



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)**

**MISC APPLI 401 OF 2002(OS)**

**FRIEDRICK KIMEMI KIMANI ..... PLAINTIFF**

**VERSUS**

**MOHAN SINGH S/O JAMA SINGH ..... 1<sup>ST</sup> DEFENDANT**

**OFFICIAL RECEIVER OF KENYA ..... 2<sup>ND</sup> DEFENDANT**

**AS ADMINISTRATOR OF THE ESTATE**

**OF GURCHANAN SINGH SANDHU) ..... 3<sup>RD</sup> DEFENDANT**

**JOHN MBURU KIBE ..... INTERESTED PARTY**

**RULING**

I: Background of application to consolidate two suit.

1. Fredrick K. Kimani files an application before this High Court of Kenya dated 5 August 2007 seeking for order under order XI Civil Procedure Rules to consolidate the Originating Summons 401/02 Originating Summons case with Hccc1769/96 between himself and John Mburu Kibe.

2. Briefly, Fredrick K. Kimani entered into a sales agreement whereby the seller was later declared a bankrupt. An official receiver was appointed. The premises was originally owned by 3 defendants.

3. The suit Hccc1769/96 was filed by John Mburu Kibe for ownership also of the said suit premises. The parties appeared before the Principal Deputy registrar C. Njai (as he then was) and a consent entered between the official receiver and John Mburu Kibe that the whole property known as LR 36/1/398 Eastleigh belongs to the said John Mburu Kibe.

4. When Fredrick K. Kimani discovered this he filed suit under Misc.401 of 2002 seeking Adverse Possession of the said premises. I seem to note and became aware of another suit before the magistrates court case at Milimani being CMCC 2202/02. I do not have sight of this file.

5. The question arises should suit Hccc1769/96 be consolidated with Misc.401/2002?

## II: Finding

6. I note the arguments put forward by the respondent. Suit Hccc 1769/96 had been compromised by the consent entered of 3 March 2003. The property was given to Fredrick K. Kimani and not John Mburu Kibe and the matters was therefore finalized.

7. Indeed once the consent had been entered to finalize the said suit is spent. What we have before court is file Misc.401/02 that is pending.

8. What the applicant did was to come to court under Misc. application 401/02 and file an application to set aside that consent in Hccc1769/96. You cannot have a consent entered into in a different file, then make application in another subsequent file to have a consent set aside.

9. The applicant's right to consolidate these two files is denied and refused. The said plaintiff application is hereby dismissed with costs to the respondents.

10. The hearing of this Originating Summons should be set down for direction under Order XXXVI r 8 a 12 Civil Procedure Rules.

Dated this 15<sup>th</sup> day of November 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

R.N.M. Ongegu of Ongegu & Associates Advocates for the plaintiff/applicant- present

I.J. Mwangi of Irungu Mwangi & Co. Advocates for the Interested Party- present