



Somoni v Muangi & 4 others (Environment and Land Case E343 of 2023 & E094 of 2024 (Consolidated)) [2026] KEELC 2420 (KLR) (30 April 2026) (Ruling)

Neutral citation: [2026] KEELC 2420 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E343 OF 2023 & E094 OF 2024 (CONSOLIDATED)
CA OCHIENG, J
APRIL 30, 2026**

BETWEEN

JOYCE BOSIBORI SOMONI PLAINTIFF

AND

SAMMY MUSILI MUANGI 1ST DEFENDANT

AGENCIES LIMITED 2ND DEFENDANT

WINFRED KANINI MBONDO 3RD DEFENDANT

THE CHIEF LAND REGISTRAR 4TH DEFENDANT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE E094 OF 2024

BETWEEN

EVANS KEROSI SOMONI PLAINTIFF

AND

SAMMY MUSILI MUANGI 1ST DEFENDANT

JOYCE BOSIBORI SOMONI 2ND DEFENDANT

RULING

1. What is before the Court for determination is the 1st Defendant’s Notice of Motion application dated the 22nd February 2024 where he seeks the following Orders:
 - a. Spent.



- b. Spent.
 - c. That the proceedings in this suit be stayed pending the hearing and determination of Nairobi High Court (Family Division) Civil Suit No. E051 OF 2023 (OS) Sammy Musili Muangi vs Joyce Bosibori Somoni.
 - d. That in the alternative this suit be consolidated with and be heard and determined in consolidation with Nairobi High Court (Family Division) Civil Suit No. E051 OF 2023 (OS) Sammy Musili Muangi vs Joyce Bosibori Somoni with the latter as the lead file.
 - e. That the costs of this application be provided for.
2. The application is premised on grounds on its face and on the 1st Defendant's supporting, further and supplementary affidavits. He avers that his marriage to the 1st Defendant ended in divorce vide Milimani Commercial Courts Divorce Cause No. E209 of 2023. Further, that he filed Nairobi High Court (family division) Civil Suit No. E051 of 2023 (OS) herein referred to as the "matrimonial cause" on 19th June 2023 seeking division of matrimonial property/assets acquired during the subsistence of his marriage to the Plaintiff, including the properties in contention in this suit. He explains that the said suit is proceeding alongside and parallel to this suit yet parties, properties in contention and advocates representing the two parties are similar.
 3. He contends that since their rights to the properties will be best determined in the matrimonial cause, it will save judicial cost and time if the two cases are consolidated and heard together as unless they are stayed or consolidated, there is a real risk of contradictory judgements from the two courts, which may bring disrepute to the administration of justice.
 4. He avers that besides this case, the Plaintiff filed several other suits against him in respect to properties that they had acquired during their marriage being Kajiado ELC Case No. E083 OF 2022 whose subject matter is LR Ngong/Ngong/27343 and 27344 as well as Kitale ELC Case No. 9 of 2024 and in both cases, he made an application for stay of proceedings pending hearing of the matrimonial cause and in both cases, the learned judges agreed with him. He urges the Court to be persuaded by the said decisions staying the suits in Kajiado and Kitale respectively.

Responses

5. In opposition, the Plaintiff filed a replying affidavit sworn on 6th November 2025. She avers that this dispute revolves around the fraudulent transfer of her properties to the name of the 1st and 3rd Defendants through the 2nd Defendant as proxy, which issues fall within the jurisdiction of this Court. Further, that the issue of whether the suit properties are matrimonial can only be addressed once this Court determines whether the said transfers were fraudulent. She insists that the parties herein are different from the parties in the matrimonial cause as the 2nd, 3rd and 4th Defendants are not parties in the said suit.
6. She points out that this suit is consolidated with ELC Case No. E094 of 2025 in which the Plaintiff therein (Evans Kerosi Somoni) is claiming an interest in the suit properties on the ground that they were purchased using funds provided by him and that she is holding them together with the 1st Defendant in trust for him (Plaintiff in the counterclaim).
7. She asserts that since the cause of action herein is distinct from the matrimonial cause, consolidation would obscure the distinction between the fraudulent transfer of the suit properties and those genuinely acquired by the couple. Further, that she has filed an application in the matrimonial matter, seeking stay of the said proceedings pending determination of this suit.



8. The Plaintiff in ELC case No. 94 OF 2025 also filed a replying affidavit in opposition. He avers that he is not a party to the proceedings in the matrimonial cause and that the Family Court cannot deal with issues touching on the parcels of land herein until a determination on ownership is made. Further, that this suit cannot be consolidated with the matrimonial cause, as the High Court does not have jurisdiction to handle this matter while this Court cannot handle the matrimonial case. He insists that division of matrimonial property should await these proceedings for good order.
9. The application was canvassed by way of written submissions.

Submissions

10. The 1st Defendant reiterates his averments in his affidavit in support of the application and submits that while the Plaintiff in the main suit and in E94 OF 2025 contend that proceedings herein are distinguishable from the proceedings that were stayed by the Court in Kitale and Kajiado, being that the said two suits only concern him and the Plaintiff in the main suit, the same is further from the truth as the Plaintiff in the consolidated matter, is a brother to the Plaintiff in the main suit, thus his participation in the proceedings is to aid his sister in her legal tussle with him.
11. On her part, the Plaintiff submits that this is a land ownership dispute that goes beyond the matter of distributing matrimonial property between the 1st Defendant and herself and must be resolved as a preliminary issue before they can proceed with the distribution of matrimonial assets in the matrimonial cause, which was filed after this suit was instituted.
12. Further, that an order of stay would deny her the right to conduct her own litigation as she deems fit, as well as her right to a fair and expeditious hearing under Article 50 of *the Constitution*.
13. On consolidation, she submits that the 1st Defendant has not satisfied the condition for the grant of a consolidated order as the questions of law, facts and matters raised herein are distinctly different from those raised in the matrimonial cause. Further, that this Court does not have authority to consolidate this matter with the matrimonial cause as the issues raised in ELC No. E094 of 2025 are matters of ownership and trust that can only be determined in this case. To this end, she cites the case of EAN Kenya Limited v John Sawers & 4 others [2007] KEHC 627 (KLR).
14. The Plaintiff in E94 OF 2025 submits that the question of ownership takes precedence as it will have a bearing in the proceedings in the matrimonial cause. On consolidation of the suit with the matrimonial cause, he insists that the two cases possess two different jurisdictions, which makes them hard to consolidate. To this end, he relies on the following decision: Martin Chiponda & 860 others v Mohamood Kassam & 13 others [2018] KEELC 3171(KLR); Wanyonyi & another v Masoni & another [2025] KEELC 9689(KLR) and Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR.
15. On the issue of stay of proceedings, he submits that while a Court has jurisdiction to stay proceedings, the jurisdiction should be used sparingly and only in the clearest of cases. To this end, he relied on the decisions of Kenya Wildlife Service v James Mutembei [2019] eKLR and in JWH v WAH; EKM (interested party) (Matrimonial Cause e009 of 2023) [2024] KEHC 1930 9 (KLR) (1 March 2024) (Ruling)

Analysis and Determination

16. Upon consideration of the instant Notice of Motion application including the respective affidavits and rivalling submissions, the only issue for determination is whether these proceedings should be stayed pending the hearing and determination of Nairobi High Court (Family Division) Civil Suit No. E051



OF 2023 (OS) Sammy Musili Muangi vs Joyce Bosibori Somoni, or in the alternative, the said matters be consolidated.

17. The 1st Defendant urges this Court to stay this suit on the basis that it concerns properties that are subject in Nairobi High Court (Family Division) Civil Suit No. E051 OF 2023 (OS), which involves distribution of matrimonial properties between the Plaintiff who is his former wife and himself.
18. He urges the Court to be persuaded by decisions staying Kajiado ELC Case No. E083 OF 2022 and Kitale ELC Case No. 9 of 2024, which are suits revolving around property disputes between the Plaintiff and himself.
19. In opposition, the Plaintiff argues that this dispute is a land ownership dispute that goes beyond the matter of distributing matrimonial properties between the 1st Defendant and herself.
20. The Plaintiff in E94 OF 2025 avers that he is not a party to the proceedings in the matrimonial cause and that he is claiming an interest in the suit properties on the ground that the Plaintiff and the 1st Defendant holds them in trust for him, which are issues the matrimonial Court cannot determine. He contends that an ELC Matter cannot be consolidated with a matrimonial cause for want of jurisdiction.
21. On matrimonial disputes, Section 17 of the Matrimonial Properties Act provides that:

“ 17. Action for declaration of rights to property

- (1) A person may apply to a court for a declaration of rights to any property that is contested between that person and a spouse or a former spouse of the person.
- (2) An application under subsection (1)—shall be made in accordance with such procedure as may be prescribed; may be made as part of a petition in a matrimonial cause; and may be made notwithstanding that a petition has not been filed under any law relating to matrimonial causes.”

22. Further, Section 93 of the [Land Registration Act](#) provides that:

“Subject to any written law to the contrary, if a spouse obtains an interest in land during the subsistence of a marriage for the co-ownership and use of both spouses or all spouses, such property shall be deemed to be matrimonial property and shall be dealt with under the [Matrimonial Property Act](#) (Cap. 152).”

23. In *Zipporah Njoki Kangara v Rock and Pure Limited & 3 others* [2021] KEELC 395 (KLR), it was stated that:

“ 17. This instant suit, the Plaintiff pursues inter alia the cancellation of the titles issued in the suit properties which she seeks to be declared as matrimonial property. The Defendants claim that this cause of action outs the jurisdiction of this court to hear and determine matrimonial property. In my view, the issue before court is one on the ownership of the suit properties that places the cause of action squarely in the jurisdiction of the ELC Act and consequently the ELC Court. The Plaintiff claims that the Defendants fraudulently transferred the suit properties into the name of the 1st Defendant, without regard to the caution she had registered to secure her spousal rights in the suit properties.”

24. In this instance, the Plaintiff in ELC E343 of 2022 vide her Plaint sought for a declaration that is she was owner of various parcels of land in dispute therein, cancellation of various titles in the names of the



- 1st and 2nd Defendants and a permanent injunction. While the Plaintiff in ELC E94 of 2025, sought for transfer of various properties to his name or in the alternative for the Defendants therein to refund him Kshs. 423, 342, 530/= together with interest.
25. I note there are other parties in these two suits which were consolidated who are not parties in the aforementioned matrimonial property cause pending in the High Court. It is trite that it is the Environment and Land Court that has jurisdiction to make Orders on cancellation of titles and not the High Court. Further, that the Environment and Land Court does not have mandate to deal with division of matrimonial property.
26. On whether consolidation should issue, Order 11 Rule 3 (1)(h) and (i) of the Civil Procedure Rules provides as follows:
- “ 3.
- (1) With a view to furthering expeditious disposal of cases and case management the court shall within thirty days after the close of pleadings convene a Case Conference in which it shall;
- h) consider consolidation of suits;..”
27. The Supreme Court stated as follows in *Omoke v Kenyatta & 83 others* (Petition 11 (E015) of 2021) [2021] KESC 27 (KLR):
- “Consolidation of suits or appeals will be ordered where there are common questions of either law or fact in two or more suits or appeals and where it is desirable that all the related matters be disposed of at the same time.”
28. On whether these proceedings should be stayed, it was also stated as follows in *Kenya Wildlife Service v James Mutembei* [2019] eKLR;
- “Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, the right to be heard without delay and overall, the right to a fair trial. Therefore, the test for stay of proceedings is high and stringent. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases... Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation...It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is no cause of action in law or equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not, succeed but that he could not possibly succeed based on the pleading and the facts of the case.”
29. It is my considered view that since the fulcrum of the dispute in this consolidated suit revolves around ownership of various parcels of land including cancellation of title and refund of monies that were allegedly utilized to purchase the suit properties; this cause of action squarely falls within the jurisdiction of this Court as stipulated under Section 13 of the ELC Act.
30. In the foregoing, while relying on the legal provisions cited and associating myself with the decisions quoted, I am unable to stay this suit pending outcome of the High Court Matrimonial Cause because even though there are some similar parties in the two suits, the issues being tackled are distinct and



there are other third parties involved. Further, consolidation of these two suits and the High Court matrimonial Cause is not practicable due to the distinct jurisdiction of both the High Court and ELC.

31. In the circumstances, I find the instant Notice of Motion application unmerited and will disallow it.

32. Costs will be in the cause.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF APRIL, 2026

CHRISTINE OCHIENG

JUDGE

In the presence of:

Kimathi holding brief for Kenyatta for Plaintiff

Muthama for 1st, 2nd and 3rd Defendants

Allan Kamau for 4th Defendant

Were for Plaintiff in Consolidated Suit

Court Assistant: Joan

