

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC CASE NO 71 OF 2017

CHRISTOPHER MARUBU NGUNGI.....
....PLAINTIFF

VERSUS

WANJAGI NYINGI KIGORO.....1ST

DEFENDANT

LYDON NJUKI NYINGI.....2ND

DEFENDANT

RULING

The Defendants filed the application dated 19/5/2025 seeking to have the court declare the suit sub-judice and strike it out. The application was made on the grounds set out on the face of the application and the supporting affidavit sworn by the 2nd applicant, Lydon Njuki Nyingi. He averred that the Plaintiff first sued his mother in this suit and later joined him in the proceedings. He then filed another suit being Siakago being MCL & E No. 55 of 2021 involving the same parties and the same subject matter of this case. He stated that the suit in Siakago is still active in court and at an advanced stage. He urged that they would suffer prejudice if both cases were allowed to proceed simultaneously. He exhibited copies of the defence and counterclaim in Siakago MCL & E No. 55 of 2021 together with a

document “striking out the name of the 1st Plaintiff (the Plaintiff herein) from the proceedings” filed under Order 1 rule 10(2).

The Plaintiff filed a replying affidavit in opposition to the application. He averred that he wrote to the Principal Magistrate in Siakago seeking to have his name struck out from the Siakago suit. He argued that the cause of action in Siakago was different from this suit, the latter being a claim for adverse possession, which the magistrate’s court had no jurisdiction to determine. He denied participating in the Siakago suit and averred that the present suit was filed in 2017, whereas the Siakago matter was instituted in 2021. He therefore contended that the Siakago suit is sub-judice.

The 2nd Defendant filed a further affidavit in which he reiterated that the Plaintiff has been participating in the proceedings in Siakago Court and attached a copy of the proceedings. He avers urged that there is nothing to show that the Plaintiff withdrew his case in Siakago or the letter sent to court to strike out his name from the suit, yet the Plaintiff is the 1st Plaintiff in that suit. He denied that the Plaintiff’s name was included in the Siakago suit erroneously by the Plaintiff’s co-Plaintiffs. He emphasised that the Plaintiff should not be allowed to seek the same relief from two different courts.

The application was canvassed through written submissions. The Defendants submitted that the land in dispute in the Siakago case and in the instant suit is Mbeti/Gachok/5929 and that at the time the suit in Siakago was filed, the magistrate court had jurisdiction

to he hear claims on adverse possession. They maintained that the Plaintiff continued to participate in the suit in Siakago even after he claimed to have had his name struck out from the suit. They urged that this suit offends the Section 6 of the Civil Procedure Act and should be struck out.

The Plaintiff submitted that among the Defendant's annexures, was his letter dated 24/12/2022 to the Siakago Court seeking to have his name struck out from the proceedings given that he had his own suit. Counsel argued that as a lay person, after filing the letter online through the judicial e-filing system, the Plaintiff considered the letter as acted upon by the court. He maintained that the proceedings in Siakago showed that the Plaintiff did not participate any further in the suit after he addressed the court vide the letter dated 24/12/2022. He reiterated that it is the Siakago suit that is sub-judice as it was filed in 2021 while this suit was filed in 2017.

The Plaintiff argued that the causes of action in the two suits are different. That this suit is for adverse possession over Mbeti/Gachoka/5929 instituted through an originating summons while the Siakago suit was instituted vide a plaint seeking a permanent injunction in respect of Mbeti/Gachoka/775, which is the mother title, revocation of the resultant subdivisions being land parcels 5929 to 5931 and for the land to be resurveyed. Further, that the Siakago suit has 4 Plaintiffs and 6 Defendants while this suit has one Plaintiff and two Defendants even though the 1st Defendant died. He opined that the court should stay these

proceedings to allow the case in Siakago to be concluded since parties were going through mediation.

The issue for determination is whether the instant suit is sub-judice. The doctrine of sub-judice is founded on Section 6 of the Civil Procedure Act which bars a court proceeding 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.

In this suit, the Plaintiff seeks a declaration that he has acquired Mbeti/Gachoka/5929 through adverse possession. On the other hand, the proceedings in Siakago MCL & E Case No. 55 of 2021 were commenced by the Plaintiff jointly with three other Plaintiffs who are not parties in this suit, against the Defendants and four other Defendants who are not parties to the present suit. The reliefs sought in that matter are a permanent injunction against the Defendants and other persons from evicting the Plaintiff and his counterparts from Mbeti/Gachoka/775 which was subdivided into 5926 to 5931. They also seek revocation of the title deeds issued from parcel 775 in favour of the Defendants and registration of the resultant parcels in the names of the Plaintiff and his counterparts according to the respective portions they physically occupy.

It is therefore evident that the issues in dispute and the reliefs sought in the two suits are different as are the parties. The suit in Siakago has four Plaintiffs and six Defendants, while the present suit involves only one Plaintiff and two Defendants. It is also worth noting that the Magistrates Court at Siakago lacks jurisdiction to entertain claims for adverse possession.

This suit is not *sub judice* under Section 6 of the Civil Procedure Act.

The application dated 19/5/2025 lacks merit and is dismissed with costs to the Plaintiff.

Delivered virtually at Bungoma this 10th day of February 2026.

**K. BOR
JUDGE**

In the presence of: -

Mr. Macharia Muraguri for the Plaintiff

No appearance for the Defendants