



**Mutanga Investments Limited v Mimano & another (Environment and Land
Case Civil Suit 23 of 2021) [2022] KEELC 3628 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3628 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND CASE CIVIL SUIT 23 OF 2021**

**JO OLOLA, J
MAY 19, 2022**

BETWEEN

MUTANGA INVESTMENTS LIMITED PLAINTIFF

AND

IAN MBUGUA MIMANO 1ST DEFENDANT

JULIUS MACHARIA MWANGI 2ND DEFENDANT

RULING

1. By a Notice of Motion dated November 15, 2021 (the 1st Application), Mutanga Investments Limited (hereinafter the Plaintiff) prays for temporary order of injunction to issue restraining the two Defendants from in any way dealing with the suit property known as LR No 6380/3, Nyeri Municipality pending the hearing and determination of this suit.
2. The 1st application which is supported by an Affidavit sworn by the Plaintiff Company's director Rose Mumbi Mimano is premised on the grounds that:
 - (i) The Plaintiff is the registered owner of the suit land and the Defendants have no interest therein;
 - (ii) The Defendants have forcibly and unlawfully taken possession of the suit land and excluded the Plaintiff's agents therefrom; and
 - (iii) The Plaintiff has suffered and continues to suffer great loss due to the said acts by the Defendants which loss may become inextricable and uncompensable due to the substantial developments on the suit land.
3. In response to the 1st application, Ian Mbugua Mimano (hereinafter the 1st Defendant) instituted a Notice of Motion dated November 22, 2021 (the 2nd application) praying for an order that this suit be struck out for being an abuse of the Court process. In the alternative, the 1st Defendant prays for



an order that this suit be stayed and/or consolidated with Nairobi Milimani High Court Commercial and Tax Case No E618 of 2021.

4. The 2nd application which is supported by an affidavit sworn by the 1st Defendant is premised on the grounds that:
 - (i) There is a pending suit before Nairobi Milimani High Court commercial and Tax Division COMM/E618 of 2121 between the Plaintiff and the 1st Defendant over the same subject matter;
 - (ii) Both suits seeks the same prayers and it is unfair and unjust for the Plaintiff to file a similar suit;
 - (iii) The Plaintiff's action is deliberately geared towards ridiculing this Courts to arrive at two different and conflicting orders; and
 - (iv) It is also not fair and a waste of judicial time for the same case to be tried in Nairobi and Nyeri and the same exposes the 1st Defendant to unnecessary waste of time and resources by having him defend himself twice in the same matter.
5. I have carefully perused and considered the two applications one filed by the Plaintiff and the other filed by the 1st Defendant as well as the responses thereto. I have similarly perused and considered the rival submissions and authorities placed before me by the Learned Advocates acting for the parties. The 2nd Defendant neither entered appearance nor did he participate in the proceedings.
6. By the 1st application dated November 15, 2021, the Plaintiff Company prays for a temporary order of injunction to restrain the two Defendants from dealing with all that parcel of land known as LR No 6380/3 situated within Nyeri Municipality pending the hearing and determination of this suit.
7. In response to the said 1st application, the 1st Defendant has vide the 2nd application dated November 25, 2021 raised a preliminary issue to the effect that there is another suit being Nairobi Milimani HCCC E618 of 2021 pending between the parties over the same parcel of land. It is therefore the 1st Defendant's case that the suit herein is an abuse of the Court process and that the same ought to be struck out, stayed and/or consolidated with the Nairobi suit which was earlier in being instituted.
8. The 2nd application is premised on the provisions of Section 6 of the [Civil Procedure Act](#) which provides thus:

“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 proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.
9. The Plaintiff while admitting the existence of the previous suit instituted in Nairobi vide their plaint dated June 4, 2021 submits that the issues in the previous suit are not the same ones directly and substantially in issue in the present suit. The Plaintiff asserts that while the previous suit revolves around the directorship and running of the Plaintiff Company, the present suit concerns title and possession of the suit land.
10. The Plaintiff further submits that this Court has exclusive jurisdiction to handle matters relating to land as well as occupation and use thereof. That the Nairobi Court lacks that jurisdiction and whether or not the 1st Defendant is decreed as one of the Plaintiff's directors, such a finding would not affect the ownership and possession of the suit property.



11. The pleadings in Nairobi High Court Commercial and Admiralty Division Civil Case No E618 of 2021 have been annexed to the 1st Defendant's Supporting Affidavit as Annexure 'A'. A perusal thereof reveals that the Plaintiff prays for Judgment therein against the 1st Defendant named therein as Ian Mbuthia Mimano and another Defendant by the name B M Security for the following:-
- (a) A declaration that the 1st Defendant ceased being a director of the Plaintiff Company on December 4, 2015;
 - (b) A permanent injunction restraining the Defendants, their servants and/or agents or anyone acting on their behalf from managing, running and interfering in any manner whatsoever with the day to day management of the Plaintiff and the Farm;
 - (c) General damages;
 - (d) Costs of the suit; and
 - (e) Interest at Court rates on (c) and (d) above.
12. The basis of those prayers can be discerned from Paragraphs 4 to 6 and 13 to 15 of the plaint wherein the Plaintiff pleads as follows:
4. The Plaintiff Company runs and manages a coffee farm otherwise known as Kirimara Coffee Farm ("the Farm").
 5. By a resolution passed on December 4, 2015, the 1st Defendant was removed as a Director of the Plaintiff. The basis for his removal was the 1st Defendant's actions of threatening and attempting to take control of the Plaintiff Company and its businesses.
 6. The Plaintiff avers that despite the 1st Defendant's removal as director he continues to fraudulently misrepresent himself as a Director of the Applicant and interfere with the management of the Plaintiff Company and more specifically the Farm.
 13. In addition, on May 21, 2021 the Defendant purportedly hired security guards from the 2nd Defendant to guard the Farm which is run and managed by the Plaintiff Company.
 14. The Plaintiff further avers that the 1st Defendant also terminated the services of the current Farm Manager Beatrice Wanja Murage and replaced her with one Peter Muiruri whose services had been suspended on account of theft.
 15. The 1st Defendants actions have caused confusion and have interfered with the smooth running and management of the affairs of the Plaintiff Company exposing it to losses, unnecessary expenses and damage to its reputation.
13. From the foregoing, it was apparent to this Court that the previous suit filed in Nairobi relates not only to the directorship of the Plaintiff Company but more particularly the running and management of the Farm known as Kirimara Coffee Farm or Estate. While the pleadings in the Nairobi case do not specify where the said Farm is located, the Plaintiff's Director Rose Mumbi Mimano avers at Paragraphs 2 and 3 of the Supporting Affidavit to the 1st Application as follows:
2. That the Applicant Company is the registered proprietor of the parcel of land LR No 6380/3, situated in Nyeri Municipality and measuring 103.8 Hectares ("the suit land" as per the certificate of title annexed hereto and marked R 1").
 3. That on the suit land is a Coffee farm and other farming activities known as Kirimara Coffee Estate owned and ran by the applicant company.



14. That being the case it was clear to me that the same Farm whose running and management is the subject of the previous suit filed in Nairobi is one and the same as the parcel of land in dispute herein. That this suit has been actuated by the same issues of running and management of the Farm can be discerned again from Paragraphs 6, 7 and 8 of Ms Mimano's Supporting Affidavit in which she avers as follows in support of the 1st application:
6. That without the authority of the Applicant Company, the Respondents have forcibly entered and remained in the suit land, ejected the Applicant Company's employees therefrom and practically taken over the suit land and the developments therein;
 7. That to sustain the said acts, the Respondents have forcibly kept away the directors, shareholders and employees of the Applicant Company from the suit land;
 8. That the Respondents have even installed security guards at the suit land from a security farm known as BM Security, without the knowledge or authority of the Plaintiff with the main aim of keeping away the Plaintiff's agents.
15. Those averments are repeated in general in the plaint dated the same November 15, 2021 wherein the Plaintiff herein prays for Judgment against the Defendants for:
- (a) A declaration that the Plaintiff is the registered proprietor of the suit property known as LR No. 6380/3 (and) has all the rights and privileges conferred by such registration;
 - (b) A declaration that the Defendants have no interest in the suit property known as LR No 6380/3 and they are trespassers thereat;
 - (c) A perpetual injunction restraining the Defendants, their agents and/or servants from interfering with the Plaintiff's dealings with, use, occupation or possession of the suit land LR No 6380/3.
 - (d) Costs and interests.
16. In the circumstances herein I was more than persuaded that the two central issues in both the previous suit filed in Nairobi and this present one is the tussle involving the directorship of the Plaintiff Company and the Management of LR No 6380/30 wherein is established the Kirimara Coffee Farm aka Kirimara Coffee Estate. The issues therein are so closely intertwined and directly and substantially in issue in both suits that one cannot escape the conclusion that this second suit was filed in abuse of the Court process.
17. As Mativo J observed in *Republic v Paul Kihara Kariuki the Attorney General & 2 Others Ex-parte Law Society of Kenya* (2020) eKLR:

“Abuse of the Court process creates a factual scenario

where a party is pursuing the same matter by a 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. A litigant has no right to pursue paripassu two processes, which will have the same effect in two cases at the same time with a view of obtaining victory in one of the processes or in both. In several decisions of this Court, I have stated that litigation is not a game of chess where the 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 positions clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of the Court process/legal process ...”



18. As it were, this Court has an inherent jurisdiction to protect itself and its processes from being abused. The Court has a greater duty to maintain its integrity and the system of administration of justice. If this suit and the 1st application were to be allowed to proceed on the same issues directly and substantially pending in the previous suit, there is a great risk of coordinate Courts granting conflicting orders to the embarrassment of all.
19. It offends the doctrine of sub-judice whose purpose and underlying object is to prevent the Courts of concurrent jurisdiction – from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, same subject matter and the same relief. It cannot be allowed to stand any more. It is struck out as demanded by the 1st Defendant.
20. The 1st Defendant shall also have the costs of both applications.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 19TH DAY OF MAY, 2022.

In the presence of:

Mr. C. M. King'ori for the Plaintiff

No appearance for the Defendant

Court assistant - Kendi

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J. O. OLOLA

JUDGE

