



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. 47 OF 2018

(FORMERLY NAIROBI ELC NO. 1385 OF 2013)

TERESIA WANJIRU MBUGUA.....PLAINTIFF

VERSUS

MOSES GIKONYO HIRAM.....DEFENDANT

ORDER/RULING

1. As I embarked on the task of writing a judgment in this case, it emerged that a previous suit had been filed in **Thika CMCC no. 336 of 2012** concerning the same parties the same subject matter and same issues.
2. The only difference is that defendant herein was the plaintiff while plaintiff was the defendant in the lower court case. Judgment in **Thika CMCC 336/12** was delivered on **11.10.2013**. A decree was issued on **16.12.2013**. Pursuant to that decree, the plaintiff in the lower court case was issued with a title deed on **19.4.2017**.
3. This ELC case was filed on **15.11.2013**, one month and two days after the delivery of the judgment in the lower court.
4. Section 6 of the Civil Procedure Act provides that;

“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.....”.
5. The **Black’s Law Dictionary 7th edition** defines proceedings as *“The regular and orderly progression of a law suit including all acts and events between the time of commencement and entry of judgment”.*
6. That being the case it was not open for the parties and particularly the plaintiff herein to elect to proceed with the case when the proceedings in the lower court stand as regular and orderly. It is also not open to this court to give a determination of the dispute in the format of a judgment, when there is a judgment of the lower court that has not been challenged.
7. The purported transfer and consolidation of this suit with Thika **CMCC no. 336/12** on **15.11.2018** through the application filed on **13.6.2018** is no longer sustainable in view of the fact that the lower court case has been finalized and execution has taken place.
8. In light of the foregoing I find that the proceedings in **Thika ELC 47/18 (Formerly ELC No. 1385 of 2013 Nairobi)** ought not to have progressed to this stage. Plaintiff ought to have initiated their termination.
9. As long as the judgment in **Thika CMCC 336/12** is in force, the only way to challenge the same is through the laid down legal procedures of appeal or review and not to have fresh proceedings in this forum.
10. In the circumstances I find that the proceedings herein are irrelevant a waste of precious judicial time, are of no consequence and are hereby declared a nullity.
11. Final orders are given as follows:

(1) The order of transfer and consolidation of this file with Thika CMCC No. 336/12 given on 15.11.2018 is hereby set aside.

(2) The two files are hereby separated and the lower court file is to be transmitted back to the CM’s court.

(3) This suit (Thika ELC 47/2018) is hereby dismissed for want of jurisdiction with no orders as to costs.

(4) This order/ruling is to be extracted and to be placed in Thika CMCC 336/12 forthwith.

(5) The ELC file No. 47/18 is marked as closed and is to be taken to the archives.

Dated, signed and delivered at Thika this 2nd May, 2019

MBUGUA LUCY

JUDGE

2/5/2019

In the presence of

J. Kouna holding brief for Onyango for Plaintiff: Present

F.N. Kimani holding brief for Jessee Kariuki for defendant: Present

Plaintiff: Present

Defendant: Absent

M/s Diana Court Assistant.