



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KISUMU
ELC CASE NO.557 OF 2015
{Formerly Civil Suit No.223 of 2011}

PETER OKOTH OMENO.....PLAINTIFF

VERSUS

AMBROSE OCHIDO ANDAJO.....1ST DEFENDANT

BENEDICT ODHIAMBO OKETCH.....2ND DEFENDANT

BONDO TOWN COUNCIL.....3RD DEFENDANT

RULING

1. Through notice of motion dated 24th January 2012, Peter Okoth Omeno, the plaintiff sought to have this suit consolidated with Kisumu H.C.C. No.104 of 2004 (O.S) for hearing and determination. The application is based on the four grounds on its face and supported by the affidavit sworn by the plaintiff on 25th January 2012.
2. The application is opposed by the 2nd Defendant, Benedict Odhiambo Oketch, through the grounds of opposition dated 29th January 2012. It is also opposed by the 1st Defendant, Ambrose Ochido Andajo, through the replying affidavit he swore on 30th January 2012.
3. The counsel for the Plaintiff filed written submissions dated 25th January 2013 while counsel for the 1st Defendant filed theirs dated 6th February 2012. Another set of submissions for all Defendants dated 4th February 2013 was also filed.
4. The following are the issues for determination;
 - a. Whether the two suits sort to be consolidated are between the same parties and same subject matter.
 - b. Whether consolidating the two suits will hasten the determination of the issues herein.
 - c. What orders to make.
 - d. Who pays the costs.

5. The court has considered the grounds on the notice of motion, affidavit evidence, grounds of opposition, written submissions and come to the following determinations;

a. That this suit and Kisumu H.C.C.C. No.104 of 2004 (O.S.) were both commenced by the same person who is the plaintiff in the two suits.

b. That the 2004 suit has two defendants/Respondents namely Ambrose Ochido Adanjo and Benedict Odhiambo Okech, while the current suit has the two as 1st and 2nd Defendants and Bondo Town Council as the 3rd Defendant.

c. That the 2004 suit is partly heard while the hearing in the current suit has not commenced.

d. That the current suit was filed in 2011 which is about seven years after filing of the 2004 suit and it is only fair that the two suits be heard and determined separately to avoid the 2004 suit, that is already partly heard, being pulled back by this suit as an order of consolidation would require the suits to be heard de novo.

6. That for reasons set out above, the notice of motion dated 24th January 2012 has no merit and is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 8TH DAY OF FEBRUARY 2017

In presence of;

Plaintiff Absent

Defendants absent

Counsel Mr. Mwamu for Plaintiff Mr. Manwari for Odongo for 1st Defendant Mr Nyasnga for Ojuro for 2nd Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/2/2017

8/2/2017

S.M. Kibunja Judge

Oyugi court assistant

Mr. Manwari for Odongo for 1st Defendant

Mr. Rodi for Mwamu for Plaintiff

Mr. Mwamum has walked

Mr. Nyasnga for Ojuro for 2nd Defendant

Court: Ruling dated and delivered in open court in presence of Mwamu for the Plaintiff, Mr. Manwari for Odongo for 1st Defendant and Mr. Nyanga for Ojuro for the 2nd Defendant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

8/2/2017