



REPUBLIC OF KENYA



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**Waweru & another (as trustees of Kihinganda Self Help Group) v Kakuzi Limited & 3 others
(Environment & Land Case 18 of 2021) [2022] KEELC 2324 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 2324 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 18 OF 2021**

LN GACHERU, J

MAY 12, 2022

BETWEEN

**ISAAC NJOROGE KARIUKI, DAVID MAINA NGURE, PRISCAH WANGUI
WAWERU 1ST PLAINTIFF
JONES GACHIE G NGURE 2ND PLAINTIFF
AS TRUSTEES OF KIHINGANDA SELF HELP GROUP**

AND

**KAKUZI LIMITED 1ST DEFENDANT
CHIEF LAND REGISTRAR 2ND DEFENDANT
DIRECTOR OF SURVEYS 3RD DEFENDANT
NATIONAL LAND COMMISSION 4TH DEFENDANT**

RULING

1. Vide a Notice of Motion Application dated 17th September 2021, the 2nd Defendant sought orders; -
 - i. That this Honorable Court does not have jurisdiction to deal with ELC No. 18 of 2021 Isaac Njoroge Kariuki, David Maina Ngure, Priscah Wangui Waweru (as trustees of Kihinganda Self Help Group) and Jones Gachie G Ngure Vs Kakuzi Limited, Kakuzi PLC, The Chief Land Registrar, The Director of Surveys and the National Land Commission.
 - ii. That this Honorable Court be pleased to strike out the Plaint dated 21st June, 2021 and filed in this Court on 23rd June, 2021
 - iii. That costs of this application be in the cause.



- 2 The application is premised on the grounds stated on the face of Application and the Supporting Affidavit of Denis Gitaka, the 2nd Defendant's Legal Manager, sworn on the 17th September, 2021. It is the Applicant's contention that the Plaintiffs' filed a claim with the Interested Party vide claim No. NLC/ HLI/049/2017, but the Applicant moved the Court in Malindi ELC Constitutional Petition No. 11 of 2020 formerly Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others, to quash the proceedings in National Land Commission Act and to challenge the Constitutionality of some provisions of National Land Commission. That National Land Commission vide NLC/ HLI/049/2017, issued directives against the 2nd Defendant which prompted the 2nd Defendant, to institute Judicial Review proceedings in Nairobi JR ELC NO. 4 of 2020 (formerly JR Misc Number 94 of 2019). That the Court in the foregoing case stayed the directives of National Land Commission and therefore, entertaining the current suit would result in subjudice. It is the Applicant's disposition that this Court has no jurisdiction to entertain the matter since the issues raised in the present suit can be addressed in the already filed suit. Further that the suit is time barred as it was filed beyond the statutory period of 12 years with no reason put forward for the delay.
- 3 The Motion is contested. The Plaintiffs filed a Replying Affidavit sworn by Isaac Njoroge Kariuki on the 12th October, 2021. It is the Plaintiffs' disposition that the instant suit is on customary trust and the issues raised therein are not related to the suits highlighted by the Applicant which is on constitutionality of Section 15(3)(b)(i) of the National Land Commission Act. Also that the Plaintiffs are not proper parties to the suit and any orders issued in the proceedings affected the Respondents and is thus not subjudice to the Plaintiffs. Additionally, the Plaintiffs affirm that they have never instituted any suit against the Applicant and the instant suit is in no way an abuse of the process of Court. The Plaintiffs detailed the circumstance of how their grievances landed at the National Land Commission, that after the establishment of Commission of Administration of Justice (C.A.J) established to independently examine unresolved public complaints, their complaint was referred to National Land Commission for determination of their resettlement. That the same was resolved, but the Applicant failed to comply with the directives of National Land Commission prompting the instant suit. That the provisions of Section 7 of the Limitation of Actions Act do not apply, since the Plaintiffs are in occupation of the suit property.
- 4 That this Court has jurisdiction to hear and determine the issues raised in their Plaint and fraud having been discovered in 2018, Limitation of action accrued then, thus the suit is not statutory barred.
- 5 The Applicant filed a Further Affidavit sworn by Denis Gitaka on 21st January, 2022, and maintained that the instant suit in directly and substantially an issue in Nairobi JR ELC 4 of 2020, NLC/ HLI/049/2017 Malindi ELC Constitutional Petition No. 11 of 2020 formerly Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others. Further, that the allegation of customary trust stems from the issue of historical injustices, which features in the claim at National Land Commission. The Applicant avers that the Plaintiffs are parties in the aforementioned cases as claimants and Interested Parties contrary to the Plaintiffs' dispositions. The Applicant asserts that the Judicial Review proceedings seeks to quash the recommendations of National Land Commission, which is the substance of the instant suit, therefore, the suit as it is subjudice and this Court lacks jurisdiction to sustain it. Moreover, the issue of fraud in the present suit does not alter the substance of the foregoing cases and the filing of this suit is an abuse of the process of Court. On being statutory barred, the Applicant maintains that the injustices complained off occurred in 1885, and at the time of the filing of the suit, 12 years had since lapsed.
- 6 The Applicant filed its submissions on the 8th February 2022, and crafted five issues for determination by this Court. On sub-judice, the Applicant maintains that the suit as filed by the Plaintiffs is subjudice as evident by paragraph 8 of the Plaint, which indicates that the claim is based on historical land



injustices over the suit property which was the subject matter and claim in NLC/ HLI/049/2017. That the substance of the two cases is similar and invites this Court to the meaning of subjudice in *Thiba Min. Hydro Co. Ltd vs. Joseph Karu Ndwiga* (2013) eKLR, where the trial Court observed that to determine that a suit is subjudice, a court will look at the substance of it and not the way the suit is framed.

7. The Applicant submits on the facts founding other suits and seeks this Court to find that the substances of the cases are similar to the instant suit. The Applicant invited this Court to consider the Murang'a Petition No 5 of 2020; - *Kakuzi Division Development Association vs the Hon Attorney General & 2 Others*, where the Court found that the Petition was sub judice on account of similar proceedings in National Land Commission and other Courts. It is the Applicant's further submissions that the suit is sub-judice for the further reason that the parties in all the suits are the same, that the Plaintiffs are the complainants in NLC/HLI/049/2017, the genesis of Nairobi JR ELC No. 4 of 2020, and interested parties in Malindi ELC Constitutional Petition No. 11 of 2020 formerly Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others.
8. Further, the Applicant submits that the suit property is similar in all the cases being L.R No. 11674, that despite alleging issues of fraud, the subject matter remains the same. On whether the suit is time barred, the Applicant submits that the suit offends the provisions of Section 7 of the *Limitation of Actions Act* on the precincts that the same was filed over a century when the course of action arose in 1885/ 1966. Reliance was placed on the case of *Kenya National Chamber of Commerce & Industry (Murang'a Chapter) & 2 Others vs. Delmonte Kenya Limited & 3 Others* (2020) eKLR, where the Court found that the claim on historical injustice brought beyond 1980 was statutory barred. That even if fraud was to be challenged, the same is still time barred for want of compliance with Section 4(2) of the *Limitation of Actions Act*, on requirement that suits based on tort be brought within three years.
9. The Applicant invited the Court to the findings in *Moffat Muriithi Muchai (suing on behalf of the Estate of the Late Milka Njoki Muchai (Deceased) Vs Wanjiru Wanjohi Gatundu & 2 others* [2019] eKLR, where the Court found that the suit was time barred. That this Court should be guided by the intent of the *Limitation of Actions Act* as was found by the Court in *Dickson Ngige Ngugi vs Consolidated Bank Ltd (Formerly Jimba Credit Corporation Limited & another* [2020].
10. On whether the Applicant will suffer prejudice, the Applicant submits that the Plaintiffs will suffer no prejudice as they are by law allowed to introduce the issue of fraud in the pending suits. That the Plaintiffs are guilty of multiplicity of suits and invites the Court to find so by relying on a number of cases to buttress his claim.
11. On jurisdiction, the Applicant submits that the Court cannot entertain the suit for being sub judice. The Applicant relied on a litany of cases in submitting that this Court has no jurisdiction.
12. The Plaintiffs filed their submissions on the 18th January, 2022, and submitted that on the 20th June 2018, they found out actions of fraud perpetrated by the Applicant and moved Court to challenge the same. That a claim for recovery of land may be brought within 12 years under the *Limitation of Actions Act*, and in cases involving fraud, time starts running from the time fraud is discovered. However, the time maybe extended as provided for under the Act. The Plaintiffs maintain that their suit has been brought on time and invites the Court to a number of cases, *Chemitei Kandagor v Job Kipnandi Chebon & 4 others* [2021] eKLR, and *Edward Moonge Lengusuranga -Vs- James Lanaiyara & Anor* (2019) eKLR, where the Court found that time begins to run from the time fraud is discovered and that allegations of fraud are to be ascertained in trial. That to establish whether the same is time barred, the Court should establish the case before Court and in cases of fraud, the same can only be established once the matter is set down for hearing and cited four cases that should guide this Court. The Plaintiffs



submits that Section 7 of the Limitation of Actions Act should not be read in isolation but should be read with the provisions of Section 13 of the Environment and Land Court Act, as well as Articles 162(2) (b) and 159 (2) (d) of the Constitution and consider that a suit may be brought outside the statutory period.

13. It is the Plaintiffs' submissions that striking out the pleadings on the basis of abuse of the process of Court cannot be granted, unless this Court considers whether the Plaintiff raises triable issues which can only be established through a hearing. Reliance was placed on the case of Ramji Megji Gudka Limited vs Alfred Morfat Omundi Michira & 2 Others [2014] eKLR, where the Court observed the need for caution when dismissing cases on the basis of an abuse of the Court process. Further that they have the Constitutional right to institute a suit and the Court ought to hear and determine the matter. It is their further submissions that they are not parties in the aforementioned suits as the Party sued is not a juridical entity and is not a registered one and even so, they are not privy to the proceedings in the Malindi case and moreover they have never filed any suit against the 1st and 2nd Defendants. The Plaintiffs in their submissions alleged that they have been in occupation of the suit land and continued to be so, even when the land was registered in the name of the Applicant in 1966 and their claim over the land was distinguished by application of Section 7 of Limitation of Actions Act, an intimation of a claim for adverse possession.
14. Both parties filed supplementary and further submissions. The Applicant filed their further submissions on the 15th February 2022, reiterating their case and adding that they erred in their pleadings in Malindi ELC Petition 11 of 2020, by indicating Kihinganda Self Help Squatters in place of Kihinganda Self Help Group, which is the Plaintiffs.
15. The Plaintiffs filed their Supplementary Submissions on February 11, 2022. The Plaintiffs maintained that they are not party to any suit alleged by the Applicant and no evidence has been placed before this Court. Further that the Applicant has not met the criteria for establishing the principle of sub-judice and the application cannot be sustained.
16. To properly determine the matter, it is important to know the genesis of the suits referred to by the Applicant. What flows from the pleadings is that there are a number of cases touching on the subject property:
 - a. NLC/HLI/049/2017, the Plaintiffs presented a claim to NLC being and upon hearing the claim, NLC issued recommendations as enumerated in Page 79 of the Applicant's Motion, where the Commission stayed the hearing of several claims for historical injustices, pending the hearing and determination of a suit in the High Court. It gave further orders that Kakuzi LTD do surrender all public land with public utilities.
 - b. Nairobi JR ELC No. 4 of 2020: The Applicant moved the High Court to quash the decision of National Land Commission.
 - c. Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others, the Applicant moved Court to challenge the Constitutionality of the provisions of Section 15(3)(b)(i) of National Land Commission Act, and quash the decision of National Land Commission. The matter was later transferred to Malindi ELC Constitutional Petition No. 11 of 2020.
 - d. Nairobi ELC No. 21 of 2020 (formerly Nairobi Petition No. 167 of 2019;- Kakuzi Division Development Association vs Attorney General & 2 Others the Petitioner moved Court for implementation of the second limb of National Land Commission recommendations, but was stayed pending the outcome in JR N. 4 of 2020.



17. What is not clear is the current status of the foregoing cases; undisputedly the subject matter of the suits is ownership of the parcel of land which is the subject of the present suit.
18. Having analyzed the application, the annexures thereto, the response and the submissions, the issues for determination by this Court are:
 - i. Whether the instant suit is subjudice to NLC/ HLI/ 049/2017, Malindi ELC Constitutional Petition No. 11 of 2020 and Nairobi JR ELC no. 4 of 2020
 - ii. Whether the suit is statutory barred
 - iii. Whether the suit should be dismissed
 - iv. Who should bare costs for the application.

(i) Whether the instant suit is subjudice to NLC/ HLI/ 049/2017, Malindi ELC Constitutional Petition No. 11 of 2020 and Nairobi JR ELC No. 4 of 2020.

19. The Applicant has given an analogy of the various suits concerning the suit property and maintains that the instant suit revolves around the aspect of historical injustice, which is the subject matter in the in the aforementioned suits, which suits are before Courts of competent and concurrent jurisdiction. That as a result thereof, this Court is ripped off the jurisdiction to entertain the instant suit for being sub-judice.
20. The principle of sub-judice is enunciated under Section 6 of the Civil Procedure Act which provides that:

“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.
21. The Supreme Court in Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR held:

A party that seeks to invoke the doctrine of sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.
22. Similarly, the Court in Edward R. Ouko Vs Speaker of the National Assembly & 4 others [2017] eKLR, reiterated the foregoing and couched the principles as hereunder;
 1. There must exist two or more suits filed consecutively.
 2. The matter in issue in the suits or proceedings must be directly and substantially the same.
 3. The parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title.
 4. The suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.



23. The purpose of it is to avoid the multiplicity of cases and it is the reason parties filing a suit are expected to make averments that there is no other suit pending between the parties.
24. As analyzed above, there are at least three suits in Courts of competent and concurrent jurisdiction concerning the suit property. What needs to be established is whether the suit is between the parties herein or that instant matter is directly and substantially an issue in the other cases. As rightly put in the Thiba Min Hydro Co. Ltd Case, supra that it is not the form in which the suit is framed that determines whether it is sub judice, rather it is the substance of the suit.
25. It is uncontroverted that the 1st Plaintiff filed a claim of Historical injustices at National Land Commission, but the claim was stayed by the Commission. The Applicant filed Judicial Review proceedings in Nairobi JR ELC No. 4 of 2020, to quash the decision of National Land Commission which the Plaintiffs were not party to. The Applicant also instituted a Constitutional Petition being Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others, which was transferred to Malindi being Malindi ELC CP No. 11 of 2020, where the 1st Plaintiff was an interested Party.
26. In the instant suit, the Plaintiffs lays a background of their claim over the suit property, which culminates from allegations of historical injustices and makes a case for customary trust between them and the 1st and 2nd Defendants. Further, the Plaintiffs aver that the Interested Party herein made a recommendation that any lease in favor of the 1st and 2nd Defendants should not be renewed until the claim for historical injustice is heard and determined. Despite this, the 1st and 2nd Defendants fraudulently issued title to Jones Gachie G Ngure, thereby making a case for allegations of fraud as enumerated in paragraphs 44 and 49 of the Plaint. The substance of the case and the prayers made out in paragraph 55 of the Plaint lay a basis for determination of allegations of fraud and irregular land allocation. Additionally, it also lay a basis for determination of Customary trusts as alluded to in paragraphs 31, 32 & 34 of the Plaint.
27. The Applicant avers that the suit is sub judice by dint of the National Land Commission claim filed by the Plaintiffs which is a culmination of the various cases filed in the subsequent Courts. National Land Commission is a creature of *the Constitution* under Article 67 whose powers and functions are derived under Article 67(2) and Part II of The *National Land Commission Act*. The functions of National Land Commission include;
- i. To manage public land on behalf of the national and county governments;
 - ii. To recommend a national land policy to the national government;
 - iii. To advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;
 - iv. To conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;
 - v. To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;
 - vi. To encourage the application of traditional dispute resolution mechanisms in land conflicts;
 - vii. To assess tax on land and premiums on immovable property in any area designated by law; and
 - viii. To monitor and have oversight responsibilities over land use planning throughout the country.



- 28 Relevant to the application is National Land Commission's function to (I) To initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress which is done in accordance to Section 15 of the [National Land Commission Act](#). There have been various suits filed on the Constitutionality of Section 15 of National Land Commission and regarding the instant suit is Malindi ELC Constitutional Petition No 11 of 2020 formerly Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others.
- 29 The Applicant in its submissions in page 6 submits that their application to consolidate their Constitutional Petition 11 of 2020, with Petition No.19 of 2016, was dismissed and they are in the process of re-transferring the file back to Nairobi. The Court has had the chance of perusing Malindi Petition 19 of 2016; - Malindi Law Society v Attorney General & 2 others [2020] eKLR and has noted from the ruling of the Court of 28th February, 2020, that the application for consolidation was dismissed. Further, from the attached copy of ruling of the Court on pages 58 to 76 of Applicant's application in Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others, the Court allowed the applicant to transfer the suit to Malindi ELC for determination, which resulted in Malindi ELC Constitutional Petition No 11 of 2020. It is important to note that the Court in Malindi Petition No. 19 of 2016, consolidated with Petition No. 291 of 2016 rendered its judgment on 29th October, 2021, which made orders among others "A declaration is hereby made that sections 38, 48, 61 and 98 of the Land Laws (Amendment) Act 2016 did not violate any article of [the Constitution](#) and the same are hence valid and Constitutional."
- 30 The National Land Commission's claim by the Plaintiffs was stayed pending the hearing and determination of the High Court case and a look at the Gazette Notice at page 79, does not indicate the particular case that stayed the hearing of the claim. However, a reading of the application indicates that the claim was stayed pending the hearing of Malindi ELC Constitutional Petition No 11 of 2020 formerly Nairobi Constitutional Petition No. 255 of 2018 Kakuzi PLC vs. NLC & Others. The suit is a Constitutional Petition, while the instant suit is on allegations of fraud, customary trust and based on the prayers of adverse possession.
- 31 The Plaintiffs have raised issues of fraud in the present case which allegation have grave forbearance. The Court of Appeal when determining issues of fraud in Kisumu Civil Appeal No. 3 of 2017 [Mellen Mbera v James Theuri Wambugu](#) [2020] eKLR, quoted with approval the case of [Vijay Morjaria v Nansing Madbusingh Darbar & Others](#) [2000] eKLR (Civil Appeal No 106 of 2000), where the Court rendered itself on the issue of fraud as follows: -
- "It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts."
- 32 The issues raised in Malindi ELC Constitutional Petition No. 11 of 2020, is on constitutionality of National Land Act while in Nairobi JR ELC No. 4 of 2020, the Applicant seeks to quash the decision of National Land Act. In all these cases, the bond of contention is land, but the issues raised in the suits are not the same or directly in issue.
33. The issues of fraud have to be dealt with by production of evidence, which cannot be well articulated in the Constitutional or JR proceedings. This Court takes cue from reasoning of the Court in [Republic vs.](#)



Land Registrar Taita Taveta District & Another [2015] eKLR and associates itself with the sentiments that:

“The Judicial Review Court is particularly ill-equipped to deal with disputed matters of facts where, as in this case, it would involve fact finding on the issue of fraud which requires proof to a standard higher than the ordinary balance of probabilities in civil litigation. To prove fraud, there is need for direct evidence to be adduced and tested through cross-examination of the witnesses before the court can conclude that fraud has been committed and the applicant had participated in it to warrant revocation of title.”

34 Additionally, this Court notes that from the suits referred to, the parties are not the same and there is no case pending on issues of fraud or customary trust in any Court of concurrent jurisdiction. To this end, this Court finds and holds that the Applicant has not demonstrated that the instant suit is sub judice in light of the foregoing principles and affirms the jurisdiction of this Court to hear and determine this suit.

(ii) Whether the suit is statutory barred

35. The suit is for recovery of land based on fraud as averred in paragraph 43 of the Plaint. The Plaintiffs allege that on 20th June, 2018, the 1st and 2nd Defendants fraudulently issued fake title deed for Kakuzi/Kirimiri Block 9/33, to the 2nd Plaintiff. A suit filed in Court must be filed within the required time frame as provided for under the Limitation of Actions Act. Fraud is a common law tort, and within the provisions of Section 4(2) of Limitation of Actions Act, an action based on tort should be filed within three years. Also, the Act under Section 7 of the same Act provides that action for recovery of land should be brought within a period of 12 years.

36. In fraud cases, time only begins to run once fraud has been discovered as envisioned under Section 26 of Limitation of Actions Act. The onus is on the party alleging fraud to lead Court to its occurrence, which can only be done at the hearing of the suit. The Applicant contends that the suit was filed beyond the requisite statutory period contemplated in Section 7 of Limitation of Actions Act, that the course of action occurred in 1885. This Court has appreciated above the tune of the pleadings to the extent that the Respondents’ suit stems from allegations of historical injustice that the White Settlers took their land, which was a community land, denying them their right over the land. However, this Court finds that the history averred by the Respondents lays basis for claim for customary trust. The suit is an omnibus, save for claiming under trust and there is a claim for adverse possession and allegation of fraud.

Section 20 of Limitation of Actions Act provides; -

- (1) None of the periods of limitation prescribed by this Act apply to an action by a beneficiary under a trust, which is an action— (a) in respect of a fraud or fraudulent breach of trust to which the trustee was a party or privy; or (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee or previously received by the trustee and converted to his use.
- (2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust (not being an action for which a period of limitation is prescribed by any other provision of this Act) may not be brought after the end of six years from the date on which the right of action accrued:

37 The Respondents’ claim is that the Applicant held the land in trust for the community, but fraudulently transferred land to the 2nd Plaintiff. A reading of the above section of the law is



instructive of the fact that Limitation of Actions do not apply to cases of fraud on trust properties or conversion thereof as contemplated in part one, but any other claim should be brought within six years. The question of trust cannot be determined at the preliminary stage, but at the full hearing. The Respondents' claim lies on the first limb of the above section and it means therefore that limitation of actions does not apply.

- 38 The Court of Appeal in *Stephens & 6 others v Stephens & another* [1987] eKLR, when allowing an Appeal found that no period of Limitation of actions applies in cases of trust. This was also the finding of the Court in *Ndiwa Chesebe v John Chesebe Sikuku* [2022] eKLR.
- 39 Having been so guided, this Court holds and finds that the suit is not statutory barred by dint of Section 20(1)(a) of *Limitation of Actions Act*. It is important to point out, that this Court has noted the laxities employed by the Respondents in the filing of the case and caution the Respondents against any further delay.

(iii) Whether the suit should be dismissed.

- 40 The Applicant urged this Court to dismiss the suit for the aforementioned reasons which deprived this Court of its' jurisdiction. It is trite that jurisdiction is the power that a Court is clothed with to hear and determine a matter without which a Court cannot entertain a suit. The Applicant has submitted at length on why this Court should dismiss this suit and it all borders on the presumption that the suit is statutory barred and sub judice. The Applicant further contends that he will suffer prejudice because of the multiplicity of cases filed by the Respondents. This Court notes that the Respondents instituted a claim at National Land Commission as by law required, and there is no other case that they have filed if any the Applicant is responsible for the referenced suits. This Court has seen no prejudice that the Applicant will be occasioned by the filing of this suit. With the above findings, the Court finds and holds that it has the requisite jurisdiction to entertain the matter. The Applicant has not made out a case to warrant the dismissal of this matter and thus the Court has no reason to do so.
- 41 However, this Court notes the nature and extent of the prayers sought and appreciates the effects its orders will have on the suit property. Additionally, the cases referenced to in the Application though not directly and substantially in issue with the present case revolve around the suit property and therefore this Court is keen on not complicating the judicial process. In exercise of its discretion, this Court shall stay the instant suit for a period of 90 Days(ninety) to allow the Applicant to file in this Court the status of the aforementioned cases.

(iv) Who should bear the cost of this Application

- 42 It is trite that costs shall follow the events and a successful party is entitled to the costs. Seemingly, the Respondents are the successful parties and this Court has no reason to deny them costs. The application is dismissed with costs to the Respondents.
- 43 Having now carefully considered the instant application and the respective submissions, the Court finds it not merited and the same is dismissed entirely with costs to the Respondents.
- 44 However, the instant suit is stayed for the next 90 days(ninety) to allow the Applicant to file in this Court the status of all the mentioned cases.
- 45 It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 12TH DAY OF MAY, 2022.

L. GACHERU



JUDGE

Delivered virtually in the presence of;

Alex Mugo - Court Assistant

No Appearance for the Plaintiffs/Respondents

No Appearance for the 1st Defendant

No Appearance for the 2nd Defendant/Applicant

No Appearance for the 3rd Defendant

No Appearance for the 4th Defendant

No Appearance for the Interested Party

L. GACHERU

JUDGE

