



REPUBLIC OF KENYA



Gikandi & 2 others (Duly Appointed Officials of Hiuka Gikandi Women Group) v Wanjohi (Environment & Land Case 1 of 2022) [2023] KEELC 453 (KLR) (2 February 2023) (Ruling)

Neutral citation: [2023] KEELC 453 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 1 OF 2022
JO OLOLA, J
FEBRUARY 2, 2023**

BETWEEN

VIRGINIA WANGECHI GIKANDI 1ST APPLICANT

LUCY WANJIKU KAGWI 2ND APPLICANT

TERESA WAMBUI MWANGI 3RD APPLICANT

DULY APPOINTED OFFICIALS OF HIUKA GIKANDI WOMEN GROUP

AND

STEPHEN MWANGI WANJOHI RESPONDENT

RULING

1. By the Notice of Motion dated 25th March, 2022 Virginia Wangechi Gikandi, Lucy Wanjiku Kagwi and Teresa Wambui Mwangi as officials of Hiuka Gikandi Women Group (the Applicants) pray for orders:
 - (a) That an order of inhibition do issue prohibiting any dealings with respect to L.R No. 6326/14 Mweiga (IR 7494) or any subdivision thereof, pending the hearing and determination of this suit; and
 - (b) That the costs of this application be provided for.
2. The application is supported by an Affidavit sworn by the three Applicants and is based on the grounds that:
 - (i) The Respondent holds 4 plots measuring 0.045 Ha. in LR No. 6326/14 Mweiga (IR 7494) in trust for the Applicants; and
 - (ii) The Respondent has declined to determine the trust and is threatening the Applicant's occupation of the said Plots.



3. In response to the application, Stephen Mwangi Wanjohi (the Respondent) has raised a Notice of Preliminary Objection opposing both the suit and the application on the grounds that:
 1. The application and the entire suit are incompetent and liable to be stayed or dismissed under Section 6 of the *Civil Procedure Act* by dint of the pending related suit, Nyeri Chief Magistrates Case No. 114 of 2018 as per the pleadings attached in the Replying Affidavit;
 2. The application and the entire suit are otherwise an abuse of the Court process; and
 3. The application and the entire suit should therefore be struck out.
4. I have carefully perused both the Motion and the Preliminary Objection raised thereto. I have similarly perused and considered the written submissions placed before me by the Learned Counsels appearing for the Parties.
5. By their application before me, the three Applicants in their capacity as the Chairman, Secretary and Treasurer of Hiuka Gikandi Women Group have urged the Court to issue an order of inhibition prohibiting the Respondent from dealing with L.R No. 6326/14 Mweiga (IR 7494) or any subdivision thereof pending the hearing and determination of this suit. In response thereto, the Respondent asserts by his Preliminary Objection that this suit ought to be stayed and/or dismissed under Section 6 of the *Civil Procedure Act* given that there is a similar pending suit between the parties being Nyeri Chief Magistrates Case No. 114 of 2018.
6. As it were, the Applicants do not deny the existence of the said suit. At paragraph 15 of the Supporting Affidavit, they have indeed exhibited the pending Court proceedings terming them part and parcel of the Respondents scheme to harass them and continue his hold on the suit land.
7. While they admit that the parties in the two suits are the same, the Applicants contend that the relief sought in this suit is to have the trust determined and that the same is not similar to the reliefs sought in the suit pending before the Chief Magistrates Court.
8. Section 6 of the *Civil Procedure Act* on which the Preliminary Objection is hinged provides as follows:

“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 proceedings between the same parties, or between Parties under whom they or any of them claim, litigating under the same title, where such proceeding is pending in the same or any other Court having jurisdiction in Kenya to grant the relief claimed.”
9. The said Section 6 of the *Civil Procedure Act* captures the doctrine of *res subjudice* in our law. Explaining the doctrine in *Republic -vs- Paul Kihara Kariuki and 3 Others Ex-parte Law Society of Kenya* (2020) eKLR, the Court aptly pronounced itself as follows:

“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.”



10. Arising from the foregoing, a party that seeks to invoke the doctrine of *res sub-judice* must therefore establish as the Respondent has done herein 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.
11. In the matter before me, it was not disputed that the Respondent herein is the Plaintiff in the suit earlier filed and now pending before the Chief Magistrates Court for determination. The Applicants herein are the Defendants in the said suit. And while the subject matter was invariably described as L.R N. 6326/14 and 6326/35 it was clear from the annexures to the Applicant's Supporting Affidavit that it was the same parcel of land which is the subject matter of this suit.
12. While the Applicants contend that the relief sought herein is different from that sought in the lower Court, it was apparent that if this suit proceeds, there was a likelihood of conflicting decisions being made over the ownership of the suit property.
13. Arising from the foregoing I am inclined to stay this suit pending the hearing and determination of Nyeri Chief Magistrates ELC Case No. 114 of 2018 and it so ordered.
14. The Respondent shall have the costs of both the application as well as his Preliminary Objection.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 2ND DAY OF FEBRUARY, 2023.**

In the presence of:

Mr. C. M. King'ori for the Defendants

No appearance for Lucy Mwai for the Applicants

(The Applicants themselves present in person in Court)

Court assistant - Kendi

J. O. OLOLA

JUDGE

