



**Mwangi v Munyiri & 4 others (Environment & Land Case
E323 of 2022) [2024] KEELC 545 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 545 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E323 OF 2022
AA OMOLLO, J
FEBRUARY 1, 2024**

BETWEEN

KINYUA MWANGI PLAINTIFF

AND

CECILIA NAMSI MUNYIRI 1ST DEFENDANT

PAUL MUNYIRI KAGUAMBA 2ND DEFENDANT

NAMSI LIMITED 3RD DEFENDANT

HOUSING FINANCE CO. LIMITED 4TH DEFENDANT

GROFIN AFRICA FUND LIMITED 5TH DEFENDANT

RULING

1. The 1st, 2nd and 3rd Defendants' raised a preliminary objection dated 28th March 2023 imploding that;
 - I. That the suit before this Honourable Court falls short on the doctrine of "res-sub judice" under Section 6 of the *Civil Procedure Act* as there is another suit on the same subject matter, involving the same parties that is pending determination. The said suit being:
 - a. HCCOMM 026 of 2018-*Cecilia Namsi Munyiri, Paul Kaguamba and Namsi Limited v Housing Finance Co. Limited and another* (where the Plaintiff/Applicant herein appears as an interested party).
 - b. That additionally, the Plaintiff herein has previously filed frivolous suits of the same nature in different courts seeking the same reliefs as he is currently seeking. Misc. 944 of 2022 (*Joel Titus Musya and Kinyua Mwangi v Cecilia Namsi Munyiri and Paul Munyiri Kaguamba*) was dismissed on the 31st day of January, 2023 and the Learned



Hon. G Omodho, while vacating the ex-parte orders issued to the Applicants stated that “It is unfathomable how then the 2nd Applicant opted to file the application before this Court leaving the already existing file in the High Court. I shall not strain to understand or explain on behalf of the 2nd Applicant why this matter is filed again while there exists another earlier suit touching on the same parties, issues and subject matter....”

- c) That the suit before this Honourable Court is brought in bad faith, is frivolous, vexatious and an abuse of this Honourable Court’s process hence a good candidate for striking out with costs.
1. They proceeded to outline the principles to be considered while determining whether or not a matter is *sub-judice* to include;
 - a. There must exist two or more suits filed consecutively.
 - b. The matter in issue in the suits or proceedings must be directly and substantially the same.
 - c. The parties in the suits or proceedings must be the same.
 - d. The suit must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.
 2. The 1st – 3rd defendants in their submissions asked the court to look at the annexures at pages 1 – 7 of the plaintiff’s bundle of documents. They stated that in HCCOMM 026 of 2018, the plaintiff appears as an interested party with the plaintiff entering appearance in that suit. That HCCOMM 026 of 2018 had been slated for hearing on 18th September, 2023. It is their submissions that pursuing a process that is being pursued in a different matter constitutes and amounts to abuse of court/legal process.
 3. In submitting that they are entitled to costs, the 1st – 3rd defendants cited inter alia the Ugandan case of *Nyanza Garage v Attorney General* which held thus;

“In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits.”
 4. The Plaintiff contested the Preliminary Objection by filing grounds of opposition dated 5th June, 2023 and submission dated 2nd October, 2023. He submitted that the preliminary objection as raised does not meet the threshold of section 6 of the *Civil Procedure Act* and the principles laid out in the case of *Mukina Biscuits Manufacturing Co. Ltd v West End Distributors Ltd.* (1969) EA 696.
 5. The Plaintiff stated that the 1st – 3rd defendants are saying the facts of the two suits are similar without cogent proof. He went on to submit that he was unprocedurally joined in HCCOMM 026 of 2018 and that jurisdiction must be discerned without much labour or toil in matters sub judice. Further, that the prayers for eviction are purely within the realm of the ELC. He submits that the jurisdiction of High Court Commercial Division and the Environment and Land Court are dissimilar hence the issue of subjudice does not arise.



6. It is contended by the Plaintiff that the Preliminary Objection is based on vague broad statements which invites the court's discretion and the same cannot be a demurrer. He added that in HCOMM 026 of 2018, the 1st – 3rd Defendants are dealing with the proceeds of sale and not the process of sale. Thus, it can be discerned clearly that the matters in issue are not the same. The plaintiff urged the court to dismiss the preliminary objection.
7. As laid out in the case of Mukisa Biscuits Manufacturing Co. Ltd *supra*, it is a requirement that a Preliminary Objection should succeed only if it does not require to be proved by calling evidence. There was no affidavit sworn in support of the Preliminary Objection as the defendants did not move the court by way of application. In urging the merit of the Preliminary Objection, the 1st – 3rd Defendants urged the court to look at pages 1 – 7 of the plaintiff's bundle of documents filed in court. The 1st – 3rd Defendants is essentially inviting the court to source for evidence while determining the merits or otherwise of their objection.
8. Secondly, the 1st – 3rd Defendants in submitting that the two matters are related referred to the prayers sought in HCCOMM 026 of 2018 and the instant suit. In the former suit, it is submitted that the prayer was for declaration that the sale of the suit property by HFCK (1st Defendant) to the Interested Party (present plaintiff) was illegal." The plaintiff has raised in their submissions the dissimilarity of jurisdiction of the two courts handling the two disputes.
9. From the heading of the former suit, the matter in dispute relates to a commercial transaction. The plaintiff urges that the High Court constituted as the Commercial Division cannot issue orders of eviction/vacant possession sought in this suit. This bring to fore a question that whether or not the two claims can be handled in one court. Section 6 of the [Civil Procedure Act](#) provides that,

“No court shall proceed with the trial of any suit or proceeding in which the 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.”
10. The key word in section 6 is that no Court shall proceed with trial where there is a related matter. The Plaintiff herein traces its title from a sale through public auction which is challenged in the High Court. It requires no evidence to infer that the outcome in HCCOMM 026 of 2018 will affect the merits or otherwise of this suit. Consequently, whether or not the High Court can issue orders of eviction, the relatedness of the cause of action in the two suits require that they should not be prosecuted concurrently. One of them must be stayed and this being the latter suit, automatically it is the one to be stayed.
11. In conclusion, I find merit in the Preliminary Objection that prosecuting this case while the other matter is still active would offend the provisions of section 6 of the [Civil Procedure Act](#). However, I will not strike out this suit due to the fact that the High Court Commercial Division may or may not grant the orders of eviction sought herein. Going forward, this suit is stayed pending hearing and determination of HC COMM case No E026 of 2018. The costs of the P.O awarded to the 1st to 3rd defendants in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 1ST DAY OF FEBRUARY 2024

A. OMOLLO



JUDGE

