

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

E.L.C MISC. CIVIL SUIT NO 72 OF 2015

JOHN KIBET KIBOR.....PLAINTIFF/APPLICANT

VERSUS

DANIEL KIPLANGAT CHEPKWONY.....DEFFENDANT/ RESPONDENT

RULING

By a Notice of Motion dated 1st April 2016 and brought under Order 25 Rule 4, the Defendant applicant seeks an order for stay of **KERICHO HC MISC CIVIL SUIT No 72 of 2015** pending the payment of costs in **HC CIVIL SUIT NO. 36 of 2013**.

This is a fairly straight forward matter. The Respondent herein filed suit against the Applicant claiming that he is entitled to land parcel number **KERICHO/LITEIN/560** measuring two acres which is registered in the Applicant's name, by way of adverse possession. Prior to the filing of this suit, the Respondent had filed a similar suit by way of a plaint vide **KERICHO HCCC No 36 of 2014** which was subsequently withdrawn. Following the withdrawal of the said suit, the Respondent was ordered to pay costs assessed by the Defendant Applicant's counsel at Kshs.104,995/=. The said costs have not yet been paid, yet the Respondent wishes to proceed with the current suit. It is against this background that the applicant has filed this application seeking an order for stay of the suit herein.

Counsel for the applicant chose not to file any submissions and sought to rely on the grounds set out in the Notice of Motion and the supporting affidavit. In his submissions, counsel for the Plaintiff/Respondent contends that the suit ought not to be stayed as there is no nexus between the current suit- **HCC MISC CIVIL SUIT NO 72 of 2015 and HCCC no 36 of 2014** which was earlier withdrawn. However, the law does not bear him out.

The Civil Procedure Act is patently clear. **Order 25 Rule 4** provides as follows:

If any subsequent suit shall be brought before payment of the costs of a discontinued suit, upon the same, or substantially the same cause of action, the court may order a stay of such subsequent suit until such costs have been paid.

I have looked at pleadings in **KERICHO HCCC No. 36 of 2014 JOHN KIBET KORIR Vs DANIEL KIPLANGAT CHEPKWONY** in which the Respondent herein seeks to be declared as the owner of 2 acres comprised in land parcel number **KERICHO/LITEIN/560**. This is similar to the claim in **KERICHO HC MISC CIVIL SUIT NO 72 JOHN KIBET KORIR VS. DANIEL KIPLANGAT CHEPKWONY** where the Respondent claims that he is entitled to 2 acres comprised in land parcel number **KERICHO/LITEIN/560** registered in the applicant's name by way of adverse possession.

It is not in dispute that the Respondent withdrew **HCCC no 36 of 2014** and that costs were assessed at Kshs.104. 995. Indeed, the Respondent has sworn an affidavit indicating that he is willing to pay the said costs. He is only under the misconception that he can pay the said costs in his own good time as he pursues the current suit. This would be a violation of the clear provisions of **Order 25 rule 4 of the Civil Procedure Rules**. The Respondent has not come to court with clean hands and he cannot therefore benefit from his breach of the law. In the circumstances, I allow the application and direct that the suit herein be stayed until the costs in **HCCC No 36 /2014** are paid. I award the costs of this application to the applicant.

Dated, signed and delivered this 12th day of April 2017.

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J. M. ONYANGO

JUDGE

In the presence of:

1. Obondo Koko for the Defendant/Applicant.
2. Miss Chelimo holding brief for Orina for the Plaintiff/Respondent.
3. Court assistant- Rotich