



Njoroge & another v Molyn Credit Limited & 3 others (Environment & Land Case 20 of 2023) [2023] KEELC 20713 (KLR) (3 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20713 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 20 OF 2023**

BM EBOSO, J

OCTOBER 3, 2023

BETWEEN

JAMES MWAURA NJOROGE 1ST PLAINTIFF

CATHERINE NGENDO NGANGA 2ND PLAINTIFF

AND

MOLYN CREDIT LIMITED 1ST DEFENDANT

SPACE GLOW AFRICA LTD 2ND DEFENDANT

REGISTRAR OF LANDS, KIAMBU 3RD DEFENDANT

STANLEY SHIUNDU AMUKAYA 4TH DEFENDANT

RULING

1. Through the notice of motion dated April 11, 2023, the 1st defendant seeks the following verbatim orders against the plaintiffs:
 1. As this application raises issues of jurisdiction of this court and the competence of the entire suit filed herein, directions do issue that this application be heard and determined prior to the plaintiffs' notice of motion dated 2nd March 2023.
 2. The suit filed herein be struck out with costs.
 3. Pursuant to this honourable court's inherent jurisdiction to intervene where there is gross abuse of the court process, the plaintiff be barred from instituting fresh suits and/or application(s) for injunction against the 1st defendant over L.R No Muguga/Kanyariri/712 and allow the Kikuyu Law Courts to finally hear and determine the earlier similar suit filed therein in 2018 failure to which the court cites the plaintiffs for contempt.



4. In the alternative to prayer (b) above, the plaintiffs be barred from instituting fresh suit(s) and /or application(s) for injunction against the 1st defendant over L.R No Muguga/ Kanyariri /712 until they have paid the 1st defendant the assessed costs emanating from the aforesaid struck out related matters in Kiambu and failure to which the court cites the plaintiffs for contempt.
2. The said application is the subject of this ruling. The application is anchored on the grounds set out in the notice of motion and it is supported by the affidavit of John Wamiti Njagi, sworn on April 11, 2023.
3. The gist of the application is that this suit is subjudice and an abuse of the process of the court, hence it should be struck out with costs. The 1st defendant contends that in 2018, the 1st plaintiff filed Kikuyu Senior Principal Magistrate Court Environment and Land Case No 52 of 2018 against the 1st defendant and M/s Regent Auctioneers, seeking injunctive orders in relation to land parcel number Muguga/ Kanyariri/712. The applicant [the 1st defendant] contends that the said suit was anchored on the same cause of action as the cause of action in the present suit. It is the case of the 1st defendant that the 1st plaintiff's two applications in which he sought interlocutory injunctive orders in the said suit were dismissed in 2019 and 2022 for lack of merit.
4. Secondly, the 1st defendant contends that in April 2022, the two plaintiffs filed Milimani [Nairobi] Chief Magistrate Court Civil Case No E1840 of 2022 against the 1st defendant and an auctioneer, seeking an injunctive order in relation to the same suit property, anchored on the same cause of action. It is the case of the 1st defendant that the said second suit together with the accompanying interlocutory application were dismissed on 5/8/2022 for being subjudice and res judicata respectively.
5. Thirdly, the 1st defendant contends that on or about 8/12/2022, the plaintiffs filed a third suit, to wit, Kiambu Chief Magistrate Court Environment and Land Case No E076 of 2022 against the 1st defendant, seeking injunctive orders in relation to the same suit property and the same cause of action. It is the case of the 1st defendant that the said suit, together with the accompanying application, were struck out with costs through a ruling rendered by the Magistrate Court at Kiambu on 2/3/2023 for being subjudice and resjudicata.
6. The 1st defendant adds that a day after the Magistrate Court at Kiambu struck out Kiambu Chief Magistrate Court Environment and Land Case No E076 OF 2022 for being subjudice and resjudicata, the plaintiffs instituted the present suit, which is anchored on the same cause of action and relates to the same suit property.
7. The 1st defendant adds that on 10/3/2023, the plaintiffs served it with a memorandum of appeal filed in Thika ELCA Case No E017 of 2023 against the ruling rendered by the Kiambu Chief Magistrate Court on 2/3/2023 and a second memorandum of appeal filed in Thika ELCA Case No E018 of 2023 in relation to the order of the Kikuyu Senior Principal Magistrate Court rendered on 24/2/2023 disallowing the withdrawal of the matter by the 1st plaintiff over irregularities in representation.
8. The 1st defendant further contends that on 14/3/2023, the 1st plaintiff filed two parallel notices of withdrawal of suit while at the same time challenging the order of the Kikuyu Senior Principal Magistrate Court disallowing the previous attempt to withdraw the suit. The 1st defendant adds that on March 17, 2023, the Kikuyu Senior Principal Magistrate Court disallowed the parallel notices and ordered the 1st plaintiff to comply with its ruling and order of February 24, 2023. The 1st defendant contends that the 1st plaintiff has not complied with the said order of the Magistrate Court at Kikuyu.
9. It is the case of the 1st defendant that, in the above circumstances, this court lacks jurisdiction to entertain this suit. The 1st defendant contends that it is suffering prejudice in terms of loss of time and financial resources in defending the multiplicity of suits.



10. The plaintiffs opposes the application through a replying affidavit sworn on May 3, 2023 by James Mwaura Njoroge. The plaintiffs contend that the application was brought in bad faith because the suit at Kikuyu Senior Principal Magistrate Court has never been heard, adding that their constitutional right to a fair hearing has been violated throughout. They further contend that there is no other similar suit pending between the parties in any other court relating to the subject matter in this suit.
11. The plaintiffs invite the court to consider that the fact that the 1st defendant proceeded to sell the suit property at a throwaway price, adding that the sale violated Section 97 of the [Land Act 2012](#) and the [Auctioneers Act 1996](#). The plaintiffs fault the manner in which the chargee's statutory power of sale was exercised by the 1st defendant.
12. The application was canvassed through written submissions dated June 12, 2023 filed by M/s Wamiti Njagi & Associates. The plaintiffs filed written submissions dated June 14, 2023. I will not rehash the rival submissions.
13. Having read the pleadings, the application, the response to the application, and the parties' rival submissions, it does emerge that the plaintiffs are challenging the manner in which the 1st defendant exercised the chargee's statutory power of sale. It does appear from the pleadings that the dominant issue in the suit revolves around the question of the lawfulness of the exercise of the chargee's statutory power of sale by the 1st defendant. Is this court the right court to adjudicate the dispute?
14. The above question is one that should be determined before the court exercises jurisdiction over the issues that fall for determination in the application dated April 11, 2022. The court cannot answer the question without according the parties the opportunity to be heard on the question.
15. Consequently, a determination on the application dated April 11, 2022 will be kept on hold pending the court's determination on the question as to whether it has jurisdiction to adjudicate disputes relating to the 1st defendant's exercise of the chargee's statutory power of sale. At time of rendering this ruling, the court will set an early date when the parties will be accorded the opportunity to submit on the question.
16. In the end, the following orders are made:
 - a. In view of the fact that the question relating to the jurisdiction of this court to adjudicate mortgage disputes has arisen, a determination on the question ought to be made first.
 - b. Parties will be given the opportunity to address the court on the question before it makes it a determination on it.
 - c. The order reserving a date for ruling on the application dated April 11, 2022 is hereby vacated pending a determination on the question as to whether this court is seized of jurisdiction to adjudicate mortgage disputes.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 3RD DAY OF OCTOBER 2023

B M EBOSO

JUDGE

In the presence of: -

Mr Wamiti Njagi for the 1st Defendant

Court Assistant: Osodo/Hinga

