



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 122 OF 2014

STANLEY KIPRUTO NG'ETICH.....PLAINTIFF/RESPONDENT

VERSUS

MARY BARNG'ETUNY.....1ST DEFENDANT/APPLICANT

PETER TALLAM.....2ND DEFENDANT/APPLICANT

JOSEPH TALLAM.....3RD DEFENDANT/APPLICANT

RULING

Mary Barng'etuny, Peter Tallam and Joseph Tallam have made the application dated 30.5.2018 praying that there be stay of proceedings and or further action in the following cases:

(a) Kapsabet PMCRC No. 1966 of 2016 Republic Vs Mary Jepkemboi Barngetuny.

(b) Kapsabet PMCRC No. 2930 of 2016 Republic Vs Joseph Kimeli Talam and

(c) Kapsabet PMCRC No. 2712 of 2016 Republic Vs Peter K. Kemei, pending hearing and determination of this case.

Furthermore, that costs be provided for.

The application is based on grounds that:

- (i) The parties in this suit are the same parties involved in the three criminal cases that they are seeking to stay.
- (ii) This suit and the three criminal cases they are seeking to stay all deal with the same subject matter.
- (iii) This suit and the three criminal cases they are seeking to stay involve the same questions of law and facts.
- (iv) This suit is still pending in court and so it is better to stay the three criminal cases so as to avoid the possibility of the two courts arriving at conflicting decisions.
- (v) The Judgment that will be delivered in this case will affect the three criminal cases they are seeking to stay.
- (vi) That filing of the three criminal cases by the plaintiff alongside this suit is an abuse of court process.
- (vii) That should this application be disallowed, the defendants/applicants will be prejudiced.
- (viii) That this case was filed earlier in the year 2014 while the three Criminal cases were filed in the year 2016.
- (ix) The plaintiff in this case is the complainant in all the three criminal cases that they seek to stay.

The application is supported by the affidavit by Alfred Chepkwony, an advocate of the High Court of Kenya who states that the plaintiff in this case has filed similar case to this suit against the 1st defendant which is Kapsabet PMCRC No. 1966 of 2016 Republic Vs Mary Jepkemboi Barngetuny. That the plaintiff in this case has filed a similar case to this one against the 2nd defendant which is Kapsabet PMCRC

No. 2712 of 2016 Republic Vs Peter K. Kemei. That the plaintiff in this case has filed a similar case to this one against the 3rd defendant which is Republic Vs Joseph Kimeli Talam.

That it is in the interest of justice that the court be pleased to stay proceedings in the above mentioned criminal cases. That no prejudice will be suffered by the plaintiff/respondent in the event that this application is allowed.

That this Honourable court has both powers, the discretion and the jurisdiction to grant the prayers sought. This application has been made in good faith and without undue delay. That in the event that this application is disallowed, the defendants/applicants will be greatly prejudiced. That it is only fair and just that the three criminal cases be stayed.

The respondent states that the application is frivolous vexatious and an abuse of the process of court. The mere fact that there exists a both civil and criminal case does not warrant a stay of proceedings in one of the matters.

I have considered the application, supporting affidavit, replying affidavit and rival submissions and do find that the defendants have been charged with illegal grazing contrary to section 8(1) as read with section 13 Cap. 355, Laws of Kenya. The particulars of the offence are that on the 21st day of March, 2016 at Kakiptui village within Nandi County unlawfully left her four heifers to graze in the sugarcane plantation of Stanley Kipruto Ngetich on Nandi Kipkaren/Salient/365 causing damage.

They are also charged with the offence of cutting down trees contrary to section 334 of the Penal Code. There is also the offence of resisting lawful arrest by the police officer contrary to section 103(a) of the National Police Service Act, 2011.

The defendants have not demonstrated any malice on the part of the police. It is not demonstrated that the police are acting unlawfully or without authority.

Section 193A of the Criminal Procedure Code Cap 75 Laws of Kenya provides for concurrent criminal and civil proceedings thus notwithstanding the provisions of any other written law, the fact that any matter in issue in any criminal proceedings is also directly or substantially in issue in any pending civil proceedings shall not be a ground for any stay, prohibition or delay of the criminal proceedings

I do find that the orders sought are not merited. Application is dismissed with costs.

Dated and delivered at Eldoret this 31st day of May, 2019.

A. OMBWAYO

JUDGE