



**Vimit Converters Limited v Aima Enterprises Limited (Environment & Land
Case 78 of 2019) [2023] KEELC 16097 (KLR) (13 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16097 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 78 OF 2019
MN GICHERU, J
MARCH 13, 2023**

BETWEEN

VIMIT CONVERTERS LIMITED PLAINTIFF

AND

AIMA ENTERPRISES LIMITED DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated February 7, 2022. It is brought under sections 1A, 1B and 3A of the Civil Procedure Act, order 51, rule 1, Civil Procedure Rules, and article 159 of the Constitution of Kenya and all enabling provisions of law.
2. The motion seeks the staying of this suit pending the hearing and determination of HCCOMM E946 of 2021, Aima Enterprises Limited versus Africa Bank Cooperation Limited and 3 others.
3. The motion is supported by fourteen grounds, an affidavit and one annexure. The gist of the above material is that the primary ground under which the plaintiff seeks to be declared the owner of the suit land is founded on an alleged purchase from a party not before this court namely Africa Bank Cooperation Limited.
4. Secondly, the defendant has filed Nairobi HCCOMM Suit no E946 of 2021 which seeks to address the unlawful dispossession of the suit land.
5. Thirdly, suit no E946 of 2021 is the proper forum to interrogate the issues of illegality and fraud as it has all the necessary parties to make a just determination of the said issues.
6. Fourthly, the stay of this suit is necessary as all the facts might not be presented before this court.
7. Fifthly, this court might arrive at a different decision from the one reached by the court hearing suit No. E946 of 2021.



8. Sixthly, the plaintiff will not suffer any prejudice at all if the order sought is allowed.
9. The application is opposed by the plaintiff and one Anthony Oyoda Abonyo, the finance controller of the plaintiff has sworn a replying affidavit dated June 9, 2022 in which he replies by raising the following issues. Firstly, he deposes that in Suit no E946/2021, the plaintiff has raised a preliminary objection seeking to strike out that suit for being an abuse of the court process.
10. Secondly, even though the defendant came on record on November 11, 2021 through a motion filed under certificate of urgency, it has delayed the quick conclusion of this dispute by a multiplicity of suits which include Kajiado HCCC236 of 2016, Kajiado CMCC 157 of 2018 and Kajiado CMCC Misc. Criminal Application no 83 of 2019.
11. The suit E946/2021 has no urgency and lacks merit. Furthermore, nothing prevents the defendant from presenting all the relevant facts and evidence before this court to prove the alleged illegality and acts of fraud.
12. Fourthly, the only issue in dispute in this suit is simply who is the rightful owner of the suit property and this court is the right and proper forum with jurisdiction to determine this issue.
13. Fifthly, the plaintiff stands to suffer prejudice if this suit is delayed any longer yet it is the defendant that has contributed to all the delay.
14. Only the plaintiff's counsel filed written submissions on November 4, 2022. No submissions have been received from the defendant's counsel. The submissions raise only two issues namely –
 - i. Whether these proceedings should be stayed pending the hearing and determination of E996 of 2021?
 - ii. Who should bear the costs?
15. I have carefully considered the application dated February 7, 2022 in its entirety including the affidavits, the annexures, the grounds, the submissions and the case law cited therein. I will treat the Defendant's grounds in support of the application as its issues. I make the following findings.
16. On the first issue of there being a necessary party to these proceedings not yet joined, I find that it is open to the defendant to institute third party proceedings against the bank or any other party as per order 1, rule 15 Civil Procedure Rules, if need be. This cannot therefore be a good ground for seeking to stay the suit.
17. On the second ground of dispossession of the suit land, I find that it is this court with exclusive jurisdiction to deal with that issue by dint of article 162(2) (b) of the Constitution which provides as follows.
 - (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –
 - (b) The environment and use and occupation of, and title to, land.
 This finding covers the third ground raised by the Defendant.
18. The defendant cannot be heard to say all the necessary facts might not be presented before this court but will be presented in suit no E946/2021. No reason has been given to support this pleading. No party has been precluded from adducing any evidence in this case. In terms of pleadings there is no difference between this court and the High Court. Both courts are governed by the Civil Procedure Act and Rules.



19. On the fifth ground, this court does not have concurrent jurisdiction with the High Court. Where this court has jurisdiction, the High Court has none. The reverse is also true. There is no way that the two courts can deal with the same issue because their jurisdictions are mutually exclusive.
20. On the sixth issue, I find that the plaintiff will suffer prejudice if the suit is stayed. Article 159(2) (b) of the Constitution of Kenya provides that justice shall not be delayed. Again section 1A of the Civil Procedure Act provides that the overriding objective of the Act and the rules made thereunder is to facilitate the just, expeditious, proportionate and affordable resolution of disputes governed by the Act. This same objective is repeated in section 3(1) of the Environment and Land Court Act (Act No. 19 of 2011).

It defeats the above stated provisions of the Constitution and the law to seek to stay this suit.

21. Finally, paragraph 26 of the plaint in suit no E946/2021 states as follows.

“There is no pending cause and there has never been any previous proceedings between the plaintiff and the defendants herein over the subject matter of this suit”.

This averment is obviously untrue because this suit is between the two parties herein who are also parties in E946/2021. Suit no E946/2021 was filed on December 22, 2021 when this suit was pending, having been filed on August 16, 2019.

22. For the above stated reasons, I find the application dated February 7, 2022 has no merit and I dismiss it with costs. It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 13TH DAY OF MARCH, 2023.

M N GICHERU

JUDGE

