



**Koome & 2 others v Kenya Tea Development Agency Holdings Limited & 3 others
(Civil Suit 34 of 2019) [2024] KEHC 13096 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13096 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CIVIL SUIT 34 OF 2019
EM MURIITHI, J
OCTOBER 31, 2024**

BETWEEN

**ASHFORD KOOME 1ST PLAINTIFF
GIBSON BUNDI 2ND PLAINTIFF
PATRICK MUTHURI 3RD PLAINTIFF**

AND

**KENYA TEA DEVELOPMENT AGENCY HOLDINGS LIMITED 1ST
DEFENDANT
KTDA MANAGEMENT SERVICES LIMITED 2ND DEFENDANT
KIONYO TEA FACTORY COMPANY LIMITED 3RD DEFENDANT
GREENLAND FEDHA LIMITED 4TH DEFENDANT**

RULING

The 1st Application

1. By a Notice of Motion dated 12/8/2020 pursuant to sections 3A and 6 of the *Civil Procedure Act*, Order 2 Rule 15 (1) and Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of the law, the Defendants seek that:
 1. The Plaintiffs' suit as filed herein be dismissed.
 2. The cost of application and entire suit be borne by the Plaintiff.
2. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Dr. John Kennedy Omanga, the Defendants' Company Secretary, sworn on even date. He avers that the Plaintiffs herein instituted the instant suit on 31/12/2019. However, there



exists another suit being Muranga High Court Petition No. 36/2019 Muranga County Government v Kenya Tea Development Agency Limited (hereinafter referred to as the previous suit) which was instituted on 7/10/2019. The issues raised herein are substantially similar to those in the previous suit, and this court has the inherent jurisdiction to preserve the integrity of the judicial process. No prejudice shall be suffered by the Plaintiffs herein if the orders sought are denied as their liberty to advance their cause in the previous suit remains open and available.

3. The 1st Plaintiff opposed the application vide grounds of opposition dated 9/9/2020 that;
 1. The said Application is misconceived, bad in law and a waste of precious judicial time.
 2. The issues raised by the Plaintiffs in their suit herein are materially different and factually beyond the issues raised in Murang'a High Court Petition No. 36 of 2019 to which the Plaintiffs and even the 2nd, 3rd and 4th Defendants are not a party.
 3. The issues raised by the Plaintiffs in the suit herein were first canvassed by them vide their letter to the First Defendant dated 5th July 2019 long before Murang'a High Court Petition No. 36 of 2019 was filed.
 4. The issues raised in the Plaintiff's suit are of immense public importance as they affect over six hundred and fifty thousand small-scale tea farmers throughout Kenya and cannot be wished away as casually as the Defendants are wont to.
 5. The Defendants' Application is deserving of quick dismissal with costs to pave for the hearing and determination of the suit on merits.

The 2nd Application

4. By a Notice of Motion dated 8/3/2024 under sections 1, 1A, 1B and 3A of the *Civil Procedure Act*, Order 17 Rule 2 of the Civil Procedure Rules and all other enabling provisions of the law, the 1st Plaintiff seeks that;
 1. This application be heard during the mention herein on 18th March 2024.
 2. The honorable court be pleased to dismiss the Defendants' Notice of Motion dated 12.8.2020 (with costs) for want of prosecution.
 3. The honorable court be pleased to set down the case for pre-trial conference and directions.
 4. Costs of this application be borne by the Defendants.
5. The grounds upon which the application is premised are set out in the body of the application and supporting affidavit of Ashford Koome, the 1st Plaintiff herein sworn on even date. He avers that they are keen on prosecuting this suit which raises fundamental issues of public interest affecting Kenyan tea farmers. On or about 12/8/2020, whilst they were preparing to set down this suit for hearing, the Defendants filed a Notice of Motion seeking to dismiss the suit, which application has never been prosecuted. When he visited the court registry on numerous occasions with a view of taking a date for pre-trial conference, he was informed that the same cannot be given until the application of 12/8/2020



is determined first. It is just that the said application is dismissed to pave way for hearing of the main suit, as they have substantially complied with Order 11.

6. The Defendants opposed the application vide a replying affidavit sworn by George Mutwiri, the 2nd Defendant's legal officer on 15/4/2024. He avers that the failure to prosecute the application of 12/8/2020 has been occasioned by factors beyond the Defendants' control. He prays for the hearing of the application on merits now that the court has given directions thereto.

Submissions

7. The 1st Plaintiff relies on *Meya Agri Traders Ltd v Elgon House (2010) eKLR* and *D.T Dobie & Company (Kenya) Ltd v Joseph Mbaria Muchina & Another (1980) eKLR* on the drastic nature of the power to strike out pleadings. He urges that the suit raises substantive and weighty issues of public nature which this court ought to interrogate on merit.
8. The 2nd and 3rd Plaintiffs urge the court to be guided by *J.A.O v Homepark Caterers Ltd & 2 Others (2004) eKLR* and decline to strike out this suit. They urge that no plausible reason has been advanced by the Defendants for their failure to prosecute their application of 12/8/2020, and pray for its dismissal with costs.
9. The Defendants urge that this matter ought to be dismissed, on the principle of sub judice since there exists a similar matter in *Muranga High Court Petition No. 36/2019*, and cite *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020...]eKLR*. They urge that there is a real and probable risk that the two courts differently constituted will arrive at different findings over the same issues. They urge that they are being vexed by the Plaintiffs by being asked to defend these proceedings yet similar proceedings pend before another court of concurrent jurisdiction, and rely on *Franklin Langat v Julius Osanga Abuti & 3 others (2022) eKLR*. They pray for the dismissal of the application dated 8/3/2024 with costs and their application dated 12/8/2020 to be allowed as prayed.

Determination

10. The two applications are the 2 sides of a coin and the singular issue for determination is whether the suit ought to be struck out for offending the sub judice rule.

Sub judice

11. The principle of Sub judice is provided for under Section 6 of the *Civil Procedure Act* as follows:
 - “6. No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”
12. The Defendants contend that this suit is sub judice because there pends for determination another suit being *Muranga High Court Petition No. 36/2019* between *Muranga County Government and The Kenya Tea Development Agency Limited*.



13. In order to ascertain whether the previous suit is substantially similar to this suit, this court reproduces in verbatim the specific reliefs sought therein as follows:

1. That this Honorable Court be pleased to declare that the respondent has a constitutional duty in the intendment of Articles 10(2)(c) as read together with Article 229(d) of *the Constitution* of Kenya, to fully and exhaustively account for the sales realized from the tea produce of the farmers within Muranga County and the Republic of Kenya generally and submit to an independent audit thereof by the Auditor General of the Republic of Kenya or such other reputable audit firm that this court would appoint for that purpose.
2. That the upon such audit and further upon a finding thereon that the respondent has not fully accounted for the sales realized from the tea produce supplied by farmers, this honorable court be pleased to declare that the respondent's actions are unlawful and unconstitutional to the extent that the respondent shall be compelled by an order of this court to revise upwards the payments to farmers of the final periodic payment (bonus) for the year 2019.
3. That this Honorable Court be pleased to declare that the respondent's management of the tea produce by farmers within its jurisdiction, is in consideration of the facts herein, in clear contravention of their consumer rights under Article 46 of *the Constitution*.
4. That this honorable Court be pleased to award damages for violations of their constitutional rights by the respondents.
5. THAT costs be provided.

14. In the instant suit, the Plaintiffs seek;

1. A Declaration and or finding that the 1st, 2nd and 3rd Defendants' growers' fertilizers and personal insurance contracts are unilateral, skewed against and unfair to the Plaintiffs hence voidable.
2. A Declaration that the 3rd Defendant's loan contracts and loans generally are unfair, overpriced and oppressive to the Plaintiffs.
3. A Declaration that the Plaintiffs and other tea farmers are legally and constitutionally at liberty to sell their tea produce to buyers other than the 1st, 2nd and 3rd Defendants without any reprisals or interference by the said Defendants.
4. An order for forensic inspection/certification of the Defendants' tea weighing bags and scales and audit of the relevant bank accounts, books of accounts and other financial records by the Kenya Bureau of Standards (and/or the Directorate of Weights and Measures), the Auditor-General of Kenya or other licensed independent auditors respectively at the Defendants' cost.
5. Specific damages and corresponding refunds to the Plaintiffs and other farmers (to be quantified and specifically pleaded upon inspection/certification and audit as per (c) above).
6. General and exemplary damages.



7. Interest on (e) and (f) above at court rates.
 8. Costs of the suit.
 9. Any other appropriate relief the honorable court may deem fit to award.
15. The prayer for an audit sought herein was addressed in the previous suit by Justice Kanyi Kimondo by the order of 7/10/2019 as follows;

“3. That pending the hearing interpartes the Auditor General of the Republic is ordered under the provisions of Article 229 (5) of *the Constitution* do consider carrying out an independent audit of the account of the respondent relating to Tea earnings or bonuses for the 2019 for Tea farmers in Murang’a County for produce supplied to the KTDA, a copy of the report of such audit shall be filed in court as soon as is practicable.”

16. While the court is alive to the fact that the parties in the two suits are not strikingly similar, it appreciates that the previous suit was instituted by the County Government of Murang’a for the benefit of and in the interest of the tea farmers of that county, inclusive of the Plaintiffs herein. Order 6 of the Civil Procedure Rules talks of “a matter in issue” as opposed to “the prayers sought” and this court finds that the matter in issue in the previous suit and this suit is the same.
17. This court is therefore precluded by the sub judice rule from proceeding with this suit.
18. The lamentations of the court (John M. Mativo J as he then was) in Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR ring true here:-

“This suit presents a sad scenario of not only having parallel proceedings on the same issues involving the same parties but also a great risk of coordinate courts granting conflicting orders. Similarly, this court is being invited to determine substantially similar issues pending before the court. The applicant did not disclose in its pleadings the existence of the earlier suit.”

This court finds that the suit must fail because it is sub judice.

19. The Plaintiffs ought to have sought to be joined in the previous suit and leave to file their pleadings therein instead of lodging an entirely different suit in a court differently constituted. That is the epitome of abuse of the court process, which this court does not condone.
20. Upon striking out the suit herein for offending the sub judice rule, the application dated 8/3/2024 becomes moot.

Orders

21. Accordingly, for the reasons set out hereinabove, the Defendants’ application dated 12/8/2020 is allowed, to the effect that the Plaintiffs’ suit is hereby struck out.
22. The plaintiffs will jointly and severally pay the costs of the suit to the defendants.

Order accordingly.

DATED AND DELIVERED THIS 31ST DAY OF OCTOBER, 2024.

EDWARD M. MURIITHI



JUDGE

APPEARANCES:

Mr. Koome 1st Plaintiff present in Person.

Mr. Njiru for Mr. S. Mugo for the 2nd and 3rd Plaintiffs.

Mr. Kariuki with Ms. Gitari for the Defendants.

