



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**LAND CASE MISC APP NO. 46 OF 2016**

**KABIBI MUTHAMI MUMO alias NELLY MUTHAMI of JIMBA**

**suing as the legal administrator of the estate of SAID NYAMU.....PLAINTIFF**

**VERSUS**

**JOSEPH MULI MWANZUI.....DEFENDANT**

**RULING**

1. Before me is an application dated 7<sup>th</sup> November 2016. The application brought under Sections 1A and 3A of the Environment and Land Court Act prays for Orders that: -

- 1. The Provincial Land Appeals Committee Mombasa Case Number 407 of 2006 be transferred to this Court for hearing and determination.**
- 2. THAT any other further order and or directions as this court may deem fit to grant.**
- 3. THAT the costs of this application be provided for.**

2. The Application is backed by the Supporting Affidavit of Kabibi Muthami Mumo sworn on 7<sup>th</sup> November 2016. It is the Applicant's case that the Respondent had lodged a claim against her deceased husband in the Kilifi Land Disputes Tribunal sitting at Kaloleni. The said tribunal determined the dispute in favour of the Respondent and the same was adopted as Land Award Case No. 2 of 2006 by the Resident Magistrate's court at Kaloleni on 11<sup>th</sup> April 2006.

3. It is further the Applicant's case that her husband lodged an appeal to the Provincial Land Dispute Appeals Committee being case No. 407 of 2006. The Land Dispute Tribunals was however disbanded before the case could be determined when the Environment and Land Court Act came into effect and repealed the Land Disputes Tribunal Act (Act No. 18 of 1990). In the absence of directions as to where matters pending before Provincial Appeals Tribunals should be heard, the Applicant is now asking this court to take over the matter and to proceed to determine the same as appropriate.

4. The application is opposed. In both Grounds of Opposition filed and a terse Replying Affidavit sworn by Joseph Muli Mwanzui on 26<sup>th</sup> February 2017, the Respondent contends that the application has been brought too late in the day and is an abuse of the court process as the award of the Tribunal was adopted by the court on 11<sup>th</sup> April 2006. Secondly, the Respondent contends that the application is subjudice as the applicant has already filed another case before the Kaloleni Principal Magistrates Court touching on

the same subject matter.

5. I have studied the application before me together with the Replying Affidavit in opposition thereto. I have also carefully perused the oral submissions made by the parties in regard to the matter.

6. It is common knowledge that the Provincial Appeals Tribunals established by the Land Disputes Tribunal Act (Act No 18 of 1990) were disbanded through the repeal of the said Act when the Environment and Land Court Act (Act No 19 of 2011) was enacted. It would therefore be in order that any matter that was left pending at the time of the repeal of the said Act which properly falls within the purview of the new Act ought to be taken back and dealt with in the manner provided under the law. The Respondent has however raised a major point of law in the Grounds of Opposition and the Replying Affidavit both filed herein on 27<sup>th</sup> February 2017 which requires some consideration by this court.

7. The sub-judice rule is framed under Section 6 of the Civil Procedure Act as follows: -

*“No court shall proceed with the trial of any suit or proceedings in which the matter in issue is also 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 litigating under the same title, where such suit or proceeding is pending in the same or other court having jurisdiction in Kenya to grant the relief claimed.”*

8. The sub-judice rule is meant to prevent abuse of the court process where parallel proceedings are heard before two different courts with concurrent jurisdiction or before the same court at different times. Looking at the Replying Affidavit before me, it is evident that the Applicant herein is the Plaintiff, and the Respondent is the Defendant in Kaloleni Principal Magistrates Civil Suit No 4 of 2014. It is equally evident that the subject matter of the said suit is the same parcel of land which was the subject in Mombasa Provincial Land Appeals Committee Case No 407 of 2006 which the Applicant seeks to have transferred to this court for hearing and determination. The Applicant did not deny the existence of the said suit and even the assertion by the Respondent that the Applicant as Plaintiff has already testified in the matter before the Magistrates Court in Kaloleni. Their only contention was that the Respondent ought to have cited sub-judice in the Kaloleni proceedings but not in these present proceedings.

9. As Angote J., observed in ***Republic -vs- District Alcoholic Drinks Regulation Committee & 4 Others ex-parte Detlef Heir & Another (2013) eKLR***, a party who wishes to file a suit which is similar to an existing suit must withdraw the first suit first. Abuse of the court process includes a situation where a party improperly uses the Judicial process to the irritation, harassment and annoyance of his opponent and to interfere with the administration of justice. That is what the applicant intends to do by transferring the same proceedings which are already the subject of a court case in Kaloleni to this court for hearing and determination.

10. This court has inherent jurisdiction to prevent an abuse of its process. In the circumstances and for the foregoing reasons, the application dated 7<sup>th</sup> November 2016 is hereby struck out with costs to the Respondent.

**Dated, signed and delivered in Malindi this 5<sup>th</sup> day of May 2017.**

**J. O. OLOLA**

**JUDGE**