



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KITALE**  
**CIVIL SUIT NO. 17 OF 2011**

**MAURICE A. WANJALA..... PLAINTIFF**

**VERSUS**

- 1. ANNA WANYAMA WANJALA .....}
- 2. JOHN SIMIYU WEPUKHULIU.....}
- 3. ISAAC WAFULA WANAKACHA.....}
- 4. OMOTO DAVID (Alias OMOTO PHILIP).....}
- 5. SOLOMON WANYONYI KHAEMBA.....}
- 6. ABRAHAM CHENGE WEKESA.....}
- 7. PENINA MTONYI.....}
- 8. MARY AMBOGO.....}
- 9. NELLY SIKHOYA BALANGA.....}
- 10. ANNE NEKESA WEKESA.....}
- 11. JOTHAM SIMITA.....}
- 12. WYCLIFFE AIRO SIRIKWA .....} DEFENDANTS

**RULING**

The Applicants brought a Notice Of Motion seeking orders staying Kitale HCCC No. 17 of 2011 pending hearing and determination of Kitale HCCC No. 130 of 2012 formerly Bungoma HCCC No. 112 of 2010. The application is based on the Supporting Affidavit sworn by Anne Wanyama Wanjala on behalf of her co-Applicants. The deponent contends that she had filed an originating summons in Bungoma HCCC No. 112 of 2010 against the present Respondent in respect of the same suit property that is Waitaluk/Kapkoi Block 10/Kapkoi Sisal/152. She contends that this suit should be stayed pending hearing and determination of the originating summons which has since been transferred to Kitale and is pending as Kitale HCCC No. 130 of 2012.

The Respondent has opposed the application contending that the suit herein should not be stayed as the parties in the two suits are the same. The Respondent contends that the issues in the two suits are different. In the former suit, the present Applicant seeks a declaration that she is entitled to half of the land which is 10 acres on the ground that the property was acquired with the joint efforts of herself and the Respondent, whereas in the latter suit, the present Respondent seeks to evict the first Defendant who is the Plaintiff in the former suit as well as other eleven co-Defendants.

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 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:.***

There is no doubt that the subject matter in both suits is Plot No. LR Waitaluk/Kapkoi Block 10/Kapkoi Sisal/152. In the previous suit, there are two parties. The present 1st Applicant is the Plaintiff in the originating motion filed previously whereas the Respondent herein is the Defendant. In the present suit, the roles have changed in that the Plaintiff in the previous suit has now become Defendant and the Defendant has become Plaintiff. There are however more Defendants in the present suit.

The 1st Applicant herein, Anne Wanyama Wanjala who is common to the two suits is litigating in the present suit over a right of ownership in the suit property. Her co-Defendants. in the present suit are sued because they bought land from her. There is therefore a common interest between her and her co-Defendants. This common interest brings them within the purview of Section 6 of the Civil Procedure Act. It therefore follows that this suit ought to be stayed. I therefore order that Kitale HCCC No. 17 of 2011 shall be stayed until the hearing and final determination of Kitale HCCC No. 130 of 2012 formerly Bungoma HCCC No. 112 of 2010.

I make no order as to costs in respect of the Notice of Motion.

It is so ordered.

**Dated, signed and delivered in Open Court on this 26th day of June, 2013.**

**E. OBAGA**

**JUDGE**

In the presence of Mr. Ndarwa for Situma for Applicants and the Plaintiff/Respondent.

Court Clerk: Joan.

**E. OBAGA**

**JUDGE**

**26/06/2013**