



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CIVIL SUIT NO. 110 OF 2018**

**HON. ERICK OKONG'O MOGENI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**SETH PANYAKO.....1<sup>ST</sup> DEFENDANT**

**ROYAL MEDIA SERVICES LIMITED**

**T/A CITIZEN TV.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RULING**

The application dated 17<sup>th</sup> April 2020 seeks the following orders:-

**1. THAT this Honourable Court be pleased to consolidate this suit with Nairobi HCCC No. 111 of 2018: Jacqueline Mogeni –v- Seth Panyako & Royal Media Services Ltd t/a Citizen T.V.**

**2. THAT the costs of this application be in the cause.**

The affidavit of Njenga Njihia sworn on 17<sup>th</sup> April 2020 supports the application. The respondent filed grounds of opposition dated 10<sup>th</sup> July, 2020. Parties entirely relies on their respective pleadings in respect of the application.

The applicant submitted that the subject matter in both suits is an alleged defamatory broadcast of 16<sup>th</sup> June, 2017. Both suits are set to be heard. If the cases are heard before different judges, there is likelihood of two conflicting judgments. Counsel referred to the case of **MARGARET WAKURU NYUTHO –V- JOSEPH KIARIE NJOROGE AND 3 OTHERS (2014) eKLR** where it was observed:-

**“Now that there are two pending suits dealing with the same subject matter and revolving around the same issues, the Plaintiff has filed the Consolidation Application. In David Ojwang’ Okebe & 11 Others v South Nyanza Sugar Company Limited & 2 Others CA Kisumu Civil Appeal (Appl) No. 139 of 2008 (2009) eKLR, the Court of Appeal discussed the main object of consolidation, that is, “to save costs and time by avoiding a multiplicity of proceedings covering largely the same ground. Thus where it appears to the court that there are common questions of law or fact; that the right to relief is in respect of the same transaction or serious of transactions; or that for some other reason, it was desirable to make an order for consolidation of one or more cases, then the court will do so.”**

Further reliance was made to the Supreme Court decision in **LAW SOCIETY OF KENYA –V- THE CENTRE FOR HUMAN RIGHTS & DEMOCRACY & OTHERS (Petition No. 14 of 2013)** where the court stated as follows at paragraph 43:-

**“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.”**

According to the applicant no injustice will be occasioned to the parties if the two suits are consolidated.

The grounds of opposition to the application are:-

- 1) The two plaintiffs in the different suits were defamed in their own capacity and each will be required to prove his/her case separately.
- 2) The questions of facts in the two matters are not the same.
- 3) The suit against the 1<sup>st</sup> defendant in this suit has already been determined and judgment was entered in the separate suits.
- 4) The consolidation of the suits would result in issues in dispute being clouded and would frustrate the just determination of the suits.
- 5) The Application dated 17<sup>th</sup> April 2020 is incompetent, fatally defective and an abuse of the court, the same has not raised any provision of law for consolidation of suit.
- 6) The 2<sup>nd</sup> defendant's/applicant's application dated 17<sup>th</sup> April 2020 does not satisfy the criteria for consolidation of suits, is thus without merit and should thus be dismissed with costs to the Plaintiff/Respondent.

The issue for determination is whether the two suits namely HCCC 110 of 2018 and 111 of 2018 should be consolidated. The dispute arose from a live coverage aired by the 2<sup>nd</sup> defendant on 16<sup>th</sup> June, 2017. The coverage referred to both plaintiffs in the two suits. It is true that reference to each one of them differs and the respondent's contention that each of them was defamed individually. However, there is no provision in law that suits relating to defamation cannot be consolidated. The underlying objective is to have suits determined within the shortest possible time and where two suits can be heard jointly, then the court should not hesitate to consolidate them.

In the case of **RMG –V- NG & ANOTHER (Nairobi HCCC No. 29 of 2009 (OS))**, the court considered the principles of consolidation of suits and states as follows:-

*“...Where there is common question of law or fact in actions having sufficient importance in proportion to the rest of each action to render it desirable that the whole of the matters should be disposed of at the same time, consolidation should rise.*

**The principle is that consolidation of suits will be ordered where common questions of law or fact arise of such importance as to make it desirable that the whole of the matters be disposed of at the same time. This would mean that the suits are brought together with a view to disposing of them simultaneously, if the questions of law or fact to be answered in each of them are one or common, and they can conveniently be so disposed of simultaneously.”**

Similarly, in the case of **KOREAN UNITED CHURCH OF KENYA & 3 OTHERS –V- SENG HA SAND (2014) eKLR** the court observed as follows:-

**“Consolidation of suits is done for purposes of achieving the overriding objective of the Civil Procedure Act, that is, for expeditious and proportionate disposal of civil disputes. The main purpose of consolidation of suits is to save costs, time and effort and to make the conduct of several actions more convenient by treating them as one action.”**

In the case of **LAW SOCIETY OF KENYA –V- DEMOCRACY & 12 OTHERS (2014) eKLR (Petition 14 of 2013)**, the Supreme Court in a ruling delivered on 8<sup>th</sup> April, 2013 (S.C. Wanjala JSC and S.N. Ndungu JSC) observed as follows at paragraph 39:-

**“The essence of consolidation is to facilitate the efficient and expeditious disposal of disputes, and to provide a framework for a fair and impartial dispensation of justice to the parties. Consolidation was never meant to confer any undue advantage upon the party that seeks it, nor was it intended to occasion any disadvantage towards the party that opposes it. In the matter at hand, this Court would have to be satisfied that the appeals sought to be consolidated turn upon the same or similar issues. In addition, the Court must be satisfied that no injustice would be occasioned to the respondents if consolidation is ordered as prayed.**

**In the circumstances, would it serve the interests of justice to consolidate the appeals in which the parties are the same, and the central issue is the same even if worded differently" The irresistible conclusion is in the affirmative. We do not see what good would result from denying the applicant’s prayer for consolidation, and allowing each of the appellants to appropriately canvas its cause. The alternative position would result in undesirable delays in concluding a matter of great public interest. It is obvious to us that, in the interests of all parties, the central issue in the appeals ought to be determined expeditiously and conclusively by this Court. Consolidation of the appeals, in our perception, would significantly advance that goal.”**

Consolidation involves the bringing together of more than one suit and have them determined jointly. This can only occur if the subject matter in dispute in both cases is similar. If the filing of the suits was triggered by an event which occurred on the same day or where such event or events occurred on different dates but called for action by both claimants or involves the same transaction or involve similar reliefs by the plaintiffs, an order of consolidation would be most ideal. In the case of **EAN KENYA LIMITED –V- JOH SAWERS & 4 OTHERS (2007) eKLR** it was stated that “... the test to be applied is not whether the parties are the same but whether the same or similar questions of law or fact are involved in the suits.”

The plaint in Civil Case number 110 is dated 18<sup>th</sup> May 2018. It was filed by the firm of Okong’o Omogeni & Co. Advocates. The reliefs being sought are damages for slander, defamation and libel. Similarly, the plaint in Civil Suit number 111 of 2018 is dated 18<sup>th</sup> May, 2019 and was filed by the same firm of advocates. The claimant is also seeking general damages for slander, defamation and libel. The claim is based on the same alleged defamatory information.

It is evident that the two suits emanate from the same cause of action. The plaintiffs are complaining against the live coverage aired by the 2<sup>nd</sup> defendant on 16<sup>th</sup> June, 2017. I am alive to the fact that both plaintiffs were defamed in their different personal capacities. However, consolidation will enable the court deal with the same issues simultaneously. Consolidation will also reduce the risk of having two different court versions of the impugned live coverage. I would equate the two cases to a road traffic accident involving passengers who are unknown to each other. Each plaintiff would be entitled to damages according to the injuries suffered.

It is therefore my finding that justice will be served faster if the two suits are consolidated. The same advocates appear for both parties and consolidation would enable a smooth hearing of both cases at the same time. The upshot is that the application dated 17<sup>th</sup> April 2020 is hereby granted as prayed. Civil Suit number 110/2018 and 111 of 2018 are hereby consolidated. The main file shall be HCCC No. 110 of 2018.

Costs of the application shall be in the cause.

**DATED AND SIGNED AT NAIROBI THIS 23RD DAY OF NOVEMBER, 2021.**

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**S. CHITEMBWE**

**JUDGE**



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