



**Wanjohi v Muriithi (Environment & Land Case 17 of 2022)  
[2023] KEELC 22465 (KLR) (20 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22465 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 17 OF 2022  
JO OLOLA, J  
DECEMBER 20, 2023**

**BETWEEN**

**MURAGE WANJOHI ..... PLAINTIFF**

**AND**

**BEN WANJUKI MURIITHI ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated 23<sup>rd</sup> November 2022, Ben Wanjuki Muriithi (the Respondent) prays for orders:
  - 1). That this Honourable Court be pleased to strike out the suit as it is vexatious, scandalous, frivolous and (an) abuse of the court process;
  - 2). That this Honourable Court lacks jurisdiction to entertain the suit on account being (that) there is another suit pending between the same parties and the same subject matter; and
  - 3). That the costs of this application be in the cause.
2. The application which is supported by an affidavit sworn by the Respondent's Counsel on record Nancy Ndiritu is premised on the grounds:
  - i). That the Applicant instituted a suit being MELC Case No E 030 of 2002 at Nyeri Chief Magistrates Courts;
  - ii). That the said case is still pending before the said court;
  - iii). That the issues raised in the pleadings herein are completely similar to the issues raised in the other case contrary to section 6 of the *Civil Procedure Act*;
  - iv). That the subject matter is the same in both cases being the parcel of land known as Nyeri/ Municipality Block 2/470; and



- v). That the suit is bad in law, vexatious, scandalous and frivolous and an abuse of the court process and the same ought to be dismissed with costs to the Respondent.
3. In addition to the Notice of Motion, the Respondent has also filed a Notice of Preliminary Objection dated the same 23<sup>rd</sup> day of November 2022 seeking to have the Originating Summons herein struck out on the grounds:
- 1). That the issues raised in the pleadings herein are completely similar to the issues raised in MELC Case No E 030 of 2022 contrary to Section 6 of the *Civil Procedure Act*, 2010;
  - 2). That the application as drawn is fatally defective, incontestably bad in law, incompetent, unsustainable and an abuse of the court process.
4. I have carefully perused and considered the Notice of Motion and the Notice of Preliminary Objection both dated 23<sup>rd</sup> November 2022. I have similarly perused and considered the submissions and authorities placed before this court by the Learned Advocates representing the parties herein.
5. By both the Motion and the Preliminary Objection, the Respondent objects to the Originating Summons filed herein by the Applicant on the ground that the same are offensive and an abuse of the court process as there is in existence a similar suit touching on the same subject matter and between the same parties that the Applicant herein had instituted in the Magistrates' Court.
6. In support of that position, the Respondent has attached to the Supporting Affidavit copies of a number of documents filed by the Applicant as the Plaintiff in Nyeri Chief Magistrates Court being MELC No E 030 of 2022.
7. As it were, I was unable to find any response to the averments made by the Respondent in the Motion by the Applicant- Murage Wanjohi. In his submissions filed herein on 20<sup>th</sup> June 2023, the Applicant appears to concede that he filed the suit in the Lower Court against the Respondent and two other parties. It is however his position that the issues raised in the two suits are different and that in any event, the suit filed in the Lower Court was withdrawn on 30<sup>th</sup> November 2022.
8. There was however no evidence placed before the court in support of the position that the suit in the Lower Court was withdrawn as stated in the Applicant's submissions. From a perusal of the Plaintiff attached to the Respondent's Supporting Affidavit, it was apparent that by the said suit, the Applicant herein had sued the Respondent herein as the 1<sup>st</sup> Defendant together with the County Government of Nyeri and the Land Registrar seeking for orders as follows:
- a). An order of permanent injunction restraining the 1<sup>st</sup> Defendant, his agents, servants and /or anybody else whatsoever or otherwise from entering and / or remaining or conducting any act whatsoever on the Plaintiff's LR No Nyeri/Municipality Block II/470 formerly Kiosk at Blue Valley (Type A) in Blue Valley;
  - b). An order directing the 3<sup>rd</sup> Defendant to expunge the name of the 1<sup>st</sup> Defendant from the register of the suit land LR No Nyeri/Municipality Block II/470 formerly Plot No 6 Kiosk (Type A) Blue Valley;
  - c). and (substitute) it with the Plaintiff's name (sic);
  - d). An order for general damages for trespass against the 1<sup>st</sup> Defendants; and
  - e). Costs of this suit plus interest.



9. A further perusal of that Plaintiff reveals that those prayers arise from the Plaintiff's contention that at all times material, he was the bonafide owner of the suit property herein after the same was transferred to himself in the year 1999. The Applicant as the Plaintiff denied ever transferring the land to the 1st Defendant whom he accuses of interfering with his peaceful use and occupation of the suit property.
10. From a perusal of the pleadings filed by both the Applicant and the Respondent herein in the Lower Court file, it was clear to me that, contrary to the Applicant's submissions, this suit and the one filed in the Lower Court revolve around the same parties over the same subject matter. It is the same parcel of land that the Applicant seeks to seize control of by his Plaintiff dated 19<sup>th</sup> May 2022. By the Originating Summons filed herein two months later dated 26<sup>th</sup> July 2022, he urges the court to declare that she is entitled to the same parcel of land by virtue of the doctrine of adverse possession.
11. As it were Section 6 of the [Civil Procedure Act](#) 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 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. As was stated by the Supreme Court of Kenya in [Kenya National Commission of Human Rights v The Attorney General & 17 others](#) [2020] eKLR.

“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.”
13. In the circumstance herein and given that there is a matter between the parties herein pending before the Chief Magistrates Court for determination regarding the same subject matter, I am persuaded that this matter was filed in abuse of the court process, and that the same is frivolous and vexatious.
14. The Originating Summons herein dated 26<sup>th</sup> July 2022 and filed in court on 26<sup>th</sup> September 2022 is accordingly hereby struck out with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023.**

In the presence of:

Mrs. Nderitu for the Defendant.

No appearance for the Plaintiff.

Court Assistant: Kendi.

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**J. O. OLOLA**

**JUDGE**

