



REPUBLIC OF KENYA



Ethics & Anti-Corruption Commission v Trojan Nominees Limited & 3 others (Environment & Land Case 38 of 2022) [2023] KEELC 17104 (KLR) (27 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17104 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 38 OF 2022**

**A OMBWAYO, J
APRIL 27, 2023**

BETWEEN

ETHICS & ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

TROJAN NOMINEES LIMITED 1ST RESPONDENT

PINEAPPLES EDGE LIMITED 2ND RESPONDENT

WILSON GACHANJA 3RD RESPONDENT

CHIEF LAND REGISTRAR 4TH RESPONDENT

RULING

1. The Defendant/Applicant herein filed the application dated November 1, 2022 under Order 51 Rule 1 of the [Civil Procedure Rules](#) which seeks the following orders:
 1. That this Honourable court be pleased to issue an order that the suit before this Honourable court is *res-sub judice*.
 2. That this Honourable court be pleased to issue an order of stay of proceedings in this matter until the Referenced Appeal and any subsequent proceedings are heard and determined.
 3. That the Applicant be awarded the costs of this application.
2. The grounds on the face of the application are that the issues raised against the 2nd Defendant/Applicant with respect to the suit property Naivasha Municipality Block 5/291 are directly and substantially in issue in Nairobi Civil Appeal No 609 of 2021. That the Plaintiff is seeking similar orders against the 2nd Defendant/Applicant as orders sought in Nairobi Civil Appeal No 609 of 2021 pending hearing and determination at the Court of Appeal.



3. The application was supported by the affidavit of Alex Kubo Mwakicharo the 1st Defendant/Applicant's advocate. He averred that the issues raised against the Applicant with respect to the suit property are directly and similar in issue in Nairobi Civil Appeal No 609 of 2021. He further averred that Kenya Agriculture & Livestock Research Organization (KALRO) had commenced a similar suit ELC No 1012 of 2015 (Formerly Petition No. 413 of 2015) raising similar issues and seeking similar orders as sought in this suit.
4. He averred that the Petition was heard and dismissed on November 18, 2019 and KALRO being dissatisfied by the said decision filed a Notice of Appeal dated November 21, 2019 and a Record of Appeal dated October 22, 2021.
5. It was further averred that the suit herein raises issues that are directly and substantially in issue in Civil Appeal No 609 of 2021.
6. He averred that proceeding with this suit as filed will result in parallel decisions in multiple forums to the detriment of the Applicant thus will embarrass the court.
7. He also averred that the suit is bad in law, misconceived and discloses no reasonable cause of action against the Applicant thus rendering it defective.
8. In conclusion, he urged the court to allow the application with costs.

Response

9. The Plaintiff/Respondent in response to the application filed its grounds of opposition dated March 20, 2023 on March 24, 2023 on the following grounds:
 1. The Plaintiff Respondent is a statutory body mandated to, inter alia, carry out investigations to establish liability for loss of or damage to public property and to institute civil proceedings for compensation or recovery of such public property under the provisions of section 7 (1) (h) of the *Anti-Corruption and Economic Crimes Act, 2003* now under section 116) of the *Ethics and Anti-Corruption Commission Act, 2011*.
 2. Pursuant to its aforesaid statutory mandate, the Plaintiff/Respondent undertook investigations into allegations of illegal or irregular alienation and allocation of the subject matter of the suit herein Land Parcel Naivasha Municipality Block 5/291.
 3. Investigations findings by the applicant indicated that the subject parcel of Land Number Naivasha Municipality Block 5/291 had been set aside by Government for utilization by Kenya Agriculture & Livestock Research Organization (KALRO) and the allocation of the same to the Respondents was irregular and fraudulent.
 4. It is pursuant to the said outcome of the investigation that the Plaintiff/Respondent filed the instant suit seeking cancellation of the Applicant title to the subject property and restoration of the same to the Government for utilization by KARLRO.
 5. The Plaintiff/Respondent is not and has not been aware of the existence of Civil Appeal No 609 of 2021 Originating from Nairobi ELC Petition No 1012 of 2015: Kenya Agricultural & Livestock Research Organization v AG, NLC, Pineapple Edge Limited and Trojan Nominees Limited and is not a party to the suit.
 6. The issues for determination in the instant suit were never and neither are they directly and substantially in issue in Nairobi ELC Petition No. 1012 of 2015 and therefore the instant suit cannot be sub judice.



7. The main issue for determination in the instant suit is the ownership and the process of acquisition of the subject property by the defendants, which issue was never determined by the Court in the Nairobi ELC Petition No 1012 of 2015. Additionally, the parties are not *sub judice* the same and the reliefs sought are also different and thus the matter cannot be
8. This application is frivolous, vexatious and lacks merit and ought to be dismissed.
9. The application is an abuse of precious judicial time and it is the interests of justice and fairness that the instant application be dismissed with costs to the Plaintiff/Respondent.

Submissions

10. The Plaintiff/Respondent filed its submissions March 20, 2023 on March 21, 2023. It gave a background of the case and identified two issues for determination:
 - a) Is the instant suit *sub judice*?
 - b) Does abuse of office suffice?
11. On the first issue, the Plaintiff/Respondent relied on Section 6 of *Civil Procedure Act* and the Supreme Court case of *Kenya National Commission on Human Rights v Attorney General: Independent Electoral & Boundaries Commission & 16 others (Interested Parties)*. It submitted that in ELC Constitutional Petition No 1012 of 2015 the issue of ownership of the suit property and the process of acquisition by the 2nd Respondent was never heard and determined as it was dismissed prematurely.
12. It submitted that no competent and parallel jurisdiction has pronounced itself on the main issue of ownership. It added that Nairobi Civil Appeal No 609 of 2021 raises the issue of dismissal of the suit prematurely as the main ground of appeal thus there is no issue directly and substantially in issue and similar to what is before the Court of Appeal. The Plaintiff/Respondent submitted that in the present case, it was not a party in the ELC Constitutional Petition No. 1012 of 2015 and Nairobi Civil Appeal No 609 of 2021. It was also its submission that the reliefs sought in the said Petition are different from what is being sought herein. It stated that the Petitioners were seeking orders related to constitutional violations whereas the instant suit is a substantive suit and the ownership of the property is at the centre thus the issue of *sub judice* fails.
13. On the second issue for determination, the Plaintiff/Respondent relied on the case of *Republic v Paul Kibara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR and submitted that since there is no suit pending in any court between the Plaintiff and Defendants over the subject property, the issue of multiplicity does not arise. It submitted that the issue of ownership and acquisition of the suit property by the 2nd Defendant has never been determined and that the appeal alluded to arose from the Petition which cannot determine the ownership.
15. In conclusion, the Plaintiff urged the court to dismiss the instant application with costs.
16. The 2nd Respondent filed its submissions dated February 21, 2023 and identified two issues for determination.
 - i. Whether this suit offends the *sub judice* rule
 - ii. Whether it is an abuse of court process
17. On the first issue, it submitted that the subject matter in this suit being Naivasha Municipality Block 5/291 is the same as the subject matter in Nairobi Civil Appeal No. 609 of 2021. It submitted that both suits seek to secure the same remedies. It further submitted that the matters in issue are the same



thus sub judice. It relied on Section 6 of the Civil Procedure Act and the case of David Ndiu & Others v Attorney General & others 2021 eKLR and submitted that the instant suit was filed despite the existence of a pending suit Civil Appeal 609 of 2021 filed by KALRO. It added that the only addition as far as the parties are concerned is the inclusion of Wilson Gachanja and the Chief Land Registrar. It argued that the facts and reliefs are substantially similar to the earlier suit.

18. It submitted that to prosecute the instant case would jeopardize the 2nd Respondent herein and subject the 2nd Respondent to double jeopardy. The 2nd Respondent relied on the case of Nguruman Limited v Jan Bonde Nielsen and another 2017 eKLR and submitted that in the interest of justice the instant suit be stayed for being *sub judice*.
19. On the second issue, it submitted that the present application is an abuse of the court process since at the time the instant suit was filed, there was another pending suit in the court of appeal. It added that there was no mention of the earlier suit in the Plaintiff's pleadings. The 2nd Respondent submitted that the Plaintiff has presented the same issued being litigated in Civil Appeal 609 of 2021 thus constituting an abuse of the court process.
20. In conclusion, it urged the court to allow the 2nd Respondent's application.

Analysis and Determination

21. Having read the application dated November 1, 2022, the supporting affidavit and the Grounds of Opposition, I find that the main issue for determination is whether the instant suit is sub judice to Nairobi Civil Appeal No 609 of 2021.
22. The legal provision for the doctrine sub judice is anchored under Section 6 of the Civil Procedure Act which provides as follows:

“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.” [Emphasis mine]

23. The Supreme Court in the Advisory Opinion in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR at para 67 stated as follows:

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”



24. This court has perused the pleadings in ELC No 1012 of 2015 and Civil Appeal 609 of 2021 and established that the issues being raised are quite different since the issue in the present suit revolves around allegations of fraud on public land while in Civil Appeal 609 of 2021 stems from alleged violation of the Petitioner's constitutional rights.
25. The subject matter in this suit is Naivasha Municipality Block 5/291 while the subject matter in Civil Appeal 609 of 2021 is Naivasha Block 5 parcels 230-233 which resulted from an unsurveyed plot. In addition, as much as the parties appear similar, they are not since in the instant suit the 3rd Respondent is not a party in the other appeal suit.
26. In conclusion, having established that the instant suit is not *sub judice* to Civil Appeal 609 of 2021, this suit shall therefore proceed accordingly. In view of the foregoing, this court finds that the instant application lacks merit and is therefore dismissed with costs. It is so ordered.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT ON THIS 27TH DAY OF APRIL 2023

A.O. OMBWAYO

JUDGE

