



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

ELC MISC. NO. 14 OF 2019

ARCHDIOCESE OF NYERI.....PLAINTIFF

VERSUS

ZACHARY MWANGI MURIU.....RESPONDENT

RULING

1. Coming up before me for determination is an application dated the 28th October 2019 wherein the Applicant seeks for substantive orders of stay of proceedings in the Chief Magistrate's Court Nyeri in ELC No. 8 of 2019 pending the hearing and determination of Nyeri Petition No. 205 of 2014 (which was the original petition No. 14 of 2013) and ELC No. 119 of 2013.
2. The application is supported by the grounds on the face of it and a supporting affidavit of Fr. David Mutahi, the Legal Officer of the Applicant herein, sworn on the 29th October 2019.
3. The main issues upon which the Application is brought is that there was a pending order which was issued by Hon. J. Waithaka which restrained the Applicants herein from undertaking any dealings in relation to Kamwenje and Mathari Farms which parcels of land form the basis of the case before the Magistrate's Court in Nyeri ELC 8 of 2019.
4. The second issue was that in the event that any order was issued in Magistrate's Court in ELC 8 of 2019 owing to the already existing order in the Environment and Land Court, the Applicants would be unable to enforce the same.
5. Their submission was that the pending matters before the Environment and Land Court between the Applicants and Mathari Village Self-help Project was the basis within which the Respondent had brought the pending suit before the Chief Magistrate's Court in ELC No. 8 of 2019 wherein the Respondents were members of that particular village, being Mathari Self-help Project.
6. That they had annexed the order of the High Court in their supporting affidavit. That in the event that a judgment was delivered in Chief Magistrate's Court in ELC No. 8 of 2019, the Respondent would benefit from both Chief Magistrate's ELC in case No. 8 of 2019 and the pending suit in the High Court.
7. That although the Respondents denied that they were members of Mathari Self-help Project, yet the receipts attached as their evidence before Chief Magistrate's ELC No. 8 of 2019 were receipts of the said group.
8. That it was therefore necessary that the Court grants stay orders as parties await the outcome of the two cases in Nyeri Petition No. 205 of 2014 and ELC No. 119 of 2013 upon which Chief Magistrate's case in ELC No. 8 of 2019 is based on.
9. In opposition of the said application, the Respondent herein submitted that the receipts that the Applicants had annexed in their claim at the Chief Magistrate's court in ELC No. 8 of 2019 were pegged from Mathari Villagers Self Help Group whereby Lucy Wambura Maingi and the others were not allocated the plots.
10. That secondly, the Petitioners in Petition No. 205 of 2014 had orders in which they had benefited from whilst the Respondents had not benefited. That in the order of 20th June 2018, the Applicant was to deliver 600 acres to the Mathari Self Help Group which was to be done within 6 months from 20th June 2018. That they had not benefited from the orders yet the people who sought those orders being Peter and 14 others had obtained parcels of land wherein they were still seeking for the increment of their acreages and issuance of title.
11. That should the orders be granted, Mbari ya Murondo would not benefit as 'they did not appear anywhere in the 600 acres'. Further, that the Applicants herein would keep on 'enjoying the Respondent's money' and land for which they lay claim to.
12. That the Applicants, who were Petitioners were beneficiaries to the orders of 20th June 2018 and 5th November 2018 as they were proprietors of the land parcels while the Respondents had no land.

13. The Respondent sought that the Application for stay be dismissed with costs.

Determination

14. I must start by saying that anybody reading the Respondent's Replying affidavit as well as his submission would require a lot of patience to try and figure out what his response to the application meant.

15. That notwithstanding, what I understand about the matter is that pending the final determination of the matters filed before this court being Nyeri ELC Petition No. 205 of 2014 and Nyeri ELC No. 119 of 2013(OS) in which the court had issued preservative orders in Nyeri ELC Petition No. 205 of 2014 until the same was finally heard and determined, the Respondent herein filed another suit in the Chief Magistrate's Court being CMELC No. 8 of 2019 wherein the parties' and the subject matter therein were similar to the pending matter before the ELC.

16. The court has however not been informed what orders the Plaintiff had sought in the subsequent case before the Magistrate's Court. But judging from the Respondents' submission or what I could make out of it was that these suits were different. That further, the Petitioners in the Petition were the only ones who had benefited from land which had been bought by the Respondents, leaving out the Respondents.

17. That in the order issued on the 20th June 2018, in ELC No. 119 of 2013(OS) the Applicant was to deliver 600 acres to the Mathari Self Help Group which was to be done 6 months from 20th June 2018. This group is yet to benefit, hence the reason for filing the subsequent suit before the Chief Magistrate's court.

18. Taking all matters into account, it is clear from the record herein that the subject matter and the parties in both the previous and subsequent proceedings are similar.

19. Pursuant to the inherent powers of this Court under Section 3A of the Civil Procedure Act and further, pursuant to the provisions of Section 6 of the Civil Procedure Act which requires the Court to stay proceedings where the matter in issue is directly and substantially in issue involving the same parties in another Court, I find that since the determination of the matter in Nyeri Petition No. 205 of 2014 and ELC No. 119 of 2013 is substantially in issue with the proceedings in CMELC No. 8 of 2019 it would be prudent, and in the interest of justice that the proceedings before the Chief Magistrate's Court in ELC No. 8 of 2019 proceedings be stayed pending the out-come of Nyeri Petition No. 205 of 2014 and ELC No. 119 of 2013.

20. For the above reasons, I find that the Application dated the 28th October 2019 is merited and is hereby upheld, with the upshot that the present suit being Nyeri Chief Magistrate's ELC No. 8 of 2019 is herein stayed pending the determination of Nyeri Petition No. 205 of 2014 and ELC No. 119 of 2013.

21. Further orders are that the Parties shall pursue the determination of Nyeri Petition No. 205 of 2014 and ELC No. 119 of 2013 to their finalization at the earliest.

22. Costs to the Applicant.

Dated and delivered at Nyahururu this 17th Day of December 2019.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE