



**Silanga Park Limited v Helicopter of Christ Church & 3 others ((sued in their capacity as the Chairman, Secretary and Treasurer of Helicopter of Christ Church)) (Environment & Land Case E147 of 2020) [2022] KEELC 2189 (KLR) (27 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2189 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E147 OF 2020**

**LN MBUGUA, J  
APRIL 27, 2022**

**BETWEEN**

**SILANGA PARK LIMITED ..... APPLICANT**

**AND**

**HELICOPTER OF CHRIST CHURCH ..... 1<sup>ST</sup> RESPONDENT**

**BISHIOP THOMAS WAHOME ..... 2<sup>ND</sup> RESPONDENT**

**GRACE MUTHONI ..... 3<sup>RD</sup> RESPONDENT**

**MARY NJERI ..... 4<sup>TH</sup> RESPONDENT**

**(SUED IN THEIR CAPACITY AS THE CHAIRMAN, SECRETARY AND  
TREASURER OF HELICOPTER OF CHRIST CHURCH)**

**RULING**

1. Before me is a notice of motion application dated September 25, 2020 filed by the Plaintiff as well as the notice of preliminary objection dated February 12, 2021 filed by Defendants.
2. The Plaintiffs are seeking the following orders in their application of September 25, 2020:
  1. Spent
  2. That this honourable court be pleased to grant interim order of injunction pending the hearing of this application interpartes.
  3. That this honourable court be pleased to issue a temporary injunction restraining the Defendant/Respondents by themselves, their servants, agents and/or employees from further interfering with the suit property, which stands on the parcel known as Title LR 209/21602, original number 209/11849, within Langata Estate and more specifically from putting up a



construction on the said plot and/or doing or committing any other acts of waste on the said suit parcel pending the hearing and determination of this suit.

4. That pending the hearing and determination of this suit, the Defendants/Respondents their servants and/or agents or otherwise howsoever be restrained from being or remaining or entering upon all that piece of Land LR 209/21602, original number 209/11849 within Langata Estate (“the suit property”).
  5. That an injunction restraining the Defendants/Respondents either by themselves, their employees, servants and/or agents from trespassing, alienating, charging, transferring, selling, dealing in any way with the suit or in other way interfering with LR 209/21602, original number 209/11849 within Langata Estate, until the hearing and determination of the main suit.
  6. That pending the hearing and determination of this suit, the Defendant/Respondents, their servants and/or agents or otherwise howsoever be ordered to demolish the structures they have erected on the suit premises at their own cost and vacate the suit premises immediately.
  7. That pending the hearing and determination of this suit, the Defendants/Respondents, their servants and/or agents or otherwise howsoever be ordered to remove the construction debris from the suit premises and vacate the suit premises immediately
  8. Costs in this application be awarded to the Plaintiff/Applicants.
3. The application is premised on the grounds in support of the application and on the supporting affidavit of Francis Nyamai Mwanzia who is the director of the Plaintiff. The Plaintiff avers that it is the registered owner of parcel LR 209/21602 original No 209/11849 measuring about 1.1100 hectares having obtained the lease from the Nairobi County Government.
  4. That sometime in September year 2018, the Defendant trespassed upon the suit parcel claiming to have a temporary occupation licence from Nairobi County Government and they proceeded to construct a church.
  5. The Applicants contend that the temporary occupational licence is fraudulent and that the Respondents have no legal justification to deal with the suit property.
  6. In response thereof, the Respondents have filed grounds of opposition as well as a Preliminary objection dated 12.2.2021. They argue that there exist other matters; that is CMCC No. 8808 of 2018 and another suit ELC No E031 of 2020 where parties and the subject matter are the same, that this court gave a ruling in this file for the two matters (ELC 147 OF 2020 and ELC E031/2020) to be consolidated but this has not been done.
  7. One Thomas Njuguna has also sworn a replying affidavit where he contends that the church has been in occupation of the suit premises since year 2002. That the church feeds and rehabilitates street children and to that end, the church has a temporary occupational licence.
  8. It is further averred that the suit land is Public land which is under electricity way leave. That on 9.6.2020, the Applicant came with a gang and vandalized and destroyed the properties of which some church staff were assaulted of which Applicant has 3 assault cases at Kibera Law Court.
  9. The Respondents contend that the title held by the Plaintiff is fraudulent.



## Determination

10. I have considered all the rival arguments including the submissions advanced by the parties. The issue for determination is whether either of the aforementioned application and the preliminary objection is merited.
11. Without any shadow of doubt, it is quite clear that the parties herein are trying to outsmart each other in the platform of litigation by filing not just various cases but various applications, counter applications and preliminary objections. However, even though there is certainly a case before the Magistrate Court No. 8808 of 2018, the Defendants herein have not availed the relevant particulars to enable this court to determine the matter on land.
12. I have nevertheless been able to peruse File No ELC E031 of 2020 where I discern that the subject property is the same as in the current suit. The gist of the Plaintiff's argument is that in ELC E031 of 2020, Francis Mwanzia was sued in his own personal capacity while in the current case No. 147/2020, Silanga Park Limited have sued in their own capacity as the owners of the suit land.
13. In *Republic v Paul Kihara Kariuki, Attorney general & 2 others exparte law Society of Kenya* [2020] eKLR, Mativo J stated as follows:
  - “ 17. With a large number of pending cases, the judiciary is overburdened and faces a stark lack of resources. In a situation like this, when two suits arising out of the same issues between the same parties are brought before the courts, there is bound to be wastage of resources and frivolous litigation. In order to correct this redundancy, there exists the doctrine of sub judice which is captured in section 6 of the *Civil Procedure Act*. [5] In a humble attempt to understand the principle and reasoning behind this doctrine and its application, I will attempt to analyse some salient features of the rule of sub judice.
  39. Abuse of court process creates a factual scenario where a party is pursuing the same matter by two-court process. In other words, a party by the two court process is involved in some gamble; a game of chance to get the best in the judicial process. [25] A litigant has no right to pursue pari-passu two processes, which will have the same effect in two courts at the same time with a view of obtaining victory in one of the process or in both. In several decisions of this court, I have stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process. [26] It matters not that the earlier suit was filed by the Branch of the LSK while the instant suit is filed by the main body.
  40. Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. [27] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.”



14. This court (Judge Eboso sitting) had already made an observation on 1.3.2021 that the company (read the Plaintiff) and its director are litigating on different platforms but in relation to the same suit property. The affidavit in support of the application at hand has been sworn by Francis Nyamai Mwanzia. Thus by and large, the actual person who is litigating for the company is Francis Nyamai. The current case therefore fits the description of abuse of the court process as set out in the aforementioned case of *Republic v Paul Kihara Kariuki, Attorney general & 2 others ex parte law Society of Kenya (supra)*.
15. This court has a Constitutional mandate to ensure that cases are heard expeditiously -see my ruling in *Lawrence Kinyua Mwai v Nyariginu Farmers Co. Ltd & another* [2019] eKLR. In that regard, I find that the appropriate orders to give is to direct the current Plaintiff to advance its claim of ownership in the suit which was filed earlier, that is ELC No E031 of 2020 instead of having two parallel suits running in same or different courts.
16. Taking into account that in both case No E147 of 2020 and E031 of 2020, there are orders for the two files to be mentioned together, having regard to the provisions of Order 10 rule (2) of the *Civil Procedure Rules* and considering that in both the aforementioned suits, the church has not properly sued or been sued as it has no such legal capacity, I deem it fit to give the following directions.
  - 1) The application dated 25.9.2020 and the entire suit No ELC. 147/2020 are hereby struck out with no orders as to costs.
  - 2) The Plaintiff in ELC E031/2020 is to file an amended plaint to:
    - (i) remove the church and bring the suit in the name of persons with legal capacity to sue.
    - (ii) Add Silanga Park Limited as 1st Defendant while the other Defendants shall be reflected as 2nd -6th Defendants.
  - 3) The Amended Plaint is to be filed and served within 21 days from the date of delivery of this ruling, failure to which the suit ELC.031/2020 shall stand as dismissed and the Plaintiff herein (Silanga Park) shall be at liberty to bring forth a fresh suit.
  - 4) A copy of this ruling shall be extracted and placed in File No ELC 031 of 2020.
  - 5) No orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF APRIL, 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Kiilu for the Plaintiff/Applicant

Mambo for the Defendants

Court Assistant: Eddel Barasa

