



Chanda & another v Consolidated Bank Ltd & 3 others (Environmental and Land Originating Summons E013 of 2024) [2024] KEELC 5636 (KLR) (25 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5636 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E013 OF 2024
NA MATHEKA, J
JULY 25, 2024**

BETWEEN

ESTHER NGUNIA CHANDA 1ST APPLICANT

PAUL MWENDWA CHANDA 2ND APPLICANT

AND

CONSOLIDATED BANK LTD 1ST RESPONDENT

COLT PETROLEUM LIMITED 2ND RESPONDENT

LAND REGISTRAR 3RD RESPONDENT

ATTORNEY GENERAL 4TH RESPONDENT

RULING

1. The applicants moved the court vide an interesting notice of motion application dated 11th June 2023 requesting *inter alia* that the 2nd respondent by itself, agents and or servants be compelled to produce one Solomon Chanda Musili who executed the charge dated 1st February 2024. In support of the application the grounds on the face of the application and the supporting affidavit by the 2nd applicant the same states that Solomon Chanda Musili was deceased by 1986 and that a living person by the same name executed the charge dated 1st February 2024 which is the subject matter and that failure by the 2nd respondent would behoove the court to make a summary determination of this suit.
2. Despite service by electronic mail on 14th June 2024 the respondents failed, ignored and or refused to respond to the same. This is serious claim with tenets of criminality and it should be treated with the seriousness it deserves. The suit is brought under the overriding objectives duty of this court under section 1A, 1B and 3A and I agree that the participation of the said Solomon Chanda Musili is essential and integral in this suit. Although the application is unopposed, it is the court's duty to nevertheless subject it to a merit evaluation in accord with the applicable laws and principles. In [Gideon Sitelu](#)



Konchellah vs. Julius Lekakeny Ole Sunkuli & 2 others (2018) eKLR the Supreme Court of Kenya held that;

...as a court of law, we have a duty in principle to look at what the application is about and what it seeks. It is not automatic that for any unopposed application, the Court will as a matter of course grant the sought orders. It behooves the Court to be satisfied that prima facie, with no objection, the application is meritorious and the prayers may be granted. The Court is under a duty to look at the application and without making any inferences on facts point out any points of law, such as any jurisdictional impediment, which might render the application a non-starter. We see no such jurisdictional issue in the application before us. Hence we have proceeded to consider the facts before us as against the jurisprudence for grant of stay orders set by this Court....”

3. Hence, the court is of the opinion that this application is premature as summoning of the said Solomon Chanda Musili would be useful during the hearing stage. Indeed the respondents are yet to even respond to the originating summons instituting this suit. The court deems it prudent that the procedures set out in the Civil Procedures in conduct of a suit be followed to wit, filing of pleadings which is then followed by hearing of witnesses which the court has stated would be the right moment of summoning the said Solomon. In the upshot, the application is not merited and I dismiss it with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 25TH DAY OF JULY 2024.

N.A. MATHEKA

JUDGE

