



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELC NO. 86 OF 2018

KENYA NATIONAL CHAMBER OF COMMERCE

& INDUSTRY -KNCC1 (MURANGA CHAPTER).....1ST PLAINTIFF

PETER KIGUTA KAMAU.....2ND PLAINTIFF

JOAN NJERU WANJIKU.....3RD PLAINTIFF

VS

DELMONTE KENYA LIMITED.....1ST DEFENDANT

NATIONAL LAND COMMISSION.....2ND DEFENDANT

COUNTY GOVERNMENT OF MURANGA.....3RD DEFENDANT

THE HON ATTORNEY GENERAL..... 4TH DEFENDANT

AND

COUNTY GOVERNMENT OF KIAMBU.....INTERESTED PARTY

RULING

1. The Plaintiffs moved the Court through a plaint filed on the 9/11/18 allegedly on behalf of 2000 of its members whose forefathers, descendants and ancestors lived on the suit lands. They averred that around 1895, the then, colonial Government took away their lands, which lands are currently described as LR No.s 12157/2, 12157/3/, 12157/4, 12157/5, 12158, 13169, 12203/1, 12203/2 and 13289 (hereinafter called the suit lands) and relocated them from their ancestral lands where they practiced barter trade and carried out cultural activities. As a result of which all their generations after colonialism have been deprived of land and thus rendered poor and economically deprived. That the suit lands are currently being occupied by the 1st Defendant as a lessee from the Government of Kenya. That upon Kenya attaining her independence, the lands did not revert to their forefathers due to ignorance coupled with their poverty. They pleaded with the Court to redeem their historical rights and atone the historical injustice by ordering that 1500 acres of land be excised out of the suit lands and allotted to them before any of the 1st Defendants leases are renewed and or extended.

2. The Plaintiffs sought orders interalia; a declaration that the Plaintiffs are entitled to 1500 acres of land out of the suit lands; the 1st Defendant do transfer the said 1500 acres to the Plaintiffs to hold in trust for the members of the 1st Plaintiff; a permanent injunction restraining the Defendants from renewing and or extending the leases of the suit lands in favour of the 1st Defendant until the historical interests of the Plaintiffs have been provided for.

3. Together with the plaint, the Plaintiffs filed a Notice of Motion on the 10/12/18 seeking orders interalia; That this suit be consolidated with ELC (54?)53 of 2018 for purposes of being heard and determined together; a temporary injunction be issued against the 2nd , 3rd and 4th Defendants restraining them from renewing and extending the lease in respect of the suit lands in favour of the 1st Defendant pending the hearing and determination of this suit.

4. The 1st Defendant denied the Plaintiffs claims vide its statement of defense filed on the 13/12/18. Interalia, the 1st defendant contended that the plaintiffs claim for 1500 acres out of its properties is baseless and without any legal foundation. Simultaneously the 1st Defendant filed a Preliminary Objection on the following grounds;

a. The Court has no jurisdiction to hear and determine the claim herein which is based on historical injustice dating back to 1895.

b. The suit herein is hopelessly time barred.

c. The suit by the 1st Plaintiff offends the mandatory provisions of Order 4 Rule 1 (2) and (4) of the Civil Procedure Rules(CPR), 2010.

5. The parties have urged the Court to determine the Motion dated 10/12/18 and the Preliminary Objection dated the 13/12/18 together. I shall determine the Preliminary Objection first and if it is upheld, then, the Motion shall be deemed spent. However, if the Preliminary Objection fails then I shall proceed to consider the Motion.

6. The parties elected to canvass the Preliminary Objection through written submissions. The Plaintiffs and the 1st Defendant filed their respective written submissions on the 18/11/19 and 20/6/19 respectively.

7. The 2nd -4th Defendants did not file any response to the Preliminary objection as well as the Notice of Motion. It is deemed that they do not oppose the Preliminary Objection.

8. In respect to the capacity of the 1st Plaintiff to sue, the Plaintiffs argued that the 1st plaintiff is the Muranga Chapter and its membership has a right to file suit through its association. That the 2nd and 3rd Plaintiffs have sued in their individual capacities as well as being members of the 1st Plaintiff, which position they will demonstrate during the hearing of the suit. Likewise, the Plaintiffs averred that they will avail the list of its 2000 members during the pretrial conference if the matter shall not have been settled out of Court. In any event they argued membership is a matter of fact and not law.

9. In addition, they contended that the gist of their suit is that their claim of 1500 acres in favour of the 1st Plaintiff members and their lineage be provided for before the renewal of the leases to the 1st Defendant. They assert that to the contrary, they are not opposed to the 1st Defendants leases being renewed/extended as long as their claim is catered for. They argued that historical injustice is a matter for evidence and faulted the preliminary objection on that account.

10. Relying on section 15 of the National Land Commission Act (NLC Act) and Art 67 of the Constitution, the Plaintiffs argued that the jurisdiction of the Court to hear and determine cases in respect to historical injustice has not been ousted. On that account, they argued that the suit should be heard to its logical conclusion.

11. The Plaintiffs submitted that they are not parties to Petition No 398 of 2015. That it is therefore incorrect for the 1st Defendant to claim that this suit is incompetent on that score.

12. In respect to time bar, the Plaintiffs contended that their suit is based on Art 67 of the Constitution and as such statutory bar under the Limitations of Actions Act does not apply.

13. Further that their claim of 1500 acres should not be extinguished because the 2nd Defendant failed to act on their letter of complaint on historical injustice dated the 26/10/2016.

14. In responding to the 3rd objection which is whether the suit by the 1st Plaintiff offends the mandatory provisions of Order 4 Rule 1 (2) and (4) of the CPR, 2010, the Plaintiffs submitted that whether or not the directors of the 1st Plaintiff or the 2nd and or 3rd Plaintiffs did swear an affidavit on behalf of the 1st Plaintiff, is not sufficient reason to dismiss a case. They argue that these are issues that may be cured by an amendment. No further elaboration is given.

15. The 1st Defendant submitted that the application and the suit filed by the Plaintiffs relate to purported land ownership rights allegedly alienated in 1895 which in the premises is time barred under section 7 of the Limitations of Actions Act. It relied on the case of **Haron Onyancha Vs The National Police Service Commission and Anor (2017) EKL**R and **Moffat Muriithi Muchai Vs Wanjiru Wanjohi Gatundu & 2 others (2019) EKL**R where the Court held that an action to recover land may not be brought after the end of 12 years from the date on which the right accrued. That in this case the alleged claim accrued in 1895, some 124 years ago. The rationale for the law of limitation is to prevent a plaintiff from prosecuting stale claims on the one hand and protect a defendant after he has lost evidence of his defence from being disturbed after a lapse of time. Its effect therefore is to remove remedies irrespective of the merits of the case. **See Mehta Vs Shah (1965) E A 321**. The 1st Defendant argued that it acquired the suit lands in 1968 without any expectation that claims such as this would arise many years later.

16. Holding that the issue of statutory bar goes to the root of the jurisdiction of a Court, the 1st Defendant contended that on that basis the Court lacks the jurisdiction to hear the suit. This was the decision of the Court in **Bosire Ongero Vs Royal Media Services (2015) EKL**R.

17. Referring to Art 67 of the Constitution and section 15 of the National Land Commission Act, the 1st Defendant averred that section 15 of the NLC Act provides a window in which historical land injustices which would otherwise be statute barred may be heard by the NLC. It was categorical that such a window does not extend to the ELC Court. It stated that section 15(3) (b), (ii) allows the NLC to admit claims of historical injustices which are not capable of being addressed through the ordinary Court system on the basis that such claims are debarred under Section 7 of the Limitations of Actions Act. The 1st Defendant strongly argued that this suit is such a candidate for hearing by the NLC using the limited window permitted under section 15 of the Act and not the ELC.

18. On the issue of jurisdiction, the 1st Defendant urged the Court to rely on the celebrated case of **The owners of the Motor Vessel Lilian S vs Caltex Oil Kenya Limited (1989) KLR 1** where the Court held that;

“.....jurisdiction is everything. Without it a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.

19. It argued that Art 67 of the Constitution as read together with Section 15 of the NLC Act mandates the NLC to investigate historical land injustices and exempts the NLC and not the ELC Court from the provisions of section 7 of the Limitations of Actions Act. It supports its position with the holding of the Court in **Ledidi Ole Tauta & others Vs The Hon AG & 2 others (2015) ECLR**. In this case the Court held that the right forum to investigate historical land injustices and make recommendations for redress rested with the NLC and not the Court. It urged the Court to down its tools on account of lack of jurisdiction.

20. In respect to whether the suit by the 1st Plaintiff offends the mandatory provisions of Order 4 Rule 1 (2) and (4) of the CPR, 2010, the 1st Defendant argued that if the 1st Plaintiff claims to be a duly registered Company, then its verifying affidavit should have been signed by its officer duly authorized under seal of the Company. That the essence of the verifying affidavit is to avoid unauthorized parties filing suits. That though the 1st Plaintiff described itself for the purpose of the suit as Kenya National Chamber of Commerce & Industry, Muranga Branch, it annexed the certificate of incorporation of Kenya National Chamber of Commerce & Industry which is a Company incorporated in 1973 and limited by guarantee. No authority has been provided to the Court in respect to a suit by the latter. No evidence to show that the 1st plaintiff is a corporation, nor is a legal person has been adduced. It argued that the case of the 1st Plaintiff is untenable on that ground. On the other hand, the 2nd and 3rd Plaintiffs were faulted for failing to institute a representative suit. That in a similar case in **Kenya Commercial Bank Limited vs Stage Coach Management Limited (2014) ECLR** the Court dismissed the suit where no authority of the Plaintiff to institute the suit was shown despite the Plaintiff having sufficient time to do so.

21. Having read and considered the pleadings of the parties together with the written submissions and the legal authorities as cited before me, the key issues that commend themselves for determination are two; whether the suit is time barred and if so, does it affect the jurisdiction of the Court to hear and determine the matter; whether the suit by the 1st Plaintiff offends the provisions of Order 4 Rule 1 (2) and (4) of the CPR)2010; costs of the objection.

22. Before I delve into the issues raised in this objection, I would like to deal with pleadings in form of grounds of opposition to the Plaintiffs notice of motion dated the 10/12/18 filed by a stranger namely Kandara Residents Association. I say a stranger because it is not a party in this suit. The said Kandara Residents Association did not seek the leave of the Court in filing the grounds of opposition and or the written submissions. It is the view of the Court that these pleadings are an abuse of the process of the Court and are hereby struck out from the record.

23. The classical case in the definition of a Preliminary objection is to be found in the case of Mukisa **Biscuits Manufacturers Ltd vs West End Distributors Ltd. [1969] E.A. 696**, where the Court held that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion”.

Further Sir Charles Newbold in the same case stated as follows;

“.....A preliminary Objection is in the nature of what used to be a demurer. It raises pure points of law which is argued on the assumption that all facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained and if what is sought is the exercise of Judicial discretion. The improper raising of points by way of Preliminary Objection does nothing but to unnecessarily increase costs and on occasion confuse the issue. The improper procedure should stop.’”

24. The effect of the case law cited above, is that, for one to succeed in putting up a Preliminary Objection, it must meet the following criteria; it must be pleaded by one party and admitted by the other; must be a matter of law which is capable of disposing off the suit; must not be blurred by factual details calling for evidence; must not call upon the Court to exercise discretion.

25. The claim of the Plaintiffs is said to have arisen in 1895 when their ancestors' land was illegally alienated by the colonial masters and the successive Governments upon independence did nothing to redress them. It is true that the 2010 Constitution now acknowledges such claims in our justice system and the need cannot be underscored given the hue and cry in respect to land injustices that bedeviled the Kenyan Society on account of various reasons ranging from colonialization, skewed developments, political and social maladies just to name a few. I say this because, understandably, Kenyans felt the need to relook at these cases afresh with a view to getting them redressed, hence the establishment of the NLC with a clear mandate enacted in Art 67 of the Constitution to receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

26. It would be of importance to, at the outset, clarify that the jurisdiction of the Court to hear and determine historical land injustices has neither been ousted by Art 67 of the Constitution nor the NLC Act. The jurisdiction of the ELC Court as set out under Article 162(2) (b) of the Constitution read together with section 13 of the ELC Act gives the Court wide powers to deal with powers under the Act to deal with land including any other dispute relating to environment and land. A claim under historical land injustice would then fit in a claim to title to land. In saying so, I am guided by the Court of Appeal pronouncements in the case of **Safepak Limited v Henry Wambega & 11 others [2019] eCLR** which quoted the decision in the **Chief Land Registrar & 4 others v Nathan Tirop Koech & 4 others [2018] eCLR** where the Court stated

“ On the question whether a Court should await investigation and recommendation by the NLC before it can entertain a claim founded on historical injustice, it is our considered view that a Court has jurisdiction to hear and determine any claim relating to historical injustice whether or not the NLC is seized of the matter. Our conviction stems from our reading of Article 67(2) (e) of the Constitution. The Article provides that the NLC can investigate “present or historical” land injustices. We lay emphasis on the word “present.” If the NLC had initial and exclusive mandate, it would mean that all present cases on land injustices can only be handled by the NLC and not Courts of law. This would prima facie render the Environment and Land Courts redundant. We do not think this was intended to be so. Our view is fortified by Section 15 (3) (b) of the National Land Commission Act which permit the Environment and Land Court to deal with historical injustice claims capable of being addressed through the ordinary Court system. Further, there is nothing in the 2010 Constitution or in the National Land Commission Act ousting the jurisdiction of the High Court or barring a person from presenting a petition before a Court in relation to a claim founded on historical injustice.”

27. For purposes of emphasis, Art 67 of the Constitution creates the National Land Commission with the mandate, to, among other things, initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress. This mandate is repeated in section 15 of the NLC Act in the following tenor; Pursuant to Article 67 (3) of the Constitution, the Commission shall receive, admit and investigate all historical land injustice complaints and recommend appropriate redress.

28. A historical land injustice is defined in section 15(2) to mean a grievance which was occasioned by a violation of right in land on the basis of any law, policy, declaration, administrative practice, treaty or agreement; resulted in displacement from their habitual place of residence; occurred between 15th June 1895 when Kenya became a protectorate under the British East African Protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated; has not been sufficiently resolved and subsists up to the period specified under paragraph; meets the criteria set out under [subsection 3](#) of this section.

29. Section 15(3) provides as follows;

(3) A historical historical land claim may only be admitted, registered and processed by the Commission if it meets the following criteria—

(a) it is verifiable that the act complained of resulted in displacement of the claimant or other form of historical land injustice;

(b) the claim has not or is not capable of being addressed through the ordinary Court system on the basis that—

(i) the claim contradicts a law that was in force at the time when the injustice began; or

(ii) claim is debarred under section 7 of the Limitation of Actions Act, (Cap. 22) or any other law;

(c) the claimant was either a proprietor or occupant of the land upon which the claim is based;

(d) no action or omission on the part of the claimant amounts to surrender or renouncement of the right to the land in question; and

(e) it is brought within five years from the date of commencement of this Act.

(4) A claim alleging historical land injustice shall be permissible if it was occasioned by—

a. colonial occupation; -

b. independence struggle;

c. pre-independence treaty or agreement between a community and the Government;

d. development-induced displacement for which no adequate compensation or other form of remedy was provided, including conversion of non-public land into public land;

e. other form of remedy was provided, including conversion of non-public land into public land;

f. inequitable land adjudication process or resettlement scheme;

g. politically motivated or conflict-based eviction;

h. corruption or other form of illegality;

i. natural disaster; or

j. other cause approved by the Commission.

32. Section 15(3) of the NLC Act sets out the criteria that the claim must meet for admission, registration and processing by the NLC. Sub section (b) is relevant to this case at hand. It states that the claim has not or is not capable of being addressed through the ordinary Court system on the basis that i) the claim contradicts a law that was in force at the time when the injustice began or ii) the claim is debarred under

section 7 of the Limitations of Actions Act (cap 22) or any other law. What this means is that a claimant must prove that he had a right to the land; that right was violated on the basis of any law policy or practice and the violation of that right resulted in displacement of the claimant from their habitual residence between the period 15/6/1895 and 27/10/2010. It is a requirement for the claimant to lead evidence to ascertain that the act complained of resulted in displacement or other form of historical land injustice.

33. In respect to section 15 (3) (b) i and ii a caveat on what matters ought to be brought before the NLC and not the Court has been stated. A claimant must identify the period within which the act complained of occurred to guide the Court on what laws were existing then and whether the claim contradicts a law in force at that period. The claim of the Plaintiffs is said to have occurred in 1895 and the Court has to satisfy itself of the laws that existed at that time to determine if the claim contradicted any of them. Part ii of the said provision provides that a claim that is debarred under the Limitations of Actions Act cannot be addressed through the ordinary Court systems because of the statutory bar of limitation.

34. In respect to the issue of time bar, the 1st Defendant has argued that the purported claim of 1500 acres alleged by the Plaintiffs arose in 1895, almost 124 years ago. That filing suit in 2018 on a claim that accrued a century ago is untenable on account of time bar. The Plaintiffs in their response urged the Court to entertain the matter so that they may give evidence of the historical chronology of the case on account of its seriousness and not dismiss it on a baseless objection such is what is before the Court.

35. Section 7 of the Limitations of Actions Act provides as follows;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person’.

36. In the case of **IGA –vs- Makerere University [1972] E.A 65** Mustafa, J.A held as follows: -

“A plaint which is barred by limitation is a plaint “barred by law”. Reading these provisions together it seems clear to me that unless the appellant in this case had put himself within the limitation period by showing grounds upon which he could claim exemption the Court “shall reject” his claim. The appellant was clearly out of time, and despite the opportunity afforded him by the Judge he did not show what grounds of exemption he relied on, presumably because none existed. The Limitation Act does not extinguish a suit or action itself but operates to bar the claim or remedy sought for, and when a suit is time barred, the Court cannot grant the remedy or relief sought.”

37. Law, Ag. V. P in the same case inter alia stated thus: -

“...The effect then is that if a suit is brought after the expiration of the period of limitation, and this is apparent from the plaint, the plaint must be rejected.”

38. In the case of **Gathoni –vs- Kenya Co-operative Creameries Ltd, [1982] KLR 104** the Court of Appeal while dismissing an appeal arising from an application for extension of time to bring a suit after the period of limitation had expired which the High Court had rejected Potter, J. A stated thus:-

“...The Law of Limitation of Actions is intended to protect defendants against unreasonable delay in the bringing of suits against them. The statute expects the intending plaintiff to exercise reasonable diligence and to take reasonable steps in his own interest. Special provision is made for infants and for the mentally unsound. But, rightly or wrongly, the Act does not help persons like the applicant who whether through dilatoriness or ignorance, do not do what the informed citizen would reasonably have done.”

39. In the case of **Mehta –vs- Shah [1965] E.A 321**, Grabbie J.A in his judgment stated as follows: -

“The object of any limitation enactment is to prevent a plaintiff from prosecuting stale claims on the one hand, protect a defendant after he has lost evidence for his defence from being disturbed after a long lapse of time. The effect of a limitation enactment is to remove remedies irrespective of the merits of the particular case.”

40. It is trite that limitation does not divest any person any rights recognized by law. It limits the period within which a person can obtain remedy from the Courts for the infringement of a right. The limitation law therefore is directed against delay in commencing legal proceedings for as the adage goes justice delayed is justice denied; delay leads to injustice especially where the case depends on oral testimony which dissipates on account of time and or death of witnesses.

41. Whereas it is the law that any suit for the recovery of land ought to be filed within 12 years as provided by section 7 of the Limitations of Act as stated above, section 26 of the said Act provides that where fraud, mistake or ignorance of material facts are pleaded, time will run from the moment the claimant discovers the fraud or mistake. In this case the Plaintiffs have not pleaded any such circumstances that would militate against the provisions of section 7 of the Limitations of Act. It is to be noted that none of the Plaintiffs have sought leave of the Court to file the suit out of time as dictated under section 27 of the Limitations of Actions Act.

42. In the instant case the cause of action according to the Plaintiffs arose in 1895 when the colonial Government illegally alienated land that belonged to their ancestors and descendants. The Court concurs with the 1st Defendant that this is a claim that on the face of it is debarred by section 7 of the Limitations Act when time is taken to have run from 1895. Given that the Limitations of Actions Act was enacted and came into force on the 19/4/1968, even if it is assumed that the computation of time started running then, then 12 years expired in 1980 within which time the Plaintiffs ought to have moved the Court for recovery of the 1500 acres of land. Any legal action intended for the recovery of the land after the period of 1980 is time barred by statute.

43. Under section 15 of the NLC Act, the NLC was given a window and exempted from the provisions of the Limitations of Actions Act. This exemption does not apply to this Court. In filing the suit as it did, the parties choose a path that would be imperiled by section 7 of the Limitations of Actions Act. That said parties are bound by their pleadings and effectively they must tread the path they have chosen for themselves however perilous it may seem.

44. It is borne out of the record that the Plaintiffs referred their complaint to the NLC vide a letter dated the 20/10/16. Nothing has been said about the outcome of this complaint. I say no more.

45. From the analysis above the Court is of the clear opinion that the Plaintiffs have no escape from the statute of limitation. There is no justification to leave this case for trial for the reason that it is time barred.

46. Jurisdiction is everything, without it, a Court has no power to make one more step. Where a Court has no jurisdiction there would be no business for a continuation of proceedings pending other evidence. It lays down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. In the circumstances I must bow to the words of the Honorable Justice Nyarangi J A in **Owners of the Motor Vessel "Lillian SS" -vs- Caltex Oil Kenya Limited [1989] KLR** and down my tools which I hereby do and take no further step.

47. That in itself is sufficient to determine the objection before me. However, I will consider the 2nd objection as well.

48. In respect to the 2nd limb of the objection it is borne of evidence that the 1st Plaintiff is described as a Limited Liability Company however a certificate of incorporation of Kenya National Chamber of Commerce & Industry was presented. The status of the 1st Plaintiff taken in that context is therefore in doubt as to its capacity to file this suit. It is clear that the 1st Plaintiff is not an incorporated body. It is trite law that unincorporated bodies such as the 1st Plaintiff is not clothing with legal capacity to sue and be sued and would ordinarily sue through its registered officials. I concur with the reasoning of the Court in the **Kipsiwo Community Self Help Group v Attorney General And 6 Others [2013] eKLR** when it stated that;

"Kipsiwo Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of Kipsiwo Self Help Group and such members had to be named and identified with precision. The person bringing action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent, if it is a representative suit. The importance of this, is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the Court does not know who the litigants are, then it becomes impossible for the Court to enforce its own orders, for it will never be clear, who the beneficiary of the order was, or who had obligation to obey or enforce such order." [emphasis is mine].

49. There is no evidence tendered before the Court to confirm that the 2nd and 3rd Plaintiffs are either members nor registered officials of the 1st Plaintiff or that they have been authorized by the 1st Plaintiff. It is clear from the verifying affidavits on record that they swore them on their own accord and not on behalf of the 1st Plaintiff.

50. Order 4 rule 1 (1) (f), (2) and (4) requires that the plaint shall contain an averment that there is no other suit pending, no previous proceedings in any Court between the parties over the same subject matter and that the cause of action relate to the Plaintiff. It goes further that the plaint shall be accompanied by an affidavit sworn by the Plaintiff verifying the correctness of the averments contained in 1(1) (f). Where the Plaintiff is a corporation the verifying affidavit shall be sworn by an officer of the Company duly authorized under seal of the company to do so.

51. Order 4 rule 1 of the Civil Procedure Rules requires every plaintiff to file a verifying affidavit for two reasons; one that there is no other suit pending and there are no previous proceedings in any Court between the parties. This is supposed to assuage the provisions of section 6 and 7 of the Civil Procedure Act in respect to the doctrines of resjudicata and subjudice. Secondly the affidavit is for verifying the above averments to avoid falsehoods.

52. In the case of the 1st Plaintiff there is no indication to show that it has the mandate to sue on behalf of the national outfit (for which a certificate of incorporation was presented) nor that it is mandated by the Constitution of the chamber to sue as a branch. They have not disclosed that they are claiming under the registered certificate of the Kenya National Chamber of Commerce and Industry which is a limited liability company under guarantee. There is no evidence that the alleged 2000 or so members of the 1st Plaintiff are guarantors of the national entity nor that the 2nd and 3rd Plaintiffs are their directors/officials. No attempt has been made to demonstrate, albeit on a prima facie basis, a cause of action based on a right to land, a violation of that right and that the violation led to the displacement of the Plaintiffs from their habitual residence or the persons they claim under.

53. It is to be noted that the 2nd and 3rd Plaintiffs have not demonstrated any independent cause of action in the plaint either.

54. With the conclusions arrived above, there is therefore no necessity to determine the motion dated the 10/12/18.

55. In the end the Preliminary objection succeeds. The application dated the 10/12/18 and the suit are dismissed entirely.

56. Costs shall be payable by the Plaintiffs in favour of the 1st Defendant.

57. **It is so ordered.**

DATED, SIGNED & DELIVERED AT MURANGA VIA EMAIL THIS 3RD DAY OF JUNE 2020.

J G KEMEI

JUDGE