

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 18 OF 2018

SHADRACK WAINAINA.....PLAINTIFF/RESPONDENT

VERSUS

GEORGE KIMNUGY MUTHUI.....DEFENDANT/APPLICANT

RULING

This application is dated 23rd July, 2018 and seeks the following orders:-

1. That the proceedings herein be stayed pending the hearing and determination of Eldoret Court of Appeal Case No. 8 of 2018.
2. That costs of this application be provided for.

It is based in the supporting affidavit of George Kimnugy Muthui and also based on the following grounds that there is an appeal filed at the Court of Appeal – Eldoret being Eldoret HC Court of Appeal No. 8 of 2018. That the said appeal has over whelming chance of success. That the said appeal will be rendered nugatory if the proceedings continue being recorded. That it will be in the interest of justice that this case be frozen and or stayed pending the outcome of the appeal.

The plaintiff/respondent opposed the application dated 23rd July, 2018 on the following grounds that the application has no merit and ought to be dismissed. That the said appeal will not be rendered nugatory if the orders sought herein are not granted. That the application is an afterthought. The plaintiff/respondent shall pray for the application to be dismissed.

This court has considered the application and the submissions herein. It is not in dispute that there is a case involving the same land and same parties namely Eldoret HC Court of Appeal No. 8 of 2018 being an appeal from a succession cause. Section 6 and 7 of the Civil Procedure Act Cap 21 provides as follows:

Section 6.

“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is directly and substantially in issue in a previously instituted suit or proceedings between the same parties, or between parties under whom they or any of them claim, litigate under the same title, where such suit or proceedings is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”

Section 7.

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

This case was filed during the pendency of the succession cause and the court had earlier stayed the proceedings in this matter. I find that the matter in issue is directly and substantially in issue in a previously instituted suit or proceedings between the same parties, or between parties under whom they or any of them claim, litigate under the same title. I find that the suit or proceedings are pending in a court having jurisdiction in Kenya. This suit is sub judice and an abuse of the court process. Parties should pursue the appeal and conclude this matter and avoid forum shopping. For these reasons I strike out this suit with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 9TH DAY OF OCTOBER 2018.

N.A. MATHEKA

JUDGE