



REPUBLIC OF KENYA

High Court at Eldoret

Civil Appeal 10 of 2008

CLEMENT ARAP RONO  
NYOKOSEI TARUS  
MISS LUCY

P.A.G. CHURCH KAPSERET.....APPELLANTS

AND

ELISHA CHUMO  
DAVID RONO  
JOSEPH METTO

(SUING ON BEHALF OF CHEPKATET SELF HELP GROUP).....RESPONDENTS

{Being an appeal from the ruling of A.B. Mongare, Resident Magistrate delivered on

28th January, 2008 in the Chief Magistrate's Court at Eldoret Civil Case No. 516 of 2005}

This is an appeal by **Clement Arap Rono, Nyokosei Tarus, Miss Lucy and P.A.G. Church – Kapsaret** (hereinafter “the appellants”). They are the defendants in Eldoret Chief Magistrate's Court Civil Case Number 516 of 2005. The appeal is from the ruling and order of the Resident Magistrate (**A.B. Mong'are**) whereby the Learned Magistrate dismissed the appellants' application for stay of proceedings pending the hearing and determination of HCC NO. 83 of 2003. **Elisha Chumo, David Rono and Joseph Metto** (suing for and on behalf of **Chepkatet Self Help Group**) (hereinafter “the respondents”) are the plaintiffs. The appellants had alleged, in the application that the issues in the suit before the Learned Resident Magistrate were substantially the same as the issues in HCCC No. 83 of 2003 (hereinafter “the High Court Case”). The appellants further alleged that the High Court case had been filed earlier in time before the lower court case and that if a stay was not granted, there was a likelihood of conflicting decisions being reached. It was also the appellants' case before the lower court that the subject matter was originally title number K15 and which was later subdivided and several parcels created including the parcels in dispute before the lower court.

The Learned Resident Magistrate did not agree with the appellants and dismissed their application with costs thus provoking this appeal. The appellants have raised four grounds of appeal expressed as follows:-

- 1) **That the Learned Resident Magistrate erred in Law in holding that the provisions of Section 6 of the Civil Procedure Act were not complied with.**
- 2) **That the Learned Resident Magistrate erred in law and in fact in holding that the suit in the lower in view of the amendments in the plaint in the High Court is older than the High Court Suit.**
- 3) **That the Learned Resident Magistrate erred in Law in holding that the suit properties and**

**parties in both courts were different.**

**4) That the Learned Resident Magistrate erred in law in failing to uphold the appellant's application for stay of proceedings and misdirected herself in holding that the appellants were on fishing exercise.**

When the appeal came up for hearing before me on 24th July, 2012 counsel maintained the same positions they had taken when they appeared before the Learned Resident Magistrate.

I have considered the record of the Learned Resident Magistrate, the grounds of appeal and the submissions made to me by counsel. Having done, so, I take the following view of the matter. The facts herein are really not in controversy. It is common ground that the Lower Court suit and the High Court case are pending before the respective courts. It is further not in dispute that the plaintiffs before the Lower Court case are not parties in the High Court case nor are the defendants **Lucy and P.A.G Church Kasperet**. It is only **Clement Arap Rono** and **Nyokosei Tarus** the 1st and 2nd defendants before the Lower Court who are also parties in the High Court Case as plaintiffs number 30 and 36 respectively.

The lower court suit is for a declaration that the defendants are trespassers and for their eviction from parcel number **Pioneer/Ngeria/Block 1(EATEC) 7081**. The plaintiffs in the High Court case seek injunctive reliefs in respect of several parcels of land including Pioneer/Ngeria/Block 1/EATEC) 8=7081 and transfer to the plaintiffs.

A further undisputed fact is that the plaintiffs' case before the lower court was closed on 3rd December, 2007.

The appellants moved the court for stay of proceedings under the provisions of section 6 of the Civil Procedure Act which reads as follows:-

**“6. 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.”**

A plain reading of this section shows that a suit may only be stayed if:-

- (a) The suit was filed subsequent to a previously filed suit or proceeding.**
- (b) The matter in issue is also directly and substantially in issue to the previously filed suit or proceeding.**
- (c) The parties are the same or claim or litigate under the same title.**
- (d) the previous suit is pending in a court of competent jurisdiction.**

In the matter at hand, the parties are not the same nor do they claim litigation under the same title. So, a crucial requirement of section 6 of the Civil Procedure Act has not been satisfied. There are other considerations which exclude the operation of this section to this case. The plaintiffs in the case before the lower court are not parties in the case before the High Court. So, proceedings therein have no meaning to them. In any event no adverse orders in that suit would be made against them and if they were, the same would not be binding on them. Further, in their amended plaint filed in the lower court, the respondents claim to be the registered proprietors of title number Pioneer/Ngeria Block 1(EATEC)7081. If that is the position, no orders would be made affecting that title as its owners are not parties in the High Court Case.

A further crucial aspect of this matter is that the case before the lower court is part heard. Indeed

the respondent's case was closed way back on 3rd December, 2007. Section 6 of the Civil Procedure Act would obviously not apply in these circumstances.

The suit in the lower court was filed way back in May, 2005. the appellants sought stay in December, 2007. The delay involved was of over 2½ years. In my judgment, the appellants are guilty of inordinate delay.

My above findings conclusively determine all the grounds of appeal raised by the appellant. None of them have any merit. The appeal is dismissed with costs.

Orders accordingly.

**DATED AND DELIVERED AT ELDORET**

**THIS 18TH DAY OF SEPTEMBER, 2012**

**F. AZANGALALA**  
**JUDGE**

**Read in the presence of:-**  
**Mr. Ngetich for the Appellant and**  
**Mr. Njuguna for the Respondent.**

**F. AZANGALALA**  
**JUDGE**

**18TH SEPTEMBER, 2012**