

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC NO. 40 OF 2011

WILLIAM MWANGI GATHUMA1ST PLAINTIFF/APPLICANT
JANET WANJIKU MWANGI2ND PLAINTIFF/APPLICANT

V E R S U S

ANNE MUMBI HINGADEFENDANT/APPLICANT

R U L I N G

This suit was filed on 4th February 2011 by the Plaintiffs against the Defendant over the parcel of land L.R. No. 26578 belonging to the Defendant an acre of which the Plaintiffs agreed to buy on 2nd May 2003. The Plaintiffs allege that subsequent to the Agreement they took possession of the one acre which now the Defendant is evicting them from.

In **HC ELC No. 34 of 2011** the Defendant herein is the Plaintiff and the Plaintiffs herein are the Defendants. The dispute is over the same Agreement and the Plaintiff therein claims the Defendants have illegally occupied her one acre comprised in L.R. No. 3994/49. The suit was filed on 1st February 2011 and is therefore the earlier case.

The parties are the same here as in the earlier case and are litigating over substantially the same land. Under section 6 of the Civil Procedure Act the two suits cannot be allowed to proceed at the same time. This is why I make an order staying these proceedings to await the hearing and resolution of **HC ELC. No. 34 of 2011**. The parties can appropriately amend the pleadings in the earlier case, including bringing any counterclaim, so that all the issues in dispute between them can, once and for all, be effectively and finally determined. Anything else would be an abuse of process.

DATED AND DELIVERED AT NAIROBI

THIS 30TH DAY OF MARCH 2011

A. O. MUCHELULE
J U D G E