



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC SUIT NO. 96 OF 2012

EZEKIEL KIPKOECH RONO.....1ST PLAINTIFF

REUBEN CHERUIYOT YEGON2nd PLAINTIFF

VERSUS

JOHN KIPNGETICH KOECH DEFENDANT

RULING

The applicants filed a Notice of Motion dated **14th May, 2013** seeking that the proceedings pending the hearing and determination of **NAKURU HC MISC APPLICATION NO. 6 OF 2012(JR)**

The application is supported by the affidavit of Rueben Cheruiyot Yegon and is premised on the grounds;

1. That the suit herein seeks declaratory and prohibitory orders over parcel **No. Cis Mara/ Ilmotiok/195**, previously registered in the name of the plaintiffs and the defendant
2. That during the subsistence of this case, filed in the year 2004, the defendant fraudulently caused the disputed land to be subdivided and new titles issued.
3. That the subdivision took place in the year 2006 and the plaintiff did file **JR No.6 of 2012** challenging the subdivision.
4. That the said case is scheduled to be heard on 11th July, 2013.
5. That since the subject property is no longer in existence, it is prudent to await the outcome of the judicial review application so as to revert the land back to its original position.

A replying affidavit was filed in opposition to the application. The same was sworn by the defendant.

In a nutshell, the plaintiff states that during the pendency of this suit, the defendant went ahead and subdivided the suit land thereby rendering the prosecution of this suit a vain venture. The subdivision is alleged to have been done fraudulently. Upon discovering the same the plaintiffs instituted judicial review proceedings; being **JR No.6 of 2012** seeking the reversal of the sub-division process. According to them; should they succeed the substratum of this suit will be restored.

According to the defendant, he disagrees with the plaintiff's position. The plaintiffs should withdraw the suit, he says. Additionally the plaintiffs had been dragging their feet in prosecuting this matter and by now seeking to stay the proceedings, they are abusing the court process.

I note that parties have largely complied with discovery as required by the rules. This court has got inherent jurisdiction to stay proceedings when it considers that the interests of justice demand so; I have been informed of the judicial review proceedings and I think that the interests of justice demand that I exercise my discretion and stay those proceedings; at any rate I do not see what prejudice will be suffered by the defendants. Consequently, I direct that this proceedings be stayed until the conclusion of **JR No.6 of 2012**.

Costs of this application will be in the cause.

Dated Signed and delivered in open court this 20th day of September 2013.

L N WAITHAKA

JUDGE

Present

Mr Morindant for the plaintiffs

N/A for the defendants

Stephen Mwangi : Court Clerk

L N WAITHAKA

JUDGE