the defendants from land parcel no. Bukhayo/Lupida/2266



and thus the two suits have different issues for determination by the court. They submitted that the deceased was buried on L.R. Bukhayo/Lupida/2266 and the burial brought to a close the cause in Busia CMC ELC No. 002 of 2021 and there was nothing left therein for purposes of transfer and consolidation. They submitted that the spent issue is synonymous to a withdrawn issue. They urged the court to dismiss the application with costs.

6. Having looked at the application and the rival submissions, the issue that comes up for determination is whether the plaintiff/applicant's prayer for consolidation is merited. The Court held in the case of; *Korean United Church of Kenya & 3 Others vs Seng Ha Sang* (2014) eKLR that:

“consolidation of suits is done for purposes of achieving the overriding objective of the *Civil Procedure Act*, that is, for expeditious and proportionate 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.”

Similar position was expressed by the Supreme Court in the Case of *Law Society of Kenya vs Center for Human Rights and Democracy and 12 Others* (2014) eKLR, thus;

“The essence of consolidation of suits 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.”

7. I am in agreement with the provisions of statute and precedents on the role of consolidation. However, a party should not abuse the court process then hide under the banner of consolidation. When the suit sought to be transferred was filed, the plaintiff already had an active suit. He has not explained why he did not bring the issues within ELC 002 of 2021 into this suit. His action of filing a second suit amounts to abuse of court process.
8. The second issue the Respondent has raised is that there is nothing to transfer the body having been buried. The annexed copy of the plaint in the suit below had only two prayers; to stop burial or to exhume the body. It is not denied that the burial took place. The prayer of exhumation can be determined without the consolidation order being made.
9. To sum it up, I decline to grant the prayer for transfer majorly because the plaintiff/applicant is guilty of abuse of the court process which this court cannot sanitise. Consequently, the notice of motion application dated 15/10/2022 be and is hereby dismissed with costs to the Defendant/Respondent.

DATED, SIGNED AND DELIVERED AT BUSIA THIS 9TH DAY OF JUNE 2022.

A. OMOLLO

JUDGE

