



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Case 77 of 2009

NAMU MURIGO.....PLAINTIFF

VERSUS

NYAGA CINGANO.....DEFENDANT

R U L I N G

The applicant by his chamber summons dated 8/7/2009 is seeking orders that Civil Suit No. 77/2009 be struck out for being frivolous, vexatious, embarrassing and abuse of the court process. He also asks that the same be dismissed with costs. The main ground on which the application is grounded is that there is a pending suit before the ***Senior Resident Magistrate Siakago (RM CC No.29 2005)*** which involves the same parties over the same subject matter.

According to counsel for the defendant/Applicant therefore, this suit contravenes section 6 of the Civil Procedure Act and is also an abuse of the court process. He has supported with the application with the affidavit dated 8/7/2008 and attached several annexures which annexures clearly show the existence of ***Siakago SRM CC No.29 of 2005***. The said suit is between the same parties herein. It relates to the same parcel of land i.e **EMBU/RIAITUNE/1678** and they both seek the same orders. That suit precedes this one as it was filed on 21/9/2005 while this one was filed on 30/4/2009. The law does not allow both suits to subsist together. The earlier suit should have been withdrawn or dealt with in any other manner before a similar one was filed before this court. I have observed that the hearing notice '***annexure CN6***' was in respect of the hearing schedule for 4/12/2008 which was long before this suit was filed. It is not therefore clear whether the earlier suit has been disposed of or it is still pending in court. That question could nonetheless only be answered by the plaintiff herein by way of rebuttal through a replying affidavit. There is no such affidavit on record. It is noted that the application was served on the Plaintiff/Respondent on 17/7/2009 as per the affidavit of service dated 3/11/2009. The same was not responded to. The only assumption this court can make therefore is that the application is not contested.

Be that as it may, I still find that the filing of this suit while a similar one was still pending before another court amounts to gross abuse of the court process. Accordingly, I allow this application and strike out the entire suit with costs to the defendant/applicant.

**W. KARANJA
JUDGE**

Delivered, signed and dated at Embu this 15th day of Feb 2010
In presence of:- Mr. Okwaro for Mr. Njegagua for Applicant

W. KARANJA
JUDGE