



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**CASE No. 113 OF 2016**

**VISIONS OF GLORY CHURCH .....1<sup>ST</sup> APPLICANT**

**JAMES GICHURU APOLLO .....2<sup>ND</sup> APPLICANT**

**VERSUS**

**EVANS ONGONDI MECHA .....1<sup>ST</sup> RESPONDENT**

**FRANK GEORGE MWANGI .....2<sup>ND</sup> RESPONDENT**

**MERCY NYAMBURA WAIRIMU .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. This ruling is in respect of Defendants' Notice of Motion dated 9<sup>th</sup> January 2018 pursuant to which the court is urged to strike out this suit for being an abuse of court process. The application is brought under **Order 2 Rule 15 (d)** of the **Civil Procedure Rules 2010** and **Section 6** of the **Civil Procedure Act**. It is supported by an affidavit sworn by Mr Joseph Karanja Mbugua learned counsel for the defendants.

2. The application is not opposed. It is deposed in the affidavit that on 4<sup>th</sup> March 2016 the plaintiff filed **Naivasha CMCC No. 151 of 2016** against the defendants herein seeking similar relief as that sought in this case. The Naivasha case is still pending. On 31<sup>st</sup> March 2016 the plaintiffs filed the present case as **Milimani ELC Case No. 301 of 2016** against the defendants herein, seeking similar relief as that in the Naivasha case. The Milimani case was transferred to this court and became **Nakuru ELC Case No. 113 of 2016**. For these reasons, the defendants urge the court to strike out the current suit as it is an abuse of court process.

3. Counsel for the defendants relied entirely on the supporting affidavit and urged the court to allow the application.

4. I have considered the application. The defendants seek striking out of the suit. Striking out has been described as a draconian remedy that the court should not be in a hurry to resort to. It is a very strong power which should only be exercised in cases which are clear and beyond all doubt. Nevertheless, in an appropriate case, the court should not hesitate to order striking out. The court has an obligation to stop abuse of its process and to ensure efficiency in the use of judicial resources. In **Kivanga Estates Limited v National Bank of Kenya Limited [2017] eKLR** the Court of Appeal stated:

*... Striking out a pleading, though draconian, the court will, in its discretion resort to it, where, for instance, the court is satisfied that the pleading has been brought in abuse of its process or where it is found to be scandalous, frivolous or vexatious.*  
...

*There is no greater duty for the court than to ensure that it maintains the integrity of the system of administration of justice and ensure that justice is not only done but is seen to be done by, amongst other measures, stopping litigations brought for ulterior and extraneous considerations. The courts, litigants and counsel are enjoined by both the Constitution and the law to assist the court to further the overriding objective for the just determination of the proceedings; the efficient disposal of the business of the court; the efficient use of the available judicial and administrative resources; the timely disposal of the proceedings, and all other proceedings in the court, at a cost affordable by the parties. ...*

5. I have perused the supporting affidavit and the annexures thereto. There is no doubt that besides this case, the plaintiffs have one other case in court being **Naivasha CMCC 151 of 2016** against the defendants over the same subject matter. The reliefs sought in the Naivasha case are:

**a) A temporary injunction against the 1<sup>st</sup> defendant from conducting a parallel Church service within Visions of Glory Church compound at any one time.**

*b) A declaration that the plaintiff is illegally holding title of plot number Naivasha/Mwichirigiri/Block 4/7201.*

*c) A permanent injunction barring the 1<sup>st</sup> defendant and/or his servants and agents from transacting any church business on plot number Naivasha/Mwichirigiri/Block 4/7201.*

*d) An order to surrender title number Naivasha/Mwichirigiri/ Block 4/7201.*

*e) Cost of this suit.*

6. On the other hand, the reliefs sought in this case are:

*a) A temporary injunction against the 1<sup>st</sup> defendant from conducting a parallel church service within Visions of Glory Church compound at any one time.*

*b) A declaration that the plaintiff is illegally holding title of plot number Naivasha/Mwichirigiri/Block 4/7201.*

*c) A permanent injunction barring the 1<sup>st</sup> defendant and/or his servants and agents from transacting any church business on plot number Naivasha/Mwichirigiri/Block/4/7201.*

*d) OCS Naivasha Police Station to effect the orders sought.*

*e) Costs of this suit.*

7. It is thus clear that the subject matter of these two cases is the same. The parties are also the same. The Naivasha case having been filed on 4<sup>th</sup> March 2016, it preceded this suit which was filed on 31<sup>st</sup> March 2016. The same law firm of Rumba Kinuthia Advocates was responsible for drawing the pleadings and filing both cases. Quite disturbingly, the plaint in this case states at paragraph 13 that “there is no other suit pending and there have been no previous proceedings in any court between the plaintiffs and the defendants over the subject matter of this suit”.

8. The matters in issue in this suit are also directly in issue in the Naivasha case. The defendants have urged the court to strike out this suit. I remind myself that striking out is a draconian remedy that should only be resorted to in the clearest of cases. Upon considering the matter, I have come to the conclusion that the plaintiffs have clearly abused the court’s process. They filed both suits within the same month yet they did not disclose the existence of the Naivasha case. Worse still, they deliberately withheld information about its existence and even misled the court that no other suit existed.

9. In view of the foregoing, I am persuaded that this is a fit and proper case in which to order striking out. Accordingly, this suit is struck out with costs to the defendants.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 28<sup>th</sup> day of June 2018.**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Karanja for defendants/applicants.

No appearance for plaintiffs/respondents.

Court Assistants: Gichaba & Lotkomo