



Yegon & 3 others v Rutto & another (Miscellaneous Civil Application E027 of 2024) [2024] KEHC 11975 (KLR) (9 October 2024) (Ruling)

Neutral citation: [2024] KEHC 11975 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
MISCELLANEOUS CIVIL APPLICATION E027 OF 2024**

JK SERGON, J

OCTOBER 9, 2024

BETWEEN

**KEVIN KIPKORIR YEGON 1ST APPLICANT
GEDION KIPNGETICH BETT 2ND APPLICANT
BRIAN KIPROTICH YEGON 3RD APPLICANT
ZEPHANIAH KIBET ROP 4TH APPLICANT**

AND

**GILBERT KIMUTAI RUTTO 1ST RESPONDENT
JAMES KIPKIRUI ROP 2ND RESPONDENT**

RULING

1. The application coming up for determination is a chamber summons dated 20th June, 2024 seeking the following orders;
 - (i) Spent
 - (ii) That pending the hearing and determination of this application and Kericho High Court ELC No 10 of 2020, there be a stay of hearing of the following cases in various courts that is Kericho CMC Criminal Cases No 3070 of 2023, Kericho CMC Criminal Cases No 059 of 2024, Kericho CMC Criminal Cases No 441 of 2024, Kericho CMC Criminal Cases No 891 of 2024 and Kericho CMC ELC No 31 of 2024 since all the matters arise from a land dispute pending hearing in High Court ELC Case No 10 of 2020 and is due for hearing on 17th October, 2024.
 - (iii) That pending the hearing and determination of this application and Kericho High Court ELC No 10 of 2020, the OCS Litein Police Station be ordered to undertake investigations in the above matters and he or his servants, agents and police officers from any police station be



restrained, stopped and/or barred from arresting, intimidating and/or processing the applicant and their siblings from any criminal charges which arise from the family land issues.

- (iv) That pending the hearing and determination of this application and Kericho High Court ELC No 10 of 2020, the applicants and their siblings be warned to keep peace and not to cause any breach of peace.
 - (v) That the land case is between blood brothers over land parcels that are held in trust by two elder brothers who have refused to equitably share amongst their siblings.
 - (vi) That the costs of this application be provided for.
 - (vii) Any other orders that meet the ends of justice.
2. The application is supported by grounds on the face of it and the supporting affidavit of Kevin Kipkorir Yegon the 1st applicant on behalf of the co-applicant herein.
 3. The 1st applicant avers that the respondents filed several criminal charges to wit Kericho CMC Criminal Cases No 3070 of 2023, Kericho CMC Criminal Cases No 059 of 2024, Kericho CMC Criminal Cases No 441 of 2024, Kericho CMC Criminal Cases No 891 of 2024 against him and the co-applicants.
 4. The 1st applicant avers that apart from the aforementioned criminal charges, the 1st respondent filed a suit against the 4th applicant in Kericho CMC ELC No 31 of 2024 which matter has been defended by their advocates and is pending hearing and determination of a preliminary objection dated 30th April, 2024.
 5. The 1st applicant avers that the use of the criminal justice system by the respondents is an attempt to scuttle and frustrate the plaintiff in the land case pending in Kericho High Court ELC No 10 of 2020, which is pending hearing on 17th October, 2024 the sole aim is to achieve their family's intent of having a bigger share of the parcel of land known as Kericho/Kabartegan/74.
 6. The 1st applicant avers that the criminal charges filed against them is one of the gimmicks being employed by the respondents and defendants in Kericho High Court ELC No 10 of 2020 to intimidate his father and siblings to agree to the mode of distribution of their grandfather's estate.
 7. The 1st applicant avers that their advocate on record has severally informed the OCPD Bureti Sub County and OCS Kabartegan Police Station that the criminal charges against some of the family members of the estate of Kiproop Arap Chumo (deceased) were as a result of a protracted land dispute, that is pending hearing and determination in court.
 8. The 1st applicant therefore urged this court to temporarily stay the proceedings in Kericho CMC Criminal Cases No 3070 of 2023, Kericho CMC Criminal Cases No 059 of 2024, Kericho CMC Criminal Cases No 441 of 2024, Kericho CMC Criminal Cases No 891 of 2024 and Kericho CMC ELC No 31 of 2024 pending hearing and determination of Kericho High Court ELC No 10 of 2020.
 9. Gilbert Kimutai Ruto the 1st respondent herein filed a replying affidavit in response to the application on behalf of the 2nd respondent.
 10. The 1st respondent avers that the applicants have severally illegally and without any colour of right or permission entered into his portion of land known as Kericho/Kabartegan/1851 and destroyed his house and fence thereon claiming ownership of the same and that there are two criminal cases pending in court Kericho CMC Criminal Cases No 3070 of 2023 against the 4th applicant and Kericho CMC Criminal Cases No 059 of 2024 against the 1st and 2nd applicants.



11. The 1st respondent avers that he is not privy to Kericho CMC Criminal Cases No 441 of 2023 and Kericho CMC ELC No 31 of 2024.
12. The 1st respondent avers that he is the legal owner of land parcel known as Kericho/Kabartegan/1851 formerly known as land known as Kericho/Kabartegan/1133 registered in the name of Rueben Rop which he bought from the 4th Applicant herein Zephania Rop.
13. The 1st respondent avers that Kericho High Court ELC No 10 of 2020 is between different parties and that the respondents are not parties to the said suit.
14. The 1st respondent avers that the instant application was made in bad faith with the intention to interfere with the criminal proceedings that are not related to Kericho High Court ELC No 10 of 2020 which are pending hearing and determination.
15. The 1st respondent avers that the instant application is baseless, scandalous, frivolous and an abuse of court process.
16. This court directed the parties to file written submissions.
17. The applicants complied and filed written submissions, they applicants maintained that this court should use its discretionary power to grant a stay of proceedings in Kericho CMC Criminal Cases No 3070 of 2023, Kericho CMC Criminal Cases No 059 of 2024, Kericho CMC Criminal Cases No 441 of 2024, Kericho CMC Criminal Cases No 891 of 2024 and Kericho CMC ELC No 31 of 2024 as all the aspects of ownership vis-a-vis customary trust of Kericho/Kabartegan/74 were pending hearing and determination in Kericho High Court ELC No 10 of 2020.
18. The applicants urged this court to adopt the doctrine of sub judice under section 6 of the *Civil Procedure Act* and order a stay of proceedings in the spurious and vexatious cases filed in Chief Magistrate Courts by the family members against each other as the parties and the issues thereon are directly and substantially the same, touching on customary land pending hearing and determination in Kericho High Court ELC No 10 of 2020. The applicants cited the case of *Kenya National Commission on Human Rights v Attorney General, Independent Electoral & Boundaries Commission & 16 others* (2002) eKLR where the Supreme Court held that;

“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. A party that seeks to invoke the doctrine of res sub-judice must therefore establish 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.”
19. The respondents complied and filed their submissions, the respondents contended that the application on record is spent and/or overtaken by events and engaging the same was tantamount to an academic exercise.



20. The respondents contended that if this court were to allow the orders in the application, the orders would adversely affect the respondents, the applicants have severally have interfered with the peaceful occupation by causing malicious damage, disturbance and assault without reasonable cause.
21. The respondents contended that stay of proceedings albeit discretionary is only granted sparingly and only in exceptional circumstances, the respondents maintained that the applicants have not made out a clear case warranting the stay of court proceedings in the criminal charges.
22. Having considered the pleadings and submissions by the respective parties, the issues for determination are to stay proceedings in Kericho CMC Criminal Cases No 3070 of 2023, Kericho CMC Criminal Cases No 059 of 2024, Kericho CMC Criminal Cases No 441 of 2024, Kericho CMC Criminal Cases No 891 of 2024 and Kericho CMC ELC No 31 of 2024 pending hearing and determination of Kericho High Court ELC No 10 of 2020.
23. In *Kenya Wildlife Service v James Mutembei* [2019] KEHC 10478 (KLR) Gikonyo J. stated as follows;

“Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceedings is high and stringent.”
24. This court finds that the plaintiff/applicants have not made out a strong and cogent case warranting this court to issue a stay of proceedings in the criminal matters pending the hearing and determination of Kericho High Court ELC No 10 of 2020. The respondent averred that he is the registered proprietor Kericho/Kabartegan/1851 and that the applicants severally illegally and without any colour of right or permission entered into his portion of land, interfered with the peaceful occupation by causing malicious damage, disturbance and assault without reasonable cause thereby necessitating criminal proceedings. This court finds that these criminal proceedings are not related to Kericho High Court ELC No 10 of 2020 and that these cases are pending hearing and determination in other courts.
25. In the end, the instant summons is found to be without merit. It is dismissed with each party bearing their own costs.

DELIVERED, SIGNED AND DATED AT KERICHO THIS 9TH DAY OCTOBER, 2024.

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J.K. SERGON

JUDGE

In the presence of:-

C/Assistant – Rutoh

No Appearance for Miss Amaya holding brief for Korir for Applicant

No Appearance for Respondent

