



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CIVIL CASE 11 OF 2003**

**ABDIRAHMAN MUHUMED ABDI ..... PLAINTIFF**

**VERSUS**

**KENYA AFRICAN NATIONAL UNION AND 4 OTHERS ..... DEFENDANT**

**Head Notes:**

- (1) Stay of Proceedings pending hearing and determination of other proceedings
- (2) Section 6 and Section 3A of Civil procedure Act.
- (3) Subject matter, a portion of a wider piece of land, that is the subject matter in other proceedings
- (4) Plaintiff is not a party to the to the other proceedings.

**RULING**

This is an application lodged by the 5th Defendant, seeking to stay the proceedings in this suit, pending the hearing and determination of another suit, HCCC NO. 1436 OF 2002. The application has been brought pursuant to the provisions of Sections 6 and 3A of the Civil Procedure Act. It is also professed to have been filed pursuant to “any other enabling provisions of the Law”.

I consider it instructive to set out in full the provisions of Section 6, as it will make it easier to follow the line of thinking in the Ruling. The said section reads as follows:-

**“No court shall proceed with the trial of any suit or proceeding in which a 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 5th Defendant invoked the provisions of section 6 of the Civil Procedure Act, primarily because there is a previously filed suit, to wit HCCC NO. 1436 OF 2002, which is still pending before this court. The said 5th Defendant, (hereinafter cited as the applicant) wishes to have the proceedings in this case stayed until the court will have determined the proceedings in the previously filed suit.

. It is the contention of the applicant that the matters in issue in this case are also directly and

substantially in issue in HCCC NO. 1436 OF 2002 (hereinafter cited as the “the other case”). The applicant submitted that the suit property is the same as that in the other case. By his affidavit, the applicant paints a dim picture, but one which is not unusual in the history of our land, Kenya. He says that the suit property L.R. NO. 209/14355 was one (1) out of six (6) plots which were created through the sub-division of L.R. NO. 209/10209, which was at all material times the property of KANU, Nakuru Branch. As far as the applicant is concerned, any step taken to sub-divide the said title, and thus give rise to the suit property, (and other plots) was fraudulent and illegal. As I understand it, the applicant is effectively saying that the parties in this case do not have any business feuding about the suit property, in any event, as it is a part of property that legitimately only belongs to KANU Nakuru Branch.

In an endeavour to give full effect to its claim to the title to L.R. 209/10209, the applicant had sued 12 allottees of plots Numbered between L.R. 209/14355 and L.R. 209/14360. The suit is HCCC No. 1436 of 2002, Kenya African National Union (KANU) and 2 Others Vs Humphrey Njau & 11 Others. The applicant herein is cited as the 2nd Plaintiff in the other suit. And he illustrated to the court the fact that the Plaintiffs in the other suit applied for and were awarded an injunction to restrain the Defendants from alienating, developing, wasting damaging or otherwise dealing with the suit property L.R. No. 209/10209 Bellevue-Nairobi, registered in the names of the Plaintiffs.

Mr. Gikaria, advocate for the applicant submitted that the injunction orders granted in the other suit covered the entire piece of land. Notwithstanding the said orders, it appears that portions of L.R. No. 209/10209 were allotted to other persons. It would appear that one such allottee did sell the suit property to the Plaintiff herein.

The Plaintiff himself does not appear to be enjoying peace on the suit property. His occupation of the suit property has been severally challenged by persons who have invaded the land and torn down a walled perimeter fence which had been erected by the Plaintiff. These actions culminated in the institution of these proceedings, by which the Plaintiff is seeking to assert the rights flowing from the title document he holds in respect of the suit property. But the applicant believes that the proceedings should be stayed.

At this point in time, I am not being called upon to determine any issue as to the legitimacy or otherwise of the competing claims to title between the applicant on the one hand, and the plaintiff and others on the other hand. That is a battle royale which will be fought later either in this case, or in the other case, or at such other forum as the parties may be advised to use. For the moment, I am only being asked to stay the proceedings. The applicant has told me that the parties could hereafter ventilate their claims in the other suit. And at that point, when I enquired from the applicant’s advocate if the Plaintiff herein was a party to the other suit, the answer was in the negative. However, the applicant sees no difficulty at all, for the parties in this suit could always be enjoined as interested parties in the other suit.

Finally, the applicant also pointed out that the 1st, 2nd, 3rd and 4th Defendants have nothing to do with this matter, as the suit property belongs to KANU Nakuru Branch.

In answer to the applicant’s submissions, Mr Wachira Advocate for the Plaintiff, noted crisply that the parties in this suit are not the same as the parties in the other suit. The point was readily conceded by the applicant.

The Plaintiff (hereinafter cited as the respondent) also pointed out that the suit property herein L.R.209/14355 is not the same as L.R. 209/10209. Clearly that is correct, although I do recognize the fact that the suit property may have been hived out of the bigger piece of land, which is the subject matter in the other suit.

The respondent has also submitted that he is not a party in the other suit. Therefore the injunction orders which the applicant may have obtained in that other suit do not have any bearing on him. He submits that if he were to be stopped in his tracks in this suit, by way of the order for stay of the proceedings, he would be prejudiced. He would have been denied the right to come to court and seek protection of the law, yet he has acted properly in every way in bringing the suit.

It was also pointed out by the respondent that the much touted injunction orders in the other suit had apparently lapsed on 10th September 2002. That would appear to be the correct position as can be gleaned from a copy of the order which the applicant has annexed to his supplementary Affidavit. In that regard, I wish to note here that the order issued by Hayanga J., on 4th September 2002 was definitely to remain in force until 10th September 2002. I have deemed it necessary to emphasise that point because the applicant has deposed in his Supporting Affidavit and the Supplementary Affidavit that that order still remains operational. If it does, the applicant has failed to put evidence of it before me. However, I hasten to add that this observation is made obiter. Whether or not the order remains in force in the other suit, would have no bearing on the application before me.

This court appreciates that the allegations made by the applicant are extremely serious. If indeed the title to the suit property has been obtained fraudulently or illegally, the same will definitely not be allowed to stand. But as I said earlier in this Ruling, that is not the issue for me to determine in this application.

It is my considered opinion that the applicant has failed to satisfy the ingredients set out in Section 6 f the Civil Procedure Act. This application must therefore fail. It is dismissed with costs.

Dated at Nairobi this 8th day of March 2004.

FRED A. OCHIENG

Ag. JUDGE