



Gikera v National Land Commission & 2 others (Environment & Land Case E089 of 2023) [2024] KEELC 6714 (KLR) (7 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6714 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E089 OF 2023**

JG KEMEI, J

OCTOBER 7, 2024

BETWEEN

AHMED CHEGE GIKERA PLAINTIFF

AND

NATIONAL LAND COMMISSION 1ST DEFENDANT

KIAMBU COUNTY GOVERNMENT 2ND DEFENDANT

GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED 3RD DEFENDANT

RULING

1. Coming up for determination is the 3rd Defendant's/Applicant's Application dated 22/2/2024 expressed under Sections 1A, 1B & 6 of the [Civil Procedure Act](#) and Order 51 Rule 1 of the Civil Procedure Rules seeking Orders that;
 - a. This Honorable Court be pleased to strike out this suit for being sub judice and an abuse of the Court process contrary to Section 6 of the [Civil Procedure Act](#).
 - b. This Honorable Court be pleased to strike out this suit since the Plaintiff has no locus standi to bring forth this suit in relation to land parcel Ruiru Kiu Block 2(Githunguri)2297, he has no connection whatsoever in the land, has not exhibited how he owns or is being affected by the land,
 - c. The Plaintiff/Respondent do bear costs of this application and suit.
2. The Application is based on grounds that the Plaintiff is claiming reliefs regarding land parcel Ruiru Kiu Block 2(githunguri) 2297 (hereinafter the suit land) without showing his ownership/connection to the suit land; that there is another pending suit before this Court touching over the same suit land where the instant Plaintiff is the 31st Plaintiff through his Company namely Landluck Company Ltd in



Thika ELC No. 50 of 2018 John Rimui Waweru & 87 Others Vs. Githunguri Constituency Ranching Co. Ltd & 3 Others. That the Plaintiff's move to institute parallel proceedings is in bad faith and offends the law as any reliefs he seeks here can be sought in the aforesaid ELC 50 of 2018.

3. The motion is supported by the 3rd Defendant's Chairman John Maina Mburu Supporting Affidavit sworn on 22/2/2024. Reiterating the above grounds, he annexed JMM1(a)&(b) being copies of the Company's Director's resolution and CR12 and JMM2&3 the pleadings in Thika ELC 50 OF 2018.
4. The application is not opposed despite leave being granted to the Plaintiff to do so.
5. On 10/6/2024 directions were taken to prosecute the application by way of written submissions. None of the parties complied.
6. Be that as it may the application is determined on merits as follows.
7. The 3rd Defendant urges this Court to strike out this suit on two fronts; the suit is sub judice in light of Thika ELC No 50 of 2018 and that the Plaintiff lacks locus standi to lodge this suit in respect of the suit land.
8. The principle of sub-judice is codified under Section 6 of the [Civil Procedure Act](#) which provides: -

“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.

Explanation -The pendency of a suit in a foreign Court shall not preclude a Court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign Court.”

9. The import of the above provision was expounded by the Court of Appeal in Civil Appeal No. 83 of 2017 Joel Kenduiyo Vs. District Criminal Investigation Officer Nandi & 4 Others (2019) eKLR where the Court held as follows:-

“Section 6 of the [Civil Procedure Act](#) is meant to prevent abuse of the Court of process where parallel proceedings are held before two different Courts with concurrent jurisdictions or before the same Court at different times. This is to obviate a situation where two Courts of concurrent jurisdiction arrive at different decisions on the same facts, evidence and cause of action.”

10. Similarly, in HCCC No. E111 of 2018 ASL Credit Limited Vs. Abdi Basid Sheikh Ali & Another (2019) eKLR the Court quoted with approval the holding in Kampala High Court Civil Suit No. 450 Of 1993 - Nyanza Garage vs. Attorney General in which the Court held that: -

“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.”



11. For the plea of sub judice to succeed, three tests must be satisfied, namely: whether the suit or issue in Thika ELC 50 of 2018 is directly and substantially in issue with the present suit; secondly, whether Thika ELC 50 of 2018 is between the same parties or parties under whom they or any of them claim herein; and, thirdly, those parties are litigating under the same title.
12. To answer the above tests, whether the issues in both matters in controversy are similar, a glean of the plaint dated 19/12/2023 herein shows that the cause of action impugns the 1st Defendant's failure to compensate owners of the suit land following acquisition of private land with the intention of constructing Ruiru - Juja Water Sewerage Treatment Plant. To that end he prays for an order of permanent injunction restraining the 1st Defendant from paying compensation arising from the aforesaid compulsory acquisition to any other persons other than the rightful owners as determined by this Court. Certainly paras. 9 & 10 of the plaint admit existence of other two suits (Thika CMCC ELC No. 23 of 2014 and Thika ELC No. 50 of 2019 (sic)) both of which are pending determination.
13. On the other hand, annexures JMM2&3 the pleadings in Thika ELC 50 of 2018, show that the Plaintiff herein is the 31st Plaintiff therein. The 3rd Defendant averred that the Plaintiff's company Landluck Investments is also a Plaintiff (3rd Plaintiff) in the aforesaid suit. The Plaintiffs therein claim as owners of various parcels of land being sub divisions of Ruiru/kiu Block 2(Githunguri), the suit land. The Plaintiffs accuse the Defendants for being trespassers on the suit land and destruction of the suit land on account of sewage construction activities. They pray for orders inter alia that the Plaintiffs be decreed owners of the suit land and a declaration that the 2nd, 3rd and 4th Defendants transfer back the Plaintiffs' land.
14. Flowing from the above, the causes of action in both suits no doubt revolve around the acquisition of private land (whose ownership undisputedly is traced to members of the Githunguri Constituency Ranching Co. Ltd) for the construction of Ruiru-Juja Water sewerage Treatment Plant. Whereas the Plaintiff in Thika ELC 50 of 2018 seeks an order of declaration of ownership and reversion of their land, the Plaintiff herein seems to depart from those reliefs and now prays for compensation to the rightful owners (whom he has not disclosed in his plaint) of the affected parcels in the suit land. To my mind, the issues in controversy in both suits and the reliefs sought in the respective suit are directly and substantially different.
15. On the second issue as to whether the Thika ELC 50 of 2018 is between the same parties or parties under whom they or any of them claim herein, it is noteworthy that, although the appellant is the Plaintiff in both suits, the Defendants are different. The only two common Defendants out of the four Defendants in each suit, are the County Government of Kiambu and Githunguri Constituency Ranching Company Limited (GCRL) and therefore, it cannot be said that the parties in both suits are the same.
16. Lastly as to whether the parties are litigating under the same title, the phrase "same title" was defined in the Indian Supreme Court decision in Ram Gobinder Vs. Bhaktavala AIR 1971 SC 664 as "the capacity" in which the parties litigate in the two suits. In this regard, the Court had this to say:

"The crucial test for determining whether the parties are litigating in a suit under the same title as in the previous suit is of the capacity in which they sued or were sued. The term same title has nothing to do either with the cause of action or with the subject matter of two suits."
17. In the Thika ELC 50 of 2018, the Plaintiff is suing as one of the owners of the suit land and the rest of the owners are named therein. In the instant case the Plaintiff does not disclose the identities of



the private owners of the suit land. See para 7 of the plaint dated 19/12/2023. For the 2 Defendants however, the test is satisfied as they are sued in similar capacities in both suits.

18. The Supreme Court in *Kenya National Commissions on Human Rights Vs. Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties)* [2020] eKLR held that:

“(67) The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the sub-judice rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the Court process and diminish the chances of Courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter. This means that when two or more cases are filed between the same parties on the same subject matter before Courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of res sub-judice must therefore establish that there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before Courts of competent jurisdiction; and, lastly, that the suits are between the same parties or their representatives.”

19. The Applicant herein decried that this suit amounts to an abuse of Court process. Further that the Plaintiff lacks locus standi to lodge this suit in relation to the suit land having failed to exhibit his ownership and/or interests therein. According to the Black's Law Dictionary, 10th Edition the phrase locus standi is the right to bring an action or challenge a decision or otherwise expressed, the right to be heard. It is a jurisdictional issue. See the Court of Appeal in *Joseph Kamau Musa, James Kariuki Muchiri, David Muchiri, Ruigu Njiriri, Joseph Njehu Boro & Others Vs. Ereri Company Limited, Gikonyo Ndirangu, Riugu Kabucho, George Kamau Gikanga, Commissioner of Lands & 110 Others* [2017] KECA 577 (KLR). The Plaintiff herein states that RUIRU KIU/BLOCK 2 (GITHUNGURI) 2297 is privately owned by persons who acquired the land by virtue of their membership of GCRL. By his own admission in paras. 9 & 10 of the plaint he avers that the dispute is a subject of two other suits which are yet to be heard and determined. Inter alia, he seeks judgment for an order of permanent injunction against the 1st Defendant from paying compensation of all those plots of land as contained in Gazette Notice No. 673 dated 5/2/2016 to any persons other than the rightful owners as determined by the Hon Court.
20. It is trite that parties are bound by their pleadings. Nowhere in his plaint has the Plaintiff demonstrated his connection to the suit land and/or identified the ‘rightful owners’ to be compensated as prayed in the plaint. This is relevant because in *Thika ELC 50 of 2018*, the Plaintiff alongside 87 other Plaintiffs are described as various owners of plots comprising the suit land. In particular the Plaintiff herein is described at para. 38 of the amended plaint dated 30/3/2022 (in *Thika ELC 50 of 2018*) as the owner of Residential Plot No. P-6, a sub division of the suit land. Accordingly, the Plaintiff’s right of action if any, can only be in respect of Plot no P-6 and not for the entire suit land as claimed in the instant plaint.
21. Recently the Court of Appeal in *Kabiru Vs. Industrial Commercial Development Authority & Another* [2023] KECA 363 (KLR) while citing with approval its earlier holding in *Alfred Njau, Aluchio Liboi, Joseph Muya Mukabi, Peter Inyangala, Akhonya Analo and Jacob Gichigo Vs. City*



Council of Nairobi [1983] KECA 56 (KLR) emphasized that the right cause of action is dependent on locus standi. In the Njau case the Appellate Court distinguished these two terms as follows;

“Lack of locus standi and a cause of action are two different things. Cause of action is the fact or combination of facts which give rise to a right to sue whereas locus standi is the right to appear or be heard, in Court or other proceedings; ...

To say that a person has no cause of action is not necessarily tantamount to shutting the person out of the Court but to say he has no locus standi means he cannot be heard, even on whether or not he has a case worth listening to.”

22. Indeed, a look at the reliefs sought in both suits indicate that their outcomes (if successful) will lead to an embarrassment of Court proceedings. The Court of Kenya in Muchanga Investments Ltd Vs. Safaris Unlimited (Africa) Ltd & 2 Others [2019] eKLR observed that it is difficult to comprehensively list all possible forms of conduct that constitute abuse of judicial process. The Court cited the Nigerian case of Sarak v Kotoye [1992] 9NWLR 9Pt 264 where abuse of judicial process was defined as follows:-

“The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. It’s one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice...”

25. The Learned Judges went on to cite examples of abuse of judicial process which include: -

- “(a) Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- b. Instituting different actions between the same parties simultaneously in different Courts even though on different grounds.
- c. Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a Respondent’s notice.”

23. The Court enjoys inherent powers to protect its dignity and the proceedings before it. A Plaintiff seeking reversion of their land to their names cannot again turn around and seek compensation in a different suit arising from the same suit land during the pendency of the former suit.

24. The upshot of the forgoing is that this suit amounts to vexing the Court’s time and an abuse of Court process and it is hereby struck out.

25. Each party to bear their own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF OCTOBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Plaintiff/Applicant – Absent but served

Defendant/Respondent – Absent but served

Ms. Muchiri for the 2nd Defendant



