



Bukera & 4 others v Telagen Investments Limited & another (Environment and Land Case E067 of 2023) [2023] KEELC 22017 (KLR) (30 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22017 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E067 OF 2023
EK WABWOTO, J
NOVEMBER 30, 2023**

BETWEEN

**HASNAIN ISMAEL BUKERA 1ST PLAINTIFF
FELIX ODUOR 2ND PLAINTIFF
JACKSON WANDERA 3RD PLAINTIFF
MARTIN MURAYA 4TH PLAINTIFF
SAUDA ALI MOHAMED 5TH PLAINTIFF**

AND

**TELAGEN INVESTMENTS LIMITED 1ST DEFENDANT
ECOBANK KENYA LIMITED 2ND DEFENDANT**

RULING

1. The 2nd Defendant filed a Notice of Motion application dated 19th June 2023 seeking the following orders:
 - a. That this Honourable Court be pleased to dismiss the Plaintiff's suit instituted by way of Plaint dated 17th February 2023 and filed on 22nd February 2023.
 - b. That the Respondents to bear costs of this Application.
2. The application was anchored on the assertion that there existed several other suits filed by the Plaintiffs, seeking similar orders and all pending final determination. As such, prayers sought that the Plaintiff's suit should be dismissed with costs for being sub-judice.
3. The 2nd Defendant filed written submissions dated 22nd August 2023 in which it was submitted that there exist several pending suits namely:



- i. ELC No E228 of 2022 where the 3rd Plaintiff sought declaratory orders of ownership of Unit A2 at Capital View Apartments and a permanent injunction restraining the 2nd Defendant from interfering with the suit.
 - ii. MCOM E360 of 2022 where the 4th Plaintiff sought declaratory orders of ownership of Unit B4 at Capital View Apartments.
 - iii. MCELC E265 of 2022(MCELC E003 of 2022) in which the 5th Plaintiff sought declaratory orders of ownership of Unit B2 at Capital View Apartments and a permanent injunction restraining the 2nd Defendant from interfering with the suit.
4. Relying on the Supreme Court case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others(Interested Parties-2020)*, it was argued that the Applicant had demonstrated sufficiently that issues pending determination before others courts were similar to the current suit.
 5. The Plaintiffs opposed the application vide grounds of opposition dated 25th July 2023 and Relying affidavits sworn by Felix Oduor and Hasnain Bukera dated 19th July and 20th July 2023 respectively. The 1st Plaintiff averred that in Civil suit 228 of 2022, the matter had been withdrawn on 16th December 2022 and therefore there existed no pending suit. Additionally, the grounds of opposition stated that:
 - i. The application is predicated upon Section 6 of the *Civil Procedure Act* which encompasses stay of proceedings and not dismissal of the suit
 - ii. There exists no pending suit filed by the 1st and 2nd Plaintiffs against the Defendant touching on the same issues.
 - iii. The cases referenced by the 2nd Defendant as filed by the 3rd, 4th and 5th Plaintiff are not between the same parties and the said cases are yet to be determined,
 6. I have considered the application and the rival submissions filed together with the cited authorities. The issue for determination is whether the application dated 19th June 2023 is merited.
 7. Section 6 of the *Civil Procedure Act* stipulates that:

“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.”
 8. Perusal of the pleadings confirm that the above-mentioned suits which are pending do touch on issue of ownership in part of Nairobi Block 93/1488 and the title/claim within the suit is most paramount and this may lead to a possible consequence of conflicting orders that may arise in other suits. The basic purpose and the underlying object of subjudice is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.
 9. Considering that there are other pending matters before the subordinate court it is not proper to stay this matter pending the determination of other matters before the subordinate court. The Plaintiffs herein ought not to have instituted this suit while they were aware that other suits pending for



determination. The same amounts to an abuse of the court process. In the circumstance's this court has no option but to strike out the current suit as instituted.

10. In the upshot, this make the following orders:

- i. This entire suit is hereby struck out.
- ii. Each party to bear own costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY OF
NOVEMBER 2023**

E. K. WABWOTO

JUDGE

