



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. E134 OF 2021

REGISTERED TRUSTEES OF TELEPOSTA PENSION SCHEME.....PLAINTIFF

=VERSUS=

BERNARD KARIUKI WATAARI.....1ST DEFENDANT

REBECCA LETANGULE.....2ND DEFENDANT

REMGUIS OKEYO.....3RD DEFENDANT

FAITH NJOROGI.....4TH DEFENDANT

JACQUELINE KEZIA.....5TH DEFENDANT

BEATRICE KALENDA.....6TH DEFENDANT

CATHERINE KIRARA.....7TH DEFENDANT

KENNEDY BWOSI.....8TH DEFENDANT

JENNIFER OKOTH.....9TH DEFENDANT

LAWRENCE MUGAMBI.....10TH DEFENDANT

PAUL M. GITAU.....11TH DEFENDANT

KEN M. SITIMA.....12TH DEFENDANT

RULING

1. By a plaint dated 15th April 2021, the Plaintiff seeks judgment against the Defendants jointly and severally for orders that the Defendants be directed and/or ordered to give vacant possession and/or vacate the suit premises i.e Houses Numbers 3B, 5A, 7A, 9A, 1B, 2B, 5B, 6B, 7B, 9B and 4a within sixty (60) days from the date of the order and in default an order for eviction to issue.

2. In response the Defendants filed a notice of preliminary objection dated 9th June 2021 on the following grounds:-

1. That the issues canvassed in the plaint support of the said orders sought are res subjudice the same being directly and substantially in issue between inter alia, the same parties herein in Civil Appeal 390 of 2019 and in Civil Appeal Application in CA 390/2019 pending the Court of Appeal in Nairobi wherein the court is yet to determine the rights of defendants to own premises they occupy and also determine whether well to issue a temporary injunction prohibiting the plaintiff from evicting the defendants herein pending the appeal.

2. That entertaining this suit will result in multiplicity of suits between the same parties and over the same subject matter which is an abuse of the court process.

3. That the defendants shall pray that the honourable court to strike out the plaintiff's plaint dated 15th April 2021 and dismiss this suit with costs to the defendants."

3. On the 26th July 2021, the court with the consent of the parties directed that the preliminary objection be canvassed by way of written submissions.

4. It is the Defendants/Applicants submission that this suit is *subjudice* because Civil Appeal No 390 of 2019 is pending in the Court of Appeal.

5. The Plaintiff/Respondent submissions is that the Defendants/Applicants have never prosecuted Civil Appeal No 39 of 2019. Further that there are no orders of stay of execution issued.

6. I have considered the preliminary objection and the rival submissions. The issue is whether the preliminary objection is merited.

7. The main ground is that the Civil Appeal No 390 of 2019 is pending the Court of Appeal.

8. I note that Civil Appeal No 390 of 2019 arises out of ELC 157 of 2016 as consolidated with ELC 381 of 2014. The parties were already heard before judgment was delivered. There are no orders of stay of execution.

9. In essence, there are no other proceedings pending before this court in respect of the parties herein. This suit is therefore not *subjudice*.

10. I find no merit in the preliminary objection and the same is dismissed with costs to the Plaintiff/Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 17TH DAY OF MARCH 2022.

.....

L. KOMINGOI

JUDGE

In the presence of:-

Ms Ikongo for Ms Mathenge for the Plaintiff

Ms Muhia for the Defendants

Steve - Court Assistant