



**Ruttoh v Onyango & 2 others; Ethics and Anti-Corruption Commission (Interested Party)
(Environment & Land Case 317 of 2015) [2022] KEELC 2439 (KLR) (6 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2439 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 317 OF 2015**

A OMBWAYO, J

MAY 6, 2022

BETWEEN

RYAN KIPKOECH RUTTOH PLAINTIFF

AND

ASARIA ONYANGO 1ST DEFENDANT

NATIONAL LANDS COMMISSION 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

RULING

1. The Interested Party, the Ethics and Anti-corruption Commission has come to this court praying that:
 - a) This Honourable Court do transfer of Kisumu CMCC Number 275 of 2018 being a matter between Mary Awuor Okeyo vs Dr. Asaria Onyango to Environment and Land Court at the High Court for consolidation, hearing and final determination with Kisumu ELC No. 317 of 2015.
 - b) The file in respect of Kisumu ELC Number 317 of 2015 be designated as the working file for the purposes of recording proceedings and filing pleadings.
 - c) Costs of this application be provided for.
2. The grounds of the applications are that:



- i) The suit properties namely Kisumu Municipality Block 12/29 and Kisumu Municipality Block 12/392 involve the same subject matter being Government House Number KISU/HOU/HG/74 save to say that the two plaintiffs have two different parcel numbers.
 - ii) The two plaintiffs have sued the 1st Defendant for eviction on a Government House that was allocated to him on account of his employment status.
 - iii) The Interested Party's witnesses in all the suits are common.
 - iv) The allegations and/or plaintiff's issues are the same.
 - v) It would be in line with the overriding objectives of the Court.
3. The application is supported by the affidavit of Koskey Robert Kimutai Bii who states that the plaintiff is desirous of having the suits mentioned in the foregoing paragraphs consolidated for the expeditious disposal of the same.
 4. That the issues for determination is both the aforementioned suits are similar. That the witnesses for the Interested Party are the same in all the aforementioned suits and their evidence is substantially the same.
 5. That the consolidation of the two suits will allow the Interested Party to put in its pleadings and allow for a counter-claim.
 6. That it is therefore in the interest of justice that the suits herein be consolidated to save the court's time and expeditiously determine and dispose the suits.
 7. That none of the parties herein will be prejudiced in any manner but the consolidation of the two suits will avoid multiplicity of suits and inconsistencies when judging the two matters.
 8. In reply to the application, Fredrick Otieno Okeyo who holds a power of Attorney for May Awuor Okeyo in CMCC No. 275 of 2018 states that Robert Kimutai has clearly misunderstood the concept of consolidation of suits and is therefore misapplying the same in this application.
 9. That for starters CMCC NO. 275 of 2018 deals with Land Reference Number Kisumu Municipality/ block 12/392 which property is registered in the name of the plaintiff in that suit and which property has no relevance to this current suit.
 10. That the Plaintiff in that suit is not aware of and has never been served with or shown any pleadings pertaining to ELC No. 317 of 2015.
 11. That for record purposes, in CMCC No. 275 of 2018, the Applicant herein, the interested party has not pleaded the matters pertaining to this suit.
 12. That the applicant herein has not by way of any evidence demonstrated that the subject matter in the two suits is the same and that the evidence to be adduced is the same and that the parties are the same.
 13. That the Plaintiff in CMCC No. 275 of 2018 states that this application has no merit and is designed by the Applicant to forestall the hearing of the suit CMCC No. 275 of 2018.
 14. That there's absolutely no material on record upon which the court can grant the orders sought by the applicant.

Both parties have filed submissions.



15. I have considered the application and the rival submissions and do find that Dr. Asaria Onyango is in occupation of a Government House number KISU/Housing/HG/74. However, the grounds on which the house sits appear to have been allocated to the individuals and titles issued.
16. The grounds are now known as Kisumu/Municipality/Block 12/129 and Block 12/392. It is prudent that the two cases be consolidated and heard by one Judicial Officer.
17. There is no dispute that the Magistrates court has Jurisdiction to entertain the dispute and therefore in the interest of Justice I do order that this suit be transferred to the Chief Magistrates Court for hearing and determination and further directions. Costs in the cause. Orders accordingly.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 6TH DAY OF MAY, 2022

ANTONY OMBWAYO

JUDGE

This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15th March 2020.

