



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.19 OF 2014**

**ESTHER NZINGO KALUME.....PLAINTIFF/RESPONDENT**

**=VERSUS=**

**1. STEPHEN JUMA**

**2. BAHATI KAHINDI JUMA.....DEFENDANTS/APPLICANTS**

**R U L I N G**

1. In his Application dated 11<sup>th</sup> August, 2015, the Defendant is seeking for the following orders:

**(a) THAT there be a stay of proceedings with this suit awaiting the hearing and determination of MOMBASA HCCC NO. 299 OF 2013 MASHA BIRYA DENA & 112 PLAINTIFFS-VS ESTHER NZINGO KALUME & 9 OTHERS.**

**(b) That the costs be in the cause.**

2. The Application is premised on the grounds that there is a similar suit pending in the Environment and Land Court at Mombasa being ELC No. 299 of 2013, Masha Biryra Dela & 112 Others Vs Esther Nzingo Kalume & 9 others where the Plaintiff herein is one of the Defendants.

3. In reply, the Plaintiff/Respondent deponed that upon her mother's demise, she took out letters of administration and proceeded to subdivide plot number 3843; that one of the plots that was curved out of the subdivision is subdivision number 6412 and that the Defendant has been in occupation of the said land as a licensee.

4. According to the Plaintiff, the Mombasa case has no relation with the current suit property because the said property was owned by his late father and administered by the Public Trustee.

5. It is the Plaintiff's case that the suit property in the Mombasa case was subdivided by the Public Trustee among his late father's six (6) wives and individual titles issued and that the Defendant is not part of the 111 Plaintiffs in the Mombasa case.

6. I have considered the submissions filed by both parties.

7. The suit in Mombasa ELC Civil Case No. 299 of 2013 is a representative suit. In the suit, the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs have sued 10 Defendants on behalf of 111 members of the Mtwapa Land Tenants

Association.

8. In the Plaintiff, the Plaintiffs have averred that they were at all material times tenants paying ground rent to the Defendant for Plot number 742/III/MN situated in Mtwapa after being allowed to build dwelling houses on the said plot.

9. The Plaintiffs' case in Mombasa ELC Civil Case No. 299 of 2013 is that the Defendants intend to evict them from plot number 742/III/MN.

10. In the said case, the Plaintiffs are seeking for a permanent injunction restraining the Defendants from evicting them from plot number 742/III/MN.

11. The Plaintiff herein is the 6<sup>th</sup> Defendant in the Mombasa case.

12. In her Replying Affidavit, the Plaintiff herein has admitted that Plot Number 742/III/MN initially belonged to her late father before the same was subdivided and distributed to his late father's wives, her mother being a beneficiary of plot number 3843.

13. The Plaintiff has further deposed that subdivided plot number 3843 was subdivided to create plot number 6412 which, according to the Plaintiff, is being occupied by the Defendant. According to the Plaintiff, she intends to transfer the said plot to one Nhaaman Shariff Onyango.

14. Having admitted that the suit property was part and parcel of plot number MN/III/742 which was owned by her late father, and considering that the Plaintiffs' case in Mombasa ELC Case No. 299 of 2013 is for a permanent injunction from being evicted from plot no. 742, which has since been subdivided, I find and hold that the issues raised in this suit are similar to the issues raised in Mombasa ELC Case No. 299 of 2013.

15. I say so because the Plaintiff herein is seeking to evict the 1<sup>st</sup> and 2<sup>nd</sup> Defendants from the suit property, the very act that the Plaintiffs are resisting in Mombasa ELC Case NO. 299 of 2013.

16. I have perused the list of the Plaintiffs who authorised the filing of Mombasa HCCC 299 OF 2013 and noticed that the 1<sup>st</sup> Defendant herein is indicated as Plaintiff number 111.

17. I am therefore in agreement with the Defendants' advocates submissions that the matter in issue in this suit is also directly and substantially in issue in Mombasa ELC Case No. 299 of 2013. The parties in this matter, with the exception of the 2<sup>nd</sup> Defendant, are also parties in Mombasa ELC Case No. 299 of 2013.

18. For those reasons, I find and hold that this suit is *res subjudice*.

19. Consequently, I allow the Application by the Defendants dated 11<sup>th</sup> August 2015 as prayed.

Dated and delivered in Malindi this 26<sup>th</sup> day of February, 2016

**O. A. Angote**

**Judge**