



Editorial Summary

1. Court Vacation

2. Subject of main suit

LAND

2.1 Head title Longonot/Kijabe originally LR 8622

2.2 Annual general meeting for 11th August 2012 not to be convened.

2.3 Suit filed 9th August 2012

3. Application dated 8th August 201

3.1 Leave to be heard during the court vacation.

3.2 Granted Korir J on 9th August 2012 Application No. 2 of 8th August 2012

3.3 “A temporary injunction granted for a period of 14 days only in terms of prayer 2.

3.4 Interparte hearing 16th August 2012.

4. Respondent files Notice of Motion 15th August 2012

4.1 Seeking orders to strike out plaintiff’s suit.

5. Parties requested to compile pending cases.

6. Submissions includes reasons why suit should be struck out.

7.

7.1 Matter under Section 6 of the Civil Procedure Act be stayed.

7.2 File referred to Hon. Chief Justice together with others already referred.

8. Case Law:

9. Advocates :

i) V. Ataka instructed by M/s Prof Tom Ojienda & Co Advocates for plaintiff

ii) *R. K. Macharia instructed by M/s Macharia Gakaria & Associates for respondent*

JOHN KAMAU MURIGU

FRANCIS KARIUKI MURANGA

JOHN KAROBA IROHA

JAMES MBUGUA KAROBA

NDUNGU NJENGA.....PLAINTIFFS/APPLICANTS

VERSUS

ERERI CO. LTD

NJUGUNA M. KUNGU

REGISTRAR OF TITLES.....DEFENDANTS/RESPONDENTS

R U L I N G

BACKGROUND

1. Eleri Company Limited had advertised that there be an annual general meeting. The applicant original plaintiff did not wish this to occur. The defendants are a land buying company. The issue of shares and land in this matter would affect land title deeds.

2. The applicants filed suit on the 9th of August 2012 under the vacation rules. This matter came before Korir J who issued a temporary injunction for 14 days. The effect of the injunction being granted was to actually cancel the annual general meeting to have been held on the 11th August 2012.

3. An interparte hearing was set for 16th August 2012. The respondents and the applicant came to an interparte hearing before me during the court vacation. The Attorney General was served but sent no representative.

4. The effect of the matter was the issue of the annual general meeting had been overtaken by events. It was not held due to the injunctive orders.

5. The respondents through R.K. Macharia filed a subsequent application seeking orders to dismiss the whole suit as being an abuse of the process of the law. The application dated 15th august 2012 was filed on 16th August 2012.

6. I did ask the parties whether there were other cases related to the present main case before court. The parties kindly came up with a list of the following cases:

6.1 Nakuru HCC 189/10 – injunctive orders are sought from the parties of Land Reference 8622 Longonot/Kijabe.

6.2 Nakuru HCC 220/10

6.3 Milimani Admiralty Division Nairobi

HCC 512/10

6.4 Milimani Admiralty Division

HCC 245/11

6.5 Nakuru JR 26/11

6.6 Nakuru 187/12

7. The present suit by the verifying affidavit of the 1st plaintiff states that:

“I further aver that there is no suit pending between the parties herein on account of the same cause of action.”

8. The paragraph 28 of the plaint states:

“There is no other suit pending between the plaintiff and the defendants neither have there been a suit between the parties herein are the same cause of action.”

9. Order 4 r 1(1)(f) Civil Procedure Rules and Order 4 r 2 applies.

10. Advocate for the respondent continued to address me at length on the cases before the High Court at Nakuru and at Nairobi being the same parties and the same subject matter, namely the head title, originally 8622 Longonot Kijabe. This indeed is an abuse of the process of law.

11. The plaintiff in reply stated that they reacted to the notice dated 14th July 2012. The intention of the plaintiffs was to seek to stay the said annual general meeting which they did.

III FINDINGS

12. Under Section 6 of the Civil Procedure Act, which they are multiplicity of suits then the suit are stayed namely:

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially in issue in a previous instituted suit or proceedings between the same parties or between parties under whom by 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.”

13. I would agree with the respondent, who has raised a preliminary objection to this suit. I am aware the orders for injunction now expired has stopped the annual general meeting to be held. The said orders have now lapsed.

14. I am of the opinion that I require to use Section 6 of the Civil Procedure Act and stay this suit till the finalization of earlier suits are heard and determined first.

15. This court has been made to believe there are cases placed before the Hon. Chief Justice for directions. If that is the situation, I would order that this file be placed with the others if any, before the Honourable the Chief Justice for directions at his convenience.

16. The proceedings and this ruling be accordingly typed.

DATED THIS 21ST DAY OF AUGUST 2012 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates:

i) *V. Ataka instructed by M/s Prof Tom Ojienda & Co Advocates for plaintiff*

ii) *R. K. Macharia instructed by M/s Macharia Gakaria & Associates for
respondent*