



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC CASE NO. 112 OF 2017

JACKSON LUKALI IGWETAPLAINTIFF/APPLICANT

VERSUS

DAVID MWENDA MAINGI.....1ST DEFENDANT/RESPONDENT

DISTRICT LAND ADJUDICATION OFFICER

URINGU II TIGANIA WEST.....2ND DEFENDANT/RESPONDENT

DIRECTOR OF SURVEY KENYA,NAIROBI.....3rd DEFENDANT/RESPONDENT

RULING

1. This ruling is in respect of the two applications one dated 1.4.2019 while the other one is dated 13.5.2019. I will deal with both applications simultaneously.

Case for the plaintiff

2. The plaintiff is the applicant in the application dated 1.4.2019 where he is seeking orders of stay of all proceedings in Tigania PM's court case no. 90 of 2014 pending the hearing and determination of this case.

3. The application is supported by the grounds set out on the face of the application and in the affidavit of the applicant. The plaintiff contends that the subject matter in this case is the same as that one in Tigania PM ELC no. 90 of 2014, and so are the parties. He contends that the determination of the Tigania matter is likely to result in an appeal before this court by the party who will feel aggrieved by the decision of the lower court.

4. He also avers that it is unjust to engage in two parallel proceedings involving the same parties and same subject matter and that such parallel proceedings will not result in affordable expeditious disposal of the dispute.

5. In his submissions the plaintiff contends that a stay will also aid in achieving the objectives set out in section 1B of the civil procedure Act.

6. The plaintiff has availed a copy of the plaint and a copy of an order from Tigania PM's court in respect of Tigania case no. 90 of 2014.

7. In response to the application dated 13.5.2019, the plaintiff admits the contents of paragraph 1,2,3,4,5,6 and 7 in the supporting affidavit of David Mwenda Maingi (1st defendant herein). Basically, plaintiff is admitting that a suit Meru HCCC No. 150/11 was filed by David's father who died and was substituted by David Mwenda, but this suit was later transferred to Tigania in 2014 to become Tigania PMCC NO. 90 of 2014, which suit has been proceeding in that court, that plaintiff then filed the present suit in the year 2017 as an originating summons which was then converted into a plaint and that in the Tigania suit the plaintiff herein has filed a counter claim.

8. The plaintiff takes issues with the filing of the application of 13.5.2019 when his earlier application dated 1.4.2019 was pending and he avers that the issues in the application of 13.5.2019 can be dealt with in the earlier application of 1.4.2019.

Case for 1st defendant (David Mwenda)

9. 1st defendant is the one who has filed the application dated 13.5.2010 seeking orders of dismissal of this suit in view of the existence of a similar suit Tigania PM ELC No. 90/14. The application is supported by the grounds set out on the face of the application and in his

supporting affidavit which grounds I have already summarized. The 1st defendant added that the plaintiff had made an application for stay of proceedings of the Tigania matter before that same court which application was dismissed vide a ruling delivered on 21.3.2019. A copy of the ruling has been availed to that effect.

Determination

10. I have considered all the issues raised herein and the submissions of the parties. It is not in dispute that the parties and the subject matter herein are the same as the ones in Tigania PM ELC No. 90 of 2014. It is also not in dispute that the Tigania matter was filed as Meru HCCC NO. 150 of 2011 but was transferred to Tigania court in 2014. The jurisdiction of the Tigania court to handle the dispute is also admitted going by the averments made in paragraph 3 of the plaintiff's affidavit filed on 30.5.2019 where he admits the contents of paragraph 4 in the affidavit of 1st defendant filed on 14.5.2019.

11. The present plaintiff has even admitted that he has a counter claim in the Tigania matter. The question which begs for an answer is ***“Why then did the current plaintiff file this suit?”*** The plaintiff has rightly contended that it is even unjust to conduct two parallel proceedings which is also costly and that an appeal is likely to emerge to this court from the Tigania court which would certainly pose a conflict in the determination of this case.

12. It is evident that the plaintiff did file an application for stay of proceedings in Tigania court vide an application dated 7.12.2018 which was dismissed on 21.3.2019. In that ruling, the magistrate cited the provisions of section 6 of the civil procedure rules which I need not reproduce as they are plainly clear. The plaintiff did not appeal against that ruling. Instead, he filed his application 10 days later on 2.4.2019 before this court. This is certainly not the way proceedings should be conducted.

13. hereby quote **Halsbury's Law of England 4th Edition volume 37 on pages 330 and 332** where it is stated;

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceeding beyond all reasonable doubt, ought not to be allowed to continue. This is a power which, it has been emphasized, ought to be exercised sparingly, and only in exceptional cases. It will be exercised where the proceedings are shown to be frivolous, vexatious or harassing or to be manifestly groundless or in which there is clearly no cause of action in law or in equity. The applicant for a stay on this ground must show not merely that the plaintiff might not, or probably would not succeed but that he could not possibly succeed on the basis of the pleading and the facts of the case”.

14. The matter in Tigania court has been in the court's arena since 2011, a period of over 8 years. The plaintiff has submitted himself to the jurisdiction of the court. Now the plaintiff wants that matter to stall so that this suit can proceed. But the suit he has filed is in the second tier of litigation hierarchy. The jurisdiction of the lower court having been admitted then parties ought to have an opportunity to litigate through all the available platforms of litigation.

15. In the case of **Alice Mweru Ngai vs Kenya Power & Lighting Co. Ltd HCCC 287 of 2014 Kerugoya**, the court while dealing with an issue of jurisdiction stated that where the law has granted jurisdiction to other organs of government to handle specific grievances the courts must respect and uphold the law. That court went on to cite the case of **supreme court constitutional application No. 2 of 2011** which recognized the aforementioned principle by stating as follows:

“To allow the application now before us, would constitute an interference with due process and with the rights of parties to be heard before a court duly vested with jurisdiction; allowing such an application would also constitute an impediment to the prospect of any appeal from the high court up to the supreme court. This is a situation in which the court must protect the jurisdiction entrusted to the High court”.

16. The provisions of section 1A(3) of the Civil Procedure Act stipulates that

“A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”.

17. Similarly, section 1B of the Act places a duty on a party and his advocate to assist the court to attain the overriding objective. The plaintiff and his advocate have certainly not lived up to such duty.

18. The filing of this suit as well as the application dated 1.4.2019 flies against the rules of procedure set out in section 6 of the Civil Procedure Act) and also amounts to an abuse of the courts process. It is not fathomable that the plaintiff is alleging that it is unjust and costly to engage in two parallel proceedings yet he is the one who has filed this suit 6 years after the matter in the Tigania court was filed.

19. Justice delayed is justice denied and this court has a constitutional duty to ensure that justice is administered expeditiously. One of the cardinal principles in our constitution is ***“the expeditious delivery of justice”*** –see **Article 159 (2) (b) of the Constitution of Kenya**, which in effect codifies the 17th century maxim of ***“Justice delayed is justice denied”***. This means that if justice is not provided in a timely manner to the parties, it loses its importance and it violates the human rights of the litigants and their family. The Tigania matter has been in court for the last 8 years. And now the plaintiff wants that case to be stayed. Why? Because he filed this suit, yet he has not given any plausible reason at all as to why he filed this suit.

20. It matters not that the 1st defendant filed his application after that one of the plaintiff. Even if the 1st defendant had not filed the application of 13.5.2019, I would have arrived at the same conclusion, that this suit is an abuse of the courts process.

21. In the circumstances, I proceed to give orders as follows:

(1) This suit and the application dated 1.4.2019 are dismissed with costs to the 1st defendant and the Tigania matter should proceed to its logical conclusion.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4TH DECEMBER, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Nyenyire holding brief for Murango M. for applicant

Ngaira holding brief for Mutembei for 1st defendant

HON. LUCY. N. MBUGUA

ELC JUDGE