

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 236 OF 2015

JOSEPHINE MWIKALI NGUMBAU.....PLAINTIFF

VERSUS

NANCY KAMENE MAINGI.....1ST DEFENDANT

ATTORNEY GENERAL.....2ND DEFENDANT

MACHAKOS COUNTY.....3RD DEFENDANT

RULING

1. In the Application dated 23rd October, 2017, the 1st Defendant is seeking for the striking out of the suit for being an abuse of the court process. The Application is premised on the grounds that there exists Machakos ELC. No. 62 of 2017 (*formerly Nairobi ELC. No. 1078 of 2015*); that the parties in the two suits are the same and that both the Plaintiff and her advocate were aware of the existence of the said suit.

2. The 1st Defendant has deponed that while aware of the existence of Machakos ELC. No. 62 of 2017, the Plaintiff, through her advocate, filed the current suit, two weeks after the pleadings in ELC. No. 62 of 2017 had been filed and that this suit offends the law.

3. In response, the Plaintiff deponed that her advocate was served with the pleadings in Nairobi ELC. No. 1078 of 2015 on 19th November, 2015; that prior to the said service, she had instructed her advocate in April, 2015 to file a suit in respect of the suit land and that the present suit was filed on 2nd December, 2015 in Machakos and that is the same day she instructed her advocate to act for her in Nairobi ELC. No. 1078 of 2015. According to the Plaintiff, by the time her advocate became aware of Nairobi ELC. No. 1078 of 2015; she had already filed this suit and that the mix up in the filing of the two suits should not be visited on her. According to the Plaintiff, the two suits should be consolidated.

4. The advocates for the Plaintiff and the 1st Defendant appeared before me on 5th February, 2018 and made oral submissions.

5. The Plaintiff in this matter, Josephine Mwikali, was sued by the 1st Defendant in Nairobi ELC. No. 1078 of 2015 (*Machakos ELC. No. 62 of 2017*). The suit property in respect of the two suits is the same, that is, L.R. No. 337/1008 (*Mavoko Municipality Block 7/117*). Both parties are claiming to be the proprietors of the land.

6. The record shows that the Plaintiff herein was sued in Nairobi ELC. No. 1078 of 2015 vide a Plaint dated 26th October, 2015 which was filed on 29th October, 2015. The record shows that the Plaintiff's advocate filed her Notice of Appointment dated 2nd December, 2015 on 7th December, 2015 in ELC. No. 1078 of 2015. Although the Plaintiff's advocate herein filed her Notice of Appointment in ELC. No. 1078 of 2015 on 7th December, 2015, the Affidavit of the process-server shows that she was served with the Plaint, the Notice of Motion and the Hearing Notice on 19th November, 2015. Indeed, she acknowledged the said service by stamping on the face of the Hearing Notice.

7. The Plaintiff's advocate herein therefore became aware of Nairobi ELC. No. 1078 of 2015 on 19th November, 2015 but formally entered appearance in that matter vide her Notice of Appointment dated 2nd December, 2015. On the same day she signed her Notice of Appointment, she also drew, signed and filed the Plaint in this matter.

8. Section 6 of the Civil Procedure Act prohibits the filing of a suit during the pendency of another suit between the same parties, or parties litigating under the same title in respect to the same cause of action.

9. Considering that the parties and the cause of action in this matter are the same as in Nairobi ELC. No. 1078 of 2015 (*Machakos ELC. No. 62 of 2017*), I find that the filing of Nairobi ELC. No. 1078 of 2015 by the 1st Defendant is contrary to the law and an abuse of the court process.

10. Having found that the Plaintiff and her advocate were aware of the existence of Nairobi ELC. No. 1078 of 2015, on 19th November, 2017, I strike out with costs Machakos ELC. No. 236 of 2015.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 20TH DAY OF APRIL, 2018.

O.A. ANGOTE

JUDGE