



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT ELDORET**  
**Civil Suit 36 of 2010**

**SAMUEL K. RONO AND 33 OTHERS.....PLAINTIFF**

**VERSUS**

**JOEL KOMEN AND 33 OTHERS.....DEFENDANT**

**RULING**

***(PRELIMINARY OBJECTION)***

**I. BACKGROUND**

1. The matter before this court touches on land. The Original title of Uasin Gishu/Kipkabus Settlement Scheme 848 and Uasin Gishu/Kipkabus Settlement Scheme 983 areas within the Keiyo County Council are titles that are no extinct.
2. The Provincial Settlement Scheme adjudicating officer caused to be issued new titles to the 33 plaintiffs in this matter. The 32 defendants herein filed a judicial review proceedings being HCC Misc. 21/04. The matter is still awaiting a ruling from the Hon. Judge (Ibrahim, Judge) in the meantime the 33 plaintiffs have now new titles. They filed this court case seeking for eviction of all 32 defendants on 2<sup>nd</sup> March, 2010. That the defendants had invaded the original land parcels with a view of cultivating, ploughing and dealing with the said land.

**II. PRELIMINARY OBJECTION**

3. The advocate for the defendants raised a preliminary objection on the grounds that the HCC. Miscellaneous Judicial Review Application of 21/04 is still pending as a result the decision of that said case law is awaited. That the said suit was to quash the decision of the Provincial Settlement Scheme adjudication officer from allocating land to the said plaintiffs.
4. The advocate for the plaintiffs does admit that there were earlier suits pending. There was, from his pleadings, a dispute between the Keiyo County Council and the defendants; besides HCC Miscellaneous Application 21/04 judicial review case there was also HCC 35/04. Nonetheless, it is now too late as title deeds have been issued to the said plaintiffs. The titles under the Registered Lands Act Cap 300 and absolute and indivisible.

**III. FINDINGS**

5. The Civil Procedure unless Under Section 6 of the Civil Procedure Act provides:

**“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 previously instituted suit or proceedings between the same parties, or between parties under whom they or any of them claim, litigating under the same title where such suit or proceedings is pending in the same or any other court having jurisdiction in Kenya to grant the relief.”**

6. Where there are such suit previously filed there must be a stay of proceedings on the latter cases. There may arise the issue also of Res - judicata that has not been canvassed here.
7. The respondents since the year 2004 await to be heard. They await a ruling to be delivered in their matter quashing the decision of the Provincial Settlement Scheme adjudication officer in allocating the property in question. That has in fact proceeded and land titles allocated to the Plaintiffs.
8. The files pending before court are not readily traced. It therefore means that the court relies on the admissions by both

advocates that these two files do exist. There is also the decision of the Keiyo Land Disputes Tribunal.

9. I would uphold the Preliminary Objection but for a limited period. That there be stay of these proceedings until the files HCC Misc. Application 21/04 and HCC 35/04 are brought up and confirmed that they are determined before these proceedings continue.
10. That the same stay of proceedings be for 30 days.
11. Costs to the Respondents.

**Dated this 22<sup>nd</sup> day of April 2010 at Eldoret.**

**M. A. ANG'AWA**

**JUDGE**

**Advocate:**

M.K. Chemwok advocate instructed from the Firm of M/s Chemwok & Company Advocate for the Plaintiff.

Mr. Chebii Advocate instructed from the Firm of M/s Chebii & Company Advocate for the Respondent