



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL APPEAL NO. E083 OF 2024

DAVID MULEI

.....**APPELLANT**

VERSUS

RODAH KAMENE MUNGUTI..

.....**RESPONDENT**

**(Being an appeal against the Ruling of Hon. Ole Keiwua (CM) at the
Kangundo Chief Magistrate's Court in Civil Case No. E124 of 2021
delivered on 7th March 2024)**

JUDGMENT

1. This appeal arises from a ruling of the court below which upheld a preliminary objection raised to the Appellant's suit against the Respondent and struck it out on the grounds that the court did not have territorial jurisdiction and that the suit was *sub judice*. It was the finding of the learned magistrate that there was a suit over the same subject matter in the Machakos Environment and Land Court and further, that because the land, the subject

matter of the suit, was situated in Mavoko that is where the suit should have been filed.

2. The factual background of the Appellant's suit in the court below, was that he had instituted **Kangundo SPMCC E124 of 2021** seeking the following orders;

“(a) An order of specific performance compelling the Defendant to comply to the Agreement and Commitment dated 10th February 2021.

(b) That in the alternative, the defendant's registration on the Plaintiffs land parcel Number Mavoko Block 5/393 be cancelled forthwith.

(c) Cost of this suit and interest till final payment.”

3. In the plaint the appellant averred that the Respondent had after fraudulently registering herself as the proprietor of his land LR Mavoko Block 5/393 entered into an agreement with him, to pay for the land but had breached the agreement hence his prayer for specific performance and/or cancellation of the registration.

4. However, according to the learned magistrate there was a suit in the **Machakos Environment and Land Court No. 64 of 2019** by which one Duncan Githaiga

Mwangi had sued the Appellant over the same subject matter and sought a similar order.

5. On her part, the respondent argued that the suits in the two courts were distinct in that the parties are different and the issues are different; that the dominant issue in the ELC case is the land whereas the Kangundo case is a money claim.

Analysis and determination

6. The appeal was canvassed through written submissions. I have perused the rival submissions, the cases cited thereat, the impugned ruling and the law.
7. In the ruling, the findings of the learned magistrate were expressed as follows:

“II. I have carefully considered the able written submissions filed by both parties. I now take the following view of this matter,

- (i) A plaint dated 29th July 2021 seeks for cancellation of Rodah Kamene Munguti registration as owner of land parcel number Mavoko Block 5/393.**
- (ii) In ELC case No.64 of 2019 an order revoking the title deed issued to the 2nd Defendant and transferred to the 3rd to 7th Defendants. This**

being the same parcel of land subject of the two suits, I hold it as fair and just that litigation is done in one forum.

- (iii) The parcel of land is referred to as Mavoko Block 5/393, the right court to handle this matter on territorial jurisdiction is Mavoko.***
- (iv) Machakos ELC 64 of 2019 was filed earlier than Kangundo E124 of 2021. Plaintiff knew they had another case when he filed this suit.***
- (v) I have not been told how this Plaintiff will be prejudice, if the other suit is heard.”***

8. The alternative prayer in the appellant's plaint sought revocation of the Respondent's title in respect of LR No. Athi River/Athi River Block 5/393. The land is also the subject of **Machakos ELC 64 of 2019** where the appellant and the Respondent are also a parties. In the ELC case the Appellant's prayers are as follows:-

“ a. A declaration that the Plaintiff is entitled to the ownership of the Parcel of land known as Athi-River/Athi-River Block 5/393 and the defendants do transfer the same to the Plaintiff and in the alternative the Executive Officer of this court do execute all relevant documents to effect transfer.

b. A permanent injunction restraining the Defendants and/or their agents and/or employees and/or servants from trespassing

onto all that parcel of land registered as Athi-River/Athi-River Block 5/393.

c. A declaration that the transfer of al that parcel of land registered as Athi-River/Athi-River Block 5/393 to the 2nd Defendant and subsequently to the 3rd to 7th Defendants was null and void.

d. A declaration that the title deed issued to the 2nd Defendant and subsequently to the 3rd to 7th Defendants is null and void for having being acquired fraudulently.

e. An order do issue revoking the title deed for land title number Athi-River/Athi-River Block 5/393 issued to the 2nd Defendant and transferred to the 3rd to 7th Defendants and the Plaintiff to be registered as owner title deed for all that land registered as Athi-River/Athi-River Block 5/393 and in default the Deputy Registrar to sign all relevant documents to effect transfer to the Plaintiff.”

9. It is evident that what features prominently in the two suits is the parcel of land LR. No. Athi-River Block 5/393 and the proprietorship or ownership of it by the Respondent so that clearly the issues are the same in both cases. In the Kangundo case the appellant was saying pay me for the land or your title will be cancelled while in the Machakos ELC Case he was impeaching the title entirely. I have perused the record of the court below, as I am entitled to as an appellate court, and have also perused the plaint in the

Machakos ELC case and noted that the respondent herein was the 2nd Defendant. It is therefore best that the matter is decided in the ELC Court. Having multiplicity of suits over the same subject matter and in different courts does not augur well for the administration of justice as the confidence in the judiciary would be eroded were the courts to arrive at different decisions. This is the essence of Section 6 of the Civil Procedure Act which states:-

“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.”

10. I also find support in the case of **Barclays Bank of Kenya limited v Elizabeth Agidza & 2 Others [2012] KEHC 587 (KLR)** where it was stated:-

“The mischief sought to be avoided by Section 6 of the Civil Procedure Act is a likelihood of two different courts adjudicating a similar matter, with similar issues between the same parties and yet arrive at different positions.....

I have carefully considered the pleadings, the witness statements and the documents on record, I have formed the view that both suits are intertwined and that the entire matter in issue in the present suit, to the effect that whether the Defendants owe the Plaintiff is entirely covered in the Kisumu suit. The fact that one party in the Kisumu suit is absent in the present suit and one party in the present suit is absent in the Kisumu suit does not make much change. The likelihood of the courts in Kisumu and Nairobi arriving at different conclusions on similar issues is but real. That is what Section 6 of the Civil Procedure Act sought to prevent. My view therefore is that the present suit falls foul of Section 6 of the Civil Procedure Act.”

11. Further, **Section 12 (d) of the Civil Procedure Act** is emphatic that subject to the pecuniary or other limitations prescribed by the law suits **“for the determination of any other right to or interest in immovable property; where situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate ...”** The appellant’s claim against the respondent concerned a right to or interest in land situate within the local limits of another court (Mavoko) and that

ousted the jurisdiction of the Kangundo court and for that reason the trial magistrate also acted correctly in upholding the preliminary objection.

12. The upshot is that this appeal is not merited. The same is dismissed with costs to the Respondent.

Orders accordingly.

Judgment signed, dated and delivered virtually on this 30th day of April 2026.

**E. N. MAINA
JUDGE**

In the presence of:

Mr. Odhiambo for Appellant

Ms Ngulukyo for Respondent

Mary - Court Assistant/Interpreter