

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MOMBASA**

**ELCLC NO. E065 OF 2025**

- 1. MIRRIAM WANJIRU**
- 2. DANIEL MUKUNYI MWITHI**
- 3. NGILA NGOVI..... PLAINTIFFS**

**VERSUS**

**MARGARET AKOTH OLANG.....**  
**.....DEFENDANT**

**RULING**

1. By a notice of motion dated 17.06.2025 filed pursuant to *Sections 63(e), 1A, 1B and 3A of the Civil Procedure Act, Order 40, Order 51, Rules 1 and 4 of the Civil Procedure Rules 2010*, the plaintiffs sought the following orders;
  - a. *Spent*
  - b. *Spent*
  - c. *Spent*
  - d. *That the honourable court be pleased to issue a temporary injunction restraining the defendant by herself, her agents and/or appointed attorneys from selling leasing and/or transferring Mombasa/Block I/MS/1668 in Mombasa County the hearing and determination of this suit.*
  - e. *That this honourable court be pleased to issue a temporary injunction restraining the defendant or any person purporting to act on her behalf, servants, or workmen, licensees of agents from howsoever disposing, harassing the plaintiffs or*

*interfering with their peaceful enjoyment, possession and occupation of Mombasa/Block I/MS/1668 in Mombasa County pending hearing and determination of this suit.*

*f. That the costs of the application be provided.*

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavits sworn by Mirriam Wanjiru Njeru on even date and her further affidavits sworn on 01.08.2025. The plaintiffs pleaded that they were the occupiers of the *Title No. Mombasa Block I/MS/1668 (the suit property)* which was initially government land and that they were apprehensive that the defendant, who had acquired a title thereto in 2011, might dispose of the suit property or evict them during the pendency of the suit. The plaintiffs pleaded to have an overriding interest over the suit property in the nature of a trust. In particular, the 1<sup>st</sup> plaintiff claimed to have been born on the suit property in 1958.
3. The defendant filed a replying affidavit sworn on 16.07.2025 in opposition to the application. She also filed a notice of preliminary objection dated 16.07.2025. The defendant pleaded that the instant suit was *sub judice* on account of the pendency of a similar suit among the parties being *Mombasa ELC No. 52 of 2019- Margaret Akoth Olang vs Lucan Nganga and 13 others* in which the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs were parties.

4. The defendant further disputed that the plaintiffs were in occupation of the suit property and asserted that the first suit was pending judgment before Hon. Justice Stephen Kibunja. As a result, the defendant contended that the instant suit was an abuse of the court process and urged the court to dismiss the same.
5. When the application was listed for directions it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the plaintiffs filed written submissions dated 01.08.2025 whereas the defendant's submissions were dated 11.08.2025.
6. The court has considered the notice of motion dated 17.06.2025, the replying affidavit and notice of preliminary objection in opposition thereto as well as the plaintiffs' further affidavit. The court is of the view that the following are the main issues for determination herein;
  - a. *Whether the instant suit is sub judice and, if so, whether it should be struck out.*
  - b. *Whether the plaintiffs are entitled to the interim injunctions sought.*
  - c. *Who shall bear the costs of the application.*

7. The court has considered the submissions and material on record on the first issue. Whereas the defendant submitted that the instant suit was *sub judice* the plaintiffs submitted otherwise. The court is of the view that the applicable provision of the *Civil Procedure Act* would be *Section 6 of the Civil Procedure Act*. The said section states as follows;

*“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, or between 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.*

*Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.”*

8. The material on record shows that vide a plaint dated 20.03.2019 the defendant sued 14 defendants including the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs herein seeking, *inter alia*, their eviction from the suit property. The basis of the defendant’s claim was that she was the registered owner of the suit property and that the defendants herein had in violation of her proprietary rights entered and occupied the land without lawful justification or excuse.

9. It would appear that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs in that suit filed a defence and counter-claim denying the defendant's claim. They counter-claimed, *inter alia*, for cancellation of the defendant's title to the suit property and a declaration that they were the legitimate owners of the suit property.
10. It is evident that the matter directly and substantially in issue in the instant suit is what is also in issue in the first suit. It is thus clear from a perusal of the plaint in this suit that the plaintiffs are challenging the defendant's title to the suit property on the basis that she obtained title thereto illegally whilst they had an overriding interest therein in the nature of a trust. Among the reliefs sought in the instant suit is cancellation of the defendant's title, rectification of the land register and a declaration that the defendant is holding the title to the suit property in trust for the plaintiffs.
11. It has not been disputed by the plaintiffs that the first suit is pending judgment before Hon. Justice Stephen Kibunja. The plaintiffs contended that since their pleadings and documents were struck out in the first suit for having been filed out of time then the instant suit cannot be considered as *res sub judice*. The court takes the view that whatever decision will be rendered in the first suit shall be a judgment *in rem* against the whole world. All the occupants of the

suit property shall be bound by the judgment including those who may not have been specifically joined.

12. The court is thus of the view that the instant suit is *res sub judice* but the appropriate remedy for the violation of *Section 6 of the Civil Procedure Act* would be a stay of the suit and not a striking out order. Accordingly, the court shall stay the instant suit pending determination of the first suit.
13. In view of the court's finding on the first issue it shall not be necessary to consider the second issue of the interlocutory injunctions sought. Once a suit or proceeding is stayed when no further action can be taken on pending applications.
14. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event unless, for good reason, the court directs otherwise. Since the suit shall be stayed pending the outcome of the first suit, the court is of the opinion that costs should be in the cause.
15. The upshot of the foregoing is that the court finds the defendant's objection to the suit to be merited. As such, the court makes the following orders;

***a. There shall be a stay of further proceedings in this suit pending the determination of Mombasa ELC E052 of 2019.***

***b. Costs of the application shall be in the cause.***

***c. The suit shall be mentioned on 20.04.2026 for further orders.***

Orders accordingly.

**Ruling dated and signed at Mombasa and delivered** virtually via Microsoft Teams on this **13<sup>th</sup> day of November, 2025.**

.....

**Y. M. ANGIMA  
JUDGE**

In the presence

Gillian - Court Assistant

Mr. Mwangunya for the plaintiffs

Mr. Kioko for the defendant