



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**CHERERE-J**  
**HCCCMISC E101 OF 2025**

**BETWEEN**

**PETER NYABAGA MOUNDE.....APPLICANT**  
**AND**

**ALEX ORANDO MEKENYE (Suing as the Administrator of the Estate of the Late Patrick Orosa Mekenye (Deceased)).....1ST RESPONDENT**

**UZURI FOODS LIMITED.....2ND RESPONDENT**

**WICKLIFF ONDARI NDURA (Suing as personal representative of Margaret Nyambune Matoke (Deceased)).....3RD RESPONDENT**

**DOROTHY ANYANGO AUTE.....4TH RESPONDENT**

**ABERE GEOFFREY MISIANI (Suing as personal representative of the Estate of Andrew Sikweya (Deceased)).....5TH RESPONDENT**

**ABERE GEOFFREY MISIANI (Suing as personal representative of the Estate of Sophiah Misiani (Deceased)).....6TH RESPONDENT**

**SEVERINA NYAMOKAMI OBURE.....7TH RESPONDENT**

**JACKSON MATUNDURA NYAKUNDI.....8TH RESPONDENT**

**JULIUS MOGAKA GEKOMBE (Suing as dependent and personal representative of the Estate of Brotas Ogeto Mogaka (Deceased))**

**.....9TH RESPONDENT**

**DENNIS OMARI.....10TH RESPONDENT**

**RULING**

1. Before this Court is the Amended Notice of Motion dated 26<sup>th</sup> January 2026 brought pursuant to Articles 165(6) and (7) and 159 of the Constitution, Sections 3A of the Civil Procedure Act and Order 38 and Order 51 of the Civil Procedure Rules.

2. The application arises from a road traffic accident that occurred on 01<sup>st</sup> April 2023 involving motor vehicles registration numbers KCJ 167R and KBZ 218F/ZE 6282. Following the accident, multiple suits against the Applicant and the 2<sup>nd</sup> Respondent were instituted in different subordinate

courts by various claimants seeking damages arising from the same occurrence.

3. The substantive orders sought by the Applicant that:

**1) That Keroka CMCC E165 of 2023 be selected as the test suit for purposes of determining civil liability arising from the accident**

**2) That proceedings in the following suits be stayed pending determination of liability in the test suit:**

**(a) Keroka CMCC E165 of 2023**

**(b) Keroka CMCC E238 of 2023**

**(c) Keroka CMCC E209 of 2024**

**(d) Keroka CMCC E092 of 2024**

**(e) Keroka CMCC E091 of 2024**

**(f) Keroka CMCC E087 of 2024**

**(g) Keroka CMCC E079 of 2024**

**(h) Keroka CMCC E073 of 2024**

**(i) Nyamira CMCC E130 of 2023**

**(j) Milimani CMCC E1078 of 2025**

**3) That the above suits be consolidated with Keroka CMCC E165 of 2023 for purposes of determining liability only.**

**4) The Court do issue such further directions as may be necessary**

**5) Costs be in the consolidated suit**

4. The Applicant contends that the multiplicity of suits presents a real risk of inconsistent findings on liability by courts of concurrent jurisdiction.

5. The 1<sup>st</sup> Respondent filed a Replying Affidavit sworn by Richard B. O. Onsongo, Advocate, on 17<sup>th</sup> January 2026 at Kisumu. The 1st Respondent supports the application and agrees that Keroka CMCC E165 of 2023, which it filed arising from the subject accident, be selected as the test suit, with the other related suits being stayed pending its determination.
6. The 2<sup>nd</sup> Respondent filed a Replying Affidavit sworn by Lawrence Momanyi, Legal Manager of Mayfair Insurance Limited, on 30<sup>th</sup> January 2026. The 2<sup>nd</sup> Respondent supports the election of a test suit and is amenable to a stay of the related proceedings to avoid inconsistent findings. However, it objects to Keroka CMCC E165 of 2023 being designated as the test suit and instead proposes Keroka CMCC E238 of 2023 on the basis that its advocates are on record in the majority of the related matters.
7. The 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents opposed the application on the grounds contained in the Replying Affidavit sworn by Wickliff Ondari Ndura on 03<sup>rd</sup> February 2026. They contend that this Court lacks jurisdiction to entertain the application. They further state that any question of stay of proceedings or election of a test suit ought properly to be determined by the trial court. They assert that sufficient cause for stay has not been demonstrated and that the intended stay would occasion delay. They also state that the claims vary depending on the nature of injuries and fatalities.
8. The record reflects that the application was served upon all the Respondents. Counsel for the 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> Respondents were duly served but neither filed any response nor attended court at the hearing of the application. The

Court is therefore satisfied that those Respondents were accorded an opportunity to be heard.

9. The issues that arise for determination are as follows:

- 1) **Whether this Court has jurisdiction to grant the orders sought**
- 2) **Whether Keroka CMCC E165 of 2023 should be designated as the test suit**
- 3) **Whether proceedings in the other listed suits should be stayed**
- 4) **Whether consolidation of all the suits should be ordered**
- 5) **Costs.**

10. On jurisdiction, the Chief Magistrate's Court at Keroka has power under Section 3A of the Civil Procedure Act and under Order 11 of the Civil Procedure Rules to consolidate suits pending before it and to select a test suit among matters properly filed in that court.

11. However, that court has no jurisdiction over matters filed in Nyamira and Milimani. To ensure consistency and the proper administration of justice across courts of equal status, this Court must exercise its supervisory jurisdiction under Article 165(6) and (7) of the Constitution.

12. In determining whether to consolidate suits, the Court is guided by the principles set out in **Law Society of Kenya v Centre for Human Rights & Democracy & 12 Others**, where it was observed that consolidation serves to facilitate the efficient and expeditious disposal of disputes and to ensure fair and impartial administration of justice, without occasioning prejudice or conferring undue advantage upon any party.

13. The power to consolidate is discretionary and must be exercised judicially in furtherance of the overriding objective under Sections 1A and 1B of the Civil Procedure Act. It is ordinarily appropriate where common questions of law or fact arise and where the suits are pending before the same court, such that a joint trial promotes convenience and consistency.
14. In the present matter, the suits arise from the same road traffic accident and raise common questions, particularly on liability. Consolidation in its strict sense, however, presupposes that the matters are pending before the same court, which is not the position here.
15. Although the substantive criteria for consolidation are met, jurisdictional limitations preclude full consolidation of all the listed matters into a single proceeding.
16. Consequently, I find that the appropriate course, in order to avoid conflicting findings while remaining within jurisdictional limits, is to designate one matter as a test suit. Accordingly, Keroka CMCC E165 of 2023, being among the earliest filed matters arising from the accident, shall serve as the test suit.
17. Upon such designation, proceedings in the remaining suits shall be stayed so as to guard against parallel and potentially inconsistent determinations, the stay being confined strictly to the issue of liability.
18. As the application was brought to secure orderly and consistent adjudication of claims arising from the same accident, it is appropriate that each party bears its own costs.

19. In the result, the Court makes the following orders:

- 1) Keroka CMCC E165 of 2023 is hereby designated as the test suit for purposes of determining liability arising from the accident of 01<sup>st</sup> April 2023 involving motor vehicles KCJ 167R and KBZ 218F/ZE 6282.
- 2) Proceedings in Keroka CMCC E238 of 2023, Keroka CMCC E209 of 2024, Keroka CMCC E092 of 2024, Keroka CMCC E091 of 2024, Keroka CMCC E087 of 2024, Keroka CMCC E079 of 2024, Keroka CMCC E073 of 2024, Nyamira CMCC E130 of 2023 and Milimani CMCC E1078 of 2025 are hereby stayed pending determination of liability in Keroka CMCC E165 of 2023.
- 3) The prayer for consolidation of all the suits with Keroka CMCC E165 of 2023 is declined
- 4) Each party shall bear its own costs

DELIVERED AT NYAMIRA THIS 19<sup>th</sup> DAY OF February 2026

**WAMAE.T. W. CHERERE**  
**JUDGE**

**Appearances**

**Court Assistant - Anita**

**For Applicant - Mr. Gichaba for GKO Advocates LLP**

**For 1<sup>st</sup> Respondent - Mr. Onsongo for Onsongo & Co. Advocates**

**For 2<sup>nd</sup> Respondent - Ms. Chepchirchir for Wachira Wekhoba AIM Associates Advocates**

**For 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents – Mr. Kirianki for G.M.Nyambati & Co.**

**Advocates**

**For 4<sup>th</sup> Respondent – N/A for Owen Onyango & Co. Advocates**

**For 8<sup>th</sup> Respondent- N/A for Gichaba H.M & Co. Advocates**

**For 9<sup>th</sup> Respondent - Mr. Ondima for Ondima Omwoma & Co. Advocates**

**For 10<sup>th</sup> Respondent – N/A for Serwin Njoroge & Co. Advocates**