



REPUBLIC OF KENYA



KENYA LAW
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**Karanja v Olum (Environment & Land Case 140 of 2020)
[2022] KEELC 2331 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 2331 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 140 OF 2020
LC KOMINGOI, J
JUNE 16, 2022**

BETWEEN

ISAAC KABEBE KARANJA PLAINTIFF

AND

WILLIAM FRANCIS OLUM DEFENDANT

RULING

1. This is the Notice of Motion application dated 14th January 2022 brought under Articles 159, 164 (3) of *the Constitution* of Kenya, Section 3A of the *Civil Procedure Act*, Order 42, Rule 6 of the *Civil Procedure Rules (2010)* and all other enabling provisions of the law.
2. It seeks orders:-
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of the suit the honourable court be pleased to grant a stay of proceedings in the suit herein.
4. That the costs of and incidental to this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs (a) to (g).
4. The application is supported by the affidavit of William Francis Olum, the Defendant/Applicant, sworn on the 14th January 2022.
5. The application is opposed by the Plaintiff vide his replying affidavit sworn on 21st February 2022. He admitted that there are pending proceedings in Nairobi ELC No.368 of 2015 between *Githunguri Njiru Farm(1966) Limited v Nairobi City Council and 174 others* which matter is before Hon. J Mbugua involving 100 acres of land. He deponed that he is not a party to the suit and the same is not



directly and substantially in issue with the present case filed in the year 2020 as the causes of action are different. He added that Nairobi ELC No.368 of 2015 does not involve the entire acreage as claimed, but only a portion which is claimed by Nairobi City County while in this suit, the cause of action against the Defendant is one of land grabbing and illegal construction of the Plaintiff's property being Plot No 73B Embakasi/Mihango/Karagita.

6. He deponed that the Defendant has failed to show how he purchased the suit land and how the suit land is connected to the suit land in Nairobi ELC No.368 of 2015. He further deponed that he will be highly prejudiced because the Defendant is enjoying the suit property by being illegally in possession thus a stay will not serve the interestS of justice.
7. On the 24th February 2022, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.

The Defendant's /Applicant's submissions

8. They are dated 31st March 2022. Counsel for the Defendant submitted that this court has jurisdiction under Section 6, 1A, 1B,3A of the Civil Procedure Act and Order 42 Rule 6 of the Civil Procedure Rules to stay proceedings herein. He added that the test to be applied is whether the dispute in question is substantially and directly the same not that they should be similar. He relied on the case of *Thiba Mini hydro Co v Josephat Ndwiga [2013] e KLR*. It was also his submission that even though the Defendant is not a party in Nairobi ELC 368 of 2015; it cannot be a justification for the court to allow this matter to proceed since the determination in ELC 368 of 2015 will have a bearing on this suit as it relates to 100 acres of land and the suit property is a portion of it.

The Plaintiff's/Respondent's submissions

9. They are dated 19th April 2022. Counsel submitted that the Plaintiff is not a party to Nairobi ELC 368 of 2015, therefore staying the proceedings will be a serious fundamental infringement of his rights. He relied on the case of *Mukunya Mugo 'A' & another v Elizabeth Mugure Mukunya [2019] e KLR*.
10. I have considered the notice of motion and the affidavit in support. I have considered the response thereto, the written submissions and the authorities cited. The issue for determination is whether the suit herein should be stayed pending the hearing and determination of Nairobi ELC .No.368 of 2015.
11. The Defendant seeks stay of these proceedings on the basis that the suit property herein is part of the subject matter in Nairobi ELC No.368 of 2015 and that the same issues of fact and law have been raised. The Plaintiff's claim is over the land described as 73B Embakasi Mihang'o Karagita (LR 27052) Nairobi. The Defendant contends that the said land is hived from the suit land in Nairobi ELC No.368 of 2015. The Plaintiff contended that the contention in Nairobi ELC No.368 of 2015 is over a portion of LR 27052 and not the entire land. In his supporting affidavit sworn on 25th day of March 2020 and filed in court, he appears to admit that his portion is one of the plots in contention in the former suit.
12. There was little brought forth by parties regarding Nairobi ELC No.368 of 2015. The court gathered from the ruling in *Githunguri Njiru Farm (1666) Ltd v Nairobi City County Assembly & 2 others [2019] eKLR* that on 14th December 2015, Honourable Lady Justice Gitumbi in Nairobi ELC No.368 of 2015 directed that status quo be maintained in that there should be no sub-division, transfer, sell or development of the properties on the suit land pending the hearing and determination of ELC No 368 of 2015.



13. The Defendant is said to have encroached on the suit land in 2020 and the Plaintiff claims to have purchased it in 2011. All the parties claim their title from Githunguri Njiru Farm (1966) Limited. The Plaintiff herein is not a party in Nairobi ELC No.368 of 2015.

Section 6 of the Civil Procedure Act provides:-

“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.”

The requirements of Section 6 of the Civil Procedure Act have not been met.

14. In Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties [202] eKLR the Supreme Court of Kenya stated as follows:

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res 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.”

15. In conclusion, I find no merit in this application and the same is dismissed with costs to the Plaintiff/ Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 16TH DAY OF JUNE 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

Mr. Muchiri for the Plaintiff/Respondent present

No appearance for the Defendant/Applicant

Steve - Court Assistant

