



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

HIGH COURT ELC 7 OF 2019

VERONICA NYAKINYA MURIMI.....PLAINTIFF/APPLICANT

VERSUS

NATION LANDS COMMISSION.....1st DEFENDANT

LAND REGISTRAR IN CHARGE NYANDARUA.....2nd DEFENDANT

THE NYANDARUA DISTRICT LANDS SURVEYOR.....3rd DEFENDANT

PAULINE WAMAITHA MURIMI.....4th DEFENDANT

RULING

1. Vide an Application by way of Notice of Motion dated 26th February 2019 brought under *Section 3A, of the Civil Procedure Act Order 40 Rule 1, 2 and 4, Order 51 Rule 1 of the Civil Procedure Rules, and all enabling provisions of the law applicable, the Applicant seeks for orders restraining the Respondent from interfering with land parcel No. Nyandarua/Milangine 829 pending the hearing and determination of the suit.*

2. The Applicant also seeks for a battery of other prayers which are not relevant at this interlocutory stage, as well as for costs of the Application.

3. The Application is supported on the grounds on the face of the same and the affidavit of Veronica Nyakinyua Murimi the Applicant herein sworn on an equal date.

4. It is worth noting that after the above Application was filed and served, the Respondent filed their grounds of opposition dated the 3rd June 2019 stating that the current suit offended the provisions of Section 6 of the Civil Procedure Act in lieu of a subsisting similar case being ELC 426 of 2017 where the Court had made a ruling and the matter was pending its hearing and determination.

5. They deponed that the application dated the 26th February 2019, was an abuse of the Court process and that the present suit be struck out so that parties could proceed with ELC No.426 of 2017 which was still subsisting.

6. The Court directed the parties to file their written submissions to both the applications dated the 26th February 2019 and the grounds of opposition dated the 3rd June 2019 wherein only the 4th Respondent complied.

4th Respondent's submission.

7. The Respondent's submission was to the effect that before filing of the present suit, there had been another suit filed by the Applicant in ELC No 426 of 2017 before the honorable Court. That the parties were the same, the issues as well as the subject matter being Nyandarua/Milangine 839, 831, 832 and 3952 were similar wherein the Court had delivered a ruling on the 12th April 2018.

8. That the present suit therefore offended the provisions of Section 6 of the Civil Procedure Act in that there is a pending suit being ELC No 426 of 2017 before the honorable Court involving the same parties herein and the same subject matter.

9. That the Applicant did not disclose the existence of the previous suit in her verifying affidavit as is required under the Civil Procedure Rules. That the present suit herein as well as the application should be struck out since it offended the mandatory provisions of the law. Reliance was placed on the decided case in **Edward R Ouko vs Speaker of the National Assembly & 4 Others [2017] eKLR**

10. The 4th Defendant submitted that the Court should frown at any attempt to circumvent justice. That instituting of a parallel suit had the effect of delaying justice at the expense of a party which had first filed the suit in Court. That the action by the Plaintiff/Applicant of filing the current suit, was an abuse of the Court process and the same should be dismissed to allow the earlier case to proceed to its conclusion.

Determination

11. After considering the submission herein and the Application before me, I

find the matter for determination as being whether the present suit is sub-judice ELC No. 426 of 2017.

12. The provisions of section 6 of the Civil Procedure Act provides for stay of suits as follows:-

“No Court shall proceed with the trial of any suit or proceedings 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 other Court having jurisdiction in Kenya to grant the relief claimed”.

13. The issue of this matter being sub-judice has been raised in the 4th Defendant/Respondent’s Ground of Opposition dated the 3rd June 2019 to the effect that the present suit was substantially in issue with Nyahururu ELC No. 426 of 2017 which is pending before Court.

14. I have gained sight of the ruling delivered in Nyahururu ELC No. 426 of 2017 where *the Plaintiff/Applicant in that case, the 4th Respondent herein, had sought for orders to restrain the 2nd Respondent, their servants, agents or anyone claiming under them or on their behalf from summoning her and her witness to appear before them to determine and indicate the proper position of the boundary dispute on plots No. Nyandarua/Milangine 829, Nyandarua/Milangine 831, Nyandarua/Milangine 832 and Nyandarua/Milangine 3952 pending the hearing and determination of an application she had filed in that case.*

15. In a ruling delivered on the 12th April 2018, the Court had held that the Land Registrar Nyandarua/Samburu County’s letter dated 8th August 2017 inviting the parties to the land site to hear the dispute on the boundaries could not be a substitute for a land Registrar’s determination under **Section 18(2) of the Land Registration Act**. Further that the Plaintiff/Applicant (4th Respondent herein) had ignored the said invitation and had rushed to Court which, was a premature move as the Court was without jurisdiction to determine boundary disputes until and after the Land Registrar’s pronouncement on the issue. The Application had been struck out with costs.

16. I note that the main bone of contention in the present matter as well as the matter in ELC No. 426 of 2017 arose after the sub-division of suit No. Nyandarua/Milangine 33 into five (5) portions of land. That thereafter the 4th Respondent’s Application in Nyahururu ELC No. 426 of 2017 had been struck out thereby allowing for a re-survey of the position of the boundary dispute on the resultant parcels of land being No. Nyandarua/Milangine 829, Nyandarua/Milangine 831, Nyandarua/Milangine 832 and Nyandarua/Milangine 3952.

17. I find that although the present application seeks interim orders against the Respondents herein, yet the issue in this suit is directly and substantially in issue in Nyandarua ELC No. 426 of 2017 and between the same parties.

18. It is trite law that where the test of sub-judice is established or met, that the latter suit should be stayed until the earlier suit is heard and determined.

19. To this end, I find that the appropriate order that commends itself for granting at this stage is to order and I hereby do order, that this suit shall forthwith be stayed pending hearing and determination of Nyahururu ELC No. 426 of 2017. The 4th Defendant/Respondent’s ground of opposition is herein allowed with costs.

Dated and delivered at Nyahururu this 21st day of September 2020.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE