



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC. CASE NO. 120 OF 2008**

MARION GITAU.....1<sup>ST</sup> PLAINTIFF  
AGNES KAGIRA.....2<sup>ND</sup> PLAINTIFF  
BEATRICE KANYURU.....3<sup>RD</sup> PLAINTIFF  
ROLAND KIOGORA.....4<sup>TH</sup> PLAINTIFF  
WANJIRU KIONGO.....5<sup>TH</sup> PLAINTIFF  
SYLVIA MUTHONI.....6<sup>TH</sup> PLAINTIFF  
LIZA MWAKAZI.....7<sup>TH</sup> PLAINTIFF

**VERSUS**

THE ATTORNEY GENERAL FOR  
COMMISSIONER OF LANDS.....1<sup>ST</sup> DEFENDANT  
{KIPCHOGE KEINO  
TOM O'MWOMBO  
FRIDAH SHIROYA } Jointly sued as the Trustees of the  
NATIONAL OLYMPIC COMMITTEE-KENYA.....2<sup>ND</sup> DEFENDANT

**RULING**

Coming up before me for determination is the Notice of Motion dated and filed on 18<sup>th</sup> October 2016 in which the Plaintiffs/Applicants seek for an order that this suit be stayed pending the hearing and adjudication of the Petition lodged at the National Land Commission and for costs of the Application be in the cause.

The Application is premised on the grounds appearing on its face together with the Supporting Affidavit of the 1<sup>st</sup> Plaintiff, Marion Gitau, sworn on 18<sup>th</sup> October 2016 in which she averred that on 11<sup>th</sup> July 2016 the Plaintiffs/Applicants lodged a Petition at the National Land Commission Tribunal regarding the unlawful, wrongful and irregular grabbing of their land being L.R. No. 209/14309. She further stated that they seek for the stay of these proceedings pending the hearing and determination of the Petition before the National Land Commission Tribunal.

The Application is contested. The 2<sup>nd</sup> Defendant filed the Replying Affidavit of Fridah Shiroya, one of its trustees, sworn on 11<sup>th</sup> November 2016 in which she averred that the issues raised in the Petition filed by the Plaintiffs/Applicants before the National Land Commission Tribunal are exactly the same issues that are before this court for determination. She averred that this suit is part heard with the first witness for the Plaintiffs having been stood down to await a further hearing date. She further averred that the Plaintiffs filed the Petition before the National Land Commission Tribunal unilaterally without consulting them. She stated that the Plaintiffs were playing lottery with this court by first filing this suit and then filing the Petition before the National Land Commission Tribunal. She stated that the Plaintiffs should be compelled to choose one forum for the determination of their issues.

The issue before this court for determination is whether or not to stay this suit pending the hearing and determination of the Petition filed before the National Land Commission Tribunal by the Plaintiffs/Applicants. It is noteworthy that none of the parties herein have disputed the jurisdiction of this court to hear this suit and determine the issues before it. It is not also disputed that the National Land Commission Tribunal has the jurisdiction to hear and determine the issues set out in the Petition filed before it by the Plaintiffs. However, it should be noted that this suit was filed on 25<sup>th</sup> March 2008 and hearing commenced on 14<sup>th</sup> November 2013. The first witness on the Plaintiffs' side has not finalized giving her evidence in chief. This suit is therefore part heard. The Plaintiffs/Applicants however proceeded to file a Petition before the National Land Commission Tribunal seeking adjudication of the very issues that this court is seized with. In requesting for a stay of this part heard suit, the Plaintiffs/Applicants are seeking redress from two different for a. Should they fail to get the orders they seek from the National Land Commission Tribunal, they will revert to this court to pursue the same orders. This is undesirable and a gross abuse of process. The Plaintiffs/Applicants are at liberty to select which forum best suits their interests and pursue that forum to the end. However, I decline to stay this suit and do dismiss this Application. Costs shall be in the cause.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 15<sup>TH</sup> DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**