

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. CIVIL CASE NO. 177 OF 2001

E.N. NGANGA & Co. PLAINTIFF

VERSUS

NATIONAL IRRIGATION BOARD DEFENDANT

R U L I N G

This is an application in form of a Preliminary objection to the effect that the Chamber application dated 24-2-2002 by the Defendants for stay of execution pending the hearing of the application and to nullify mode of execution sought by Decree holder be stayed .

Mrs Ngugi for the Respondent says that the application is an abuse of court's process as there have been numerous applications timed to coincide with intended execution and in fact that the Respondent moves ahead to compromise such application by making part payment she says this application here is premature because the Decree holder have not proclaimed but Mrs Karanja for the applicant opposes the application. She says it does not lie because execution does not depend only on proclamation.

This court has inherent power to strike out any pleading that is an abuse of court's process the word connotes that the court's process must be used properly and bona fide so as to prevent improper use of court's machinery like where it is being used for vexatious and oppressive manner. What Mrs. Ngugi alleges here is re-litigation. It is abuse of court's process for a party (defendant) to seek to re-litigate matters already litigated with a view to frustrating the process of the court or file several generic applications so as to forestall execution. I believe this kind of conduct can pass as abuse of court's process. However in this application based on Preliminary Objection the pump requires that the points to be argued must be pure point of law or on agreed facts. To determine the propriety of the alleged institution of the several generic applications is to investigate and confirm the existence of those applications. In the first instance that is a question of evidence and as Mrs. Karanja alleges differently there is no consensus. No agreement on them hence Preliminary Objection cannot hold.

Application denied and is dismissed but no Order as to costs.

Dated this 21st Day of March 2003.

A.I. HAYANGA

JUDGE

Read to Mrs Ngugi

Read to Mrs Kimani

A.I. HAYANGA

JUDGE