



REPUBLIC OF KENYA



**Wachira v Wachira (Civil Case 17 of 2018) [2024] KEHC 1547 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1547 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CIVIL CASE 17 OF 2018  
M MUYA, J  
FEBRUARY 22, 2024**

**BETWEEN**

**JOSEPH WACHIRA ..... APPLICANT**

**AND**

**MARY WAIRIMU WACHIRA ..... RESPONDENT**

**RULING**

1. That the honourable court be pleased to strike out the applicants Originating Summons dated 13<sup>th</sup> November 2018.
2. That the honourable court be pleased to dismiss the Applicant`s suit against the Respondent with costs.  
The grounds are:-
  - a). The Applicant had previously filed a similar suit against the Respondent in Nairobi High Court Civil Suit No. 2107 of 1988 in which he sought for the following orders:-
    - i). That the Plaintiff is entitled to registration as the lawful proprietor of the following parcels of land:-
      - a). Plot No. E6/2 New Mathira Housing Scheme.
      - b). Plot No. 742/Marmanet Forest/302/Laikipia District.
      - c). Plot No. 742/Marmanet Forest/302/Laikipia District.
    - ii). A declaration that the Plaintiff is the lawful proprietor of the said parcels of land above.
    - iii). A declaration that the Defendant was registered as the proprietor of the said land in trust for the Plaintiff.
    - iv). That the Defendant is ordered to sign all the necessary documents to effect the transfer of the said parcels of land.



- v). That in default of the Defendant signing all the necessary documents of transfer, the Registrar of the High Court of Kenya be authorized to sign the same on behalf of the Defendant.
- b). That instead of prosecuting Nairobi High Court Civil Case No. 2107 of 1988 or withdrawing it, the Applicant filed another similar suit against the Respondent on 14<sup>th</sup> July 2009 being Nairobi High Court Civil Suit No. ELC 341 of 2009 (OS) and sought for the following orders:-
- i. The property known as Plot No. 742, Marmanet Forest/302 Laikipia District and Plot No. 768 Marmanet Forest/302/Laikipia District and Plot No. E6/2/New Mathare Housing Scheme are family properties owned jointly by the Applicant and the Respondent in equal shares.
  - ii. The Applicant be registered as proprietor of Plot No. 768 Marmanet Forest/302/Laikipia District.
  - iii. The Respondent be registered as proprietor of Plot No. E6/2/New Mathare Housing scheme.
  - iv. That the Applicant be registered as proprietor of 1/2 share of Plot No. 742 Marmanet Forest/302 Laikipia District and the Respondent be registered in respect of the other ½ share.
  - v. That the Respondent be ordered to sign all necessary documents to effect the transfer of the said parcels of land in the name of the Applicant and in default the Deputy Registrar of the High Court of Kenya be authorized to sign the documents on her behalf.
- c). The Respondent moved the court vide Notice of Motion application dated 10/4/2012 to stay Nairobi High Court Civil Case No. ELC 341 of 2009 for being *sub-judice* given the pendency of Nairobi High Court Civil No. 2107 of 1988.
- d). The Honourable Court stayed Nairobi High Court Civil Case No. ELC 341 of 2009 pending hearing and determination of Nairobi HCCC 2107 of 1988 on 2/7/2012.
- e). The Applicant has never moved the court to prosecute Nairobi HCCC No. 2107 of 1988 despite the same having been filed close to 33 years ago.
- f). The present suit is an abuse of the court process as the Honourable Court gave orders that Nairobi HCCC No 342 of 2009 be stayed pending hearing and determination of Nairobi HCCC No. 2107 of 1988.
- g). The present suit is a replica of Nairobi HCCC No. ELC 341 of 2009 hence the Applicant is trying to have the said suit prosecuted through the back door.
- h). The Applicant's present suit against the Respondent raises issues which are directly and substantially in issue in Nairobi HCCC No. 2107 of 1988, NRB HCCC No. ELC 341 of 2009. That the suit violates the *Civil Procedure Act* and it should be struck out.

### Issues For Determination

3. Whether the Applicant's Originating Summons dated 13<sup>th</sup> November 2018 violates section 6 and 7 of the *Civil Procedure Act*.



## Analysis And Determination.

4. Section 6 of the *Civil Procedure Act* 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 proceeding between the same parties, or 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.”
6. Section 7 of the Act states:- “No court shall try any suit or issue in which the matter is directly and substantially in issue in a former suit between the same parties or between the same parties under whom they or any of them claim, litigating under the same title, in court competent to try such subsequent suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”
7. The contention by the Respondent in the application is that none of the Plaintiff’s two suits offends the above two provisions of the *Civil Procedure Act*.
8. In that suit No. 2107 of 1988 involved the three properties:-
  - 1). 6/2 New Mathare Housing Scheme;
  - 2). Plot No. 742/Marmanet Forest/302/Laikipia District; and
  - 3). Plot No. 742/Marmanet Forest/302/Laikipia District.
9. The main issue being the claim by the Plaintiff as the proprietor and the need by the court to declare him as such.
10. In suit No. ELC 341 of 2009 (OS) involved Plot No. 742/Marmanet 302/Laikipia District.
  - 2). Plot No. 768 Marmanet Forest/302/Laikipia District.
  - 3). Plot No. E6/2 Mathare Housing scheme.
11. The main issue being that the properties was owned by the Applicant and the Respondent jointly and in equal shares.
12. That the prayers in the two suits are substantially different.
13. Issue raised in one suit was whether the properties were the Plaintiff’s alone and issue raised in the other suit is whether they were family properties which ought to be shared equally.
14. Further that HCCC No. 2107 of 1988 was partly heard by Aganyanya J. before the file disappeared and that at no time was the Plaintiff served with a court order for stay of suit No. 2107 of 1988.
15. The Plaintiff in his Replying Affidavit dated 28<sup>th</sup> November 2022 at Paragraph 17 deposes that before filing this suit in June 2009 he had been advised by his Advocate Kaai Mugambi to write and discontinue suit No. 2107 of 1988. That he wrote to the court indicating that he had withdrawn the said suit.
16. As for the stay orders on the same suit, he denies knowledge of the same.
17. I have perused the Notice of Motion application dated 10<sup>th</sup> April 2012 seeking stay and /or dismissal of the instant suit for being *subjudice*.



18. The application was heard by Lady Justice Mwilu (as she then was) and issued orders of stay pending hearing and determination of Civil Suit No. 2107 of 1988.
19. Further a perusal of suit No. 2107 of 1988 and suit No. ELC 341 of 2009 (OS) they involve the same properties and /or subject matters.  
The parties are the same.
20. The Plaintiff alleges to have withdrawn civil suit No. 2107 of 1988 but there is no evidence to that effect.
21. The instant suit raises issues which are substantially in issue in Nairobi Civil Suit No. ELC 341 of 2009 (OS) and Nairobi Civil Suit No. 2107 of 1988.  
Orders sought are substantially same ones.
22. I am satisfied that this instant suit violates the provisions of Sections 6 and 7 of the Civil Procedure Act.
23. This application has merit and the suit is accordingly struck out and dismissed with costs to the Defendant.

**RULING READ AND DELIVERED IN OPEN COURT THIS 22<sup>ND</sup> DAY OF FEBRUARY 2024.**

In the presence of:-

Odoyo for the Defendant/Applicant.

Court assistant: Andrew.

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**JUSTICE MARTIN MUYA**

