



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL SUIT NO. 1389 OF 2004**

**SOUTH DOWNS DEVELOPERS LIMITED.....PLAINTIFF**

**VERSUS**

**HAITHAR HAJI ABDI.....1ST DEFENDANT**

**ABDI RAHIM HAITHAR HAJI.....2ND DEFENDANT**

**RULING**

1. Mutungi J rendered a judgment in this suit on 29/4/2013 in which he made the following final orders:

***a) An eviction order do issue against the defendants, their servants, agents, tenants, licencees or any other person whosever from the plaintiff's parcel of land Reference Number 13154 (Original Number part of 6861/4), Nairobi***

***b) A permanent injunction restraining the defendants by***

***themselves, their servants, agents, tenants, licencees and/or any person whosoever from being, remaining***

***entering in, continuing in occupation, eviction (sic), constructing, continuing with the construction of any***

***structures whatsoever on the plaintiff's parcel of land Reference Number 13154 (Original Number part of 6861/4), Nairobi.***

***c) General damages in the sum of Ksh 6,300,000/- together with interest thereon at court rates from the date of this judgment***

***d) Costs of the suit together with interest thereon.***

2. From the record, the defendant's attempts to overturn the said judgment through the appeal and review mechanisms were unsuccessful. The plaintiff's bill of costs was taxed and the ensuing reference was disposed. The matter is at the stage of execution.

3. On 17/12/2020, Mr Kahuthu, counsel for the judgment debtor canvassed what he described as "three applications dated 25/9/2020, 22/10/2020; and 15/10/2020" which he had filed electronically. The CTS file docket, however, shows that only two applications were uploaded, dated 25/9/2020 and 15/10/2020 respectively. The CTS file docket further shows that on 22/10/2020 only a certificate of urgency dated 22/10/2020 was uploaded. Also uploaded on the same day, 22/10/2020, was the application dated 15/10/2020 which had been uploaded earlier in the month. I will in the circumstances only pronounce myself on the two applications dated 25/9/2020 and 15/10/2020 respectively.

4. The two applications are similar in terms of the reliefs sought and the legal framework under which they were brought. They were brought under the substantive provisions of Section 6 of the Civil Procedure Act. The applicant sought orders of stay of suit and/or order/judgement/hearing/notice to show cause or rulings until **Nairobi HCCC No. 6054/1991** is heard and fully determined. The applicant contended that **Nairobi HCCC No. 6054/1991** which was consolidated with **Nairobi HCCC 1181/1992** was filed before this suit. He added that the issue pending in Nairobi **HCCC 6054/1991** have a direct impact or bearing to the case herein as they are similar.

5. The applications were opposed by the plaintiff/decreed-holder. The plaintiff/decreed-holder termed them as an abuse of the process of the court. The applications were canvassed through brief oral submissions which I have considered.

6. Arguing the applications virtually, Mr Kahuthu submitted that the judgment debtor was seeking stay under **Section 6** of the **Civil**

**Procedure Act** and the gist of his plea was that this suit is connected with two other suits that were filed prior to this one and were pending in the High Court. He added that the litigating parties were the same and what was being adjudicated in those other suits is the discovery of new evidence. He urged the court to grant stay orders under **Section 6** of the **Civil Procedure Act**.

7. Opposing the applications, Mr Kangethe, counsel for the decree-holder submitted that there was no proper ground for stay because there was no pending appeal and there was no pending application for review of the judgment. He added that the Court of Appeal had already rendered a judgment on the judgment debtor's appeal. He further submitted that the parties in the alleged related suits were not the same. He urged the court to dismiss the applications.

8. I have considered the two duplicate applications dated 25/9/2020 and 15/10/2020 respectively. They were brought under the framework in Section 6 of the Civil Procedure Act. The single question to be answered in the two duplicate applications is whether there issues pending trial both in this suit and in the said related two suits.

9. Mutungi J rendered a judgment in this suit in April, 2013 after trial. There are therefore no issues pending trial and/or determination in this suit. Secondly, the judgment debtor proceeded to the Court of Appeal and exhausted the appeal mechanism. His review application before this court was similarly lost before Mutungi J.

10. This being a suit that has been tried and determined through a final judgment, I do not think I have jurisdiction, or put differently, a proper legal basis upon which to grant a stay order under **Section 6** of the **Civil Procedure Act**. Section 6 of the Civil Procedure Acts relates to pending suits, not fully determined suits. In the circumstances, the two applications by the judgment debtor dated 25/9/2020 and 15/10/2020 are rejected for failure to satisfy the criteria upon which a stay order under Section 6 of the **Civil Procedure Act** is granted. The judgment debtor shall bear costs of the two applications.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 4TH DAY OF MARCH 2021.**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Ayieko for the Plaintiff/Decree holder

Mr Kahuthu for the Defendant / Judgment Debtor

Court Assistant: June Nafula