



**REPUBLIC OF KENYA**

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

**COMMERCIAL & TAX DIVISION**

**MILIMANI LAW COURTS**

**HCCC NO. 368 OF 2018**

**JAMES MUNGAI GACUCU.....1<sup>ST</sup> PLAINTIFF**

**REMA ENTERPRISES LIMITED .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**STANDARD CHARTERED BANK (K) LIMITED.... DEFENDANT**

**AND**

**MARY WANGARI GACUCU .....INTERESTED PARTY**

**RULING**

1. These proceedings were begun by way of a Plaint dated 15<sup>th</sup> November 2017 and filed on the same day. The propriety of the entire proceedings are challenged and the Defendant has through a Notice of Motion dated 5<sup>th</sup> February 2018 sought that the Plaint dated 15<sup>th</sup> November 2017 be struck out.

2. The fulcrum to the application is that there is pending before Court another suit being HCCC No. 645/2015 which revolves around the same subject matter as this suit and in which parties are identical.

3. This matter need not detain judicial time! By way of Notice of Motion dated 17<sup>th</sup> June 2018 and filed on 18<sup>th</sup> June 2019 the Plaintiff/Respondent herein sought that this suit be consolidated with HCCC 645 OF 2015 James Mungai Gacucu & Another –vs- Standard Chartered Bank of Kenya. A disposition in the affidavit of Anthony Mwanzia Mutunga sworn on 17<sup>th</sup> June 2018 in support of that application is very telling in regard to the application now before Court. He depones:-

[3] That both suits relates to same parties as herein and subject matter namely land parcels Number LR No. 209/11095/57 (I.R No. 79385), 209/11095/58 (I.R No. 79386) and 209/11095/59 (I.R No. 79387) Ranger's Court, South C are similar to Nairobi HCC No. 645 of 2015 but instituted in different divisions of the High Court being the Commercial Division and Environment and Land Court Division.

4. That disposition is, in my view, a concession that these two suits relate to the subject matter and involves the same parties. For the fact that it is still pending then this suit should, perhaps, never have been filed. Yet is the answer to this state of affairs to strike out the current suit or to stay it. On this the Court elects to take the action prescribed by Section 6 of the Civil Procedure Act which reads:-

[S.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.

Explanation. — The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

5. The Court therefore stays this suit pending the hearing and determination of HCCC No. 645/2015. Once that suit is determined then the Defendant herein can decide whether or not to move this Court for striking out of the present suit on the basis of *res judicata*.

6. In answer to the Notice of Motion dated 5<sup>th</sup> February 2018 this suit is stayed pending the hearing and determination of HCCC 645 OF 2015 James Mungai Gacucu & Another –vs- Standard Chartered Bank of Kenya. Costs to the Applicant.

**Dated, Signed and Delivered in Court at Nairobi this 21<sup>st</sup> Day of February 2020**

**F. TUIYOTT**

**JUDGE**

**PRESENT:**

Mwinzi for Plaintiff

Ouma for Gathu for Defendant

Court Assistant: Nixon