



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**MILIMANI LAW COURTS**

**ELC NO. 1192 OF 2014**

**JOHN SILAS PULEIY.....PLAINTIFF/APPLICANT**

**VERSUS**

**JACKSON KARANJA MUHIA.....DEFENDANT/RESPONDENT**

**RULING**

There are two applications coming up for determination, one filed by the Plaintiff dated **27<sup>th</sup> March 2014**, seeking temporary orders of injunction and another filed by the Defendant dated **24<sup>th</sup> October 2014**, seeking dismissal of the suit. When the matter came up for directions, the Court ordered that both applications be disposed off together and the same be canvassed by way of written submissions.

The Plaintiff seeks orders that:

1. *Spent*
2. *Pending the hearing of the application, the Court be pleased to issue a temporary injunction restraining the Defendant, by himself, his servants or agents from trespassing into the suit parcel LR. No. Ngong/Township/Block 2/350 and committing acts of wastage, fencing, building on or whichever action inimical to the Applicant's interest.*
3. *The Defendant by himself or servants be restrained from entering, trespassing or interfering with the Plaintiff's quiet possession of the suit parcel LR. No. Ngong/Township/Block 2/350.*

The application is premised on grounds that the Plaintiff has been the sole proprietor of the suit parcel since **26<sup>th</sup> March 1996**, but that the Defendant has been trespassing thereon, erected a fence and committed other acts inimical to the Plaintiff's proprietary rights thereby prevented the Plaintiff from entering and developing the suit parcel. In the supporting affidavit, the Plaintiff annexed copies of the Certificate of Lease dated **25<sup>th</sup> November 2011**, and Official Search as at **11<sup>th</sup> March 2014**, which indicates that he is the registered proprietor thereof.

The Defendant swore a Replying Affidavit on **24<sup>th</sup> October 2014**, in response to the application, the contents of which are a replica of the affidavit in support of his application for dismissal of the suit.

The Defendant's application is dated **24<sup>th</sup> October 2014**, seeking an order that the Plaint be struck out and the suit be dismissed with costs. The application is premised on grounds that the dispute in this suit is substantively similar to matters in dispute between the parties herein in *Machakos H.C. Misc. JR. No. 39*

of 2012, which is pending determination. Thus, the suit is an abuse of the Court process and ought to be struck out.

In the affidavit in support of the application, the Defendant deposed that he is the rightful proprietor of **L.R. No. Ngong/Township/Block 2/350** (*the suit property*) and was issued with a Certificate of Lease on **28<sup>th</sup> February 2005**. The Lands Registrar, Kajiado revoked his title to the suit property and published the same in the Kenya Gazette of **4<sup>th</sup> February 2011**. Consequently, he initiated Judicial Review proceedings ***Machakos H.C. Misc. JR. No. 39 of 2012*** against the ***Olekajwado County Council, the Commissioner of Lands and the Lands Registrar Kajiado***, to quash the decision of the said Land Registrar. It is deposed that the final decision of the Court in the Judicial Review proceedings was made on **25<sup>th</sup> April 2012** whereby the resolution of the Lands Registrar of revoking the title to the suit property was quashed. Subsequently on **13<sup>th</sup> July 2012**, the Plaintiff herein filed an application in ***Machakos H.C. Misc. JR. No. 39 of 2012***, seeking an order, *inter-alia*, that the final order of the Court be set aside. The Defendant deposes that the Plaintiff's application came up for hearing on **27<sup>th</sup> February 2014** but that the same did not proceed due to the Plaintiff's absence.

In the circumstances, the Defendant contends that the suit herein is deemed to be barred by *res judicata* and *sub-judice* and ought to be dismissed. Further, that the Plaintiff is duty bound by law to disclose to the Court the existence of his application in the Judicial Review proceedings in ***Machakos H.C. Misc. JR. No. 39 of 2012***. Thus, that the Plaintiff cannot purport to seek equitable reliefs from the Court whereas he has come to court with unclean hands. In support of the application, the Defendant annexed, *inter-alia*, copies of the pleadings of ***Machakos H.C. Misc. JR. No. 39 of 2012*** together with the order of the Court dated **25<sup>th</sup> April 2012**, and copies of the pleadings filed by the Plaintiff in the said proceedings.

In response to the application, the Plaintiff filed a notice of preliminary objection dated **20<sup>th</sup> February 2015** on the grounds that the application was an abuse of the Court process as the order sought does not lie where there are several suits between the same parties over the same subject matter.

In the submissions, the Defendant referred to the provisions of **Sections 6 and 7 of the Civil Procedure Act** reiterating that the dispute between the parties herein are directly and substantially in issue in the Judicial Review proceedings in ***Machakos H.C. Misc. JR. No. 39 of 2012***. Thus, the conditions of *res judicata* having been met, the suit ought to be struck out. On behalf of the Plaintiff, counsel submitted that the existence of the Judicial Review proceedings in ***Machakos H.C. Misc. JR. No. 39 of 2012*** is not in dispute. However, that the Plaintiff was compelled to institute this suit to seek interlocutory orders because of the lack of an Environment and Land Court Judge in Machakos Court.

The dispute between the parties is ownership of a parcel known as **L.R. No. Ngong/Township/Block 2/350**. The Defendant's case is that he was the registered owner of the said property until **4<sup>th</sup> February 2011** when the Registrar of Lands, Kajiado revoked his title and the same subsequently allocated to the Plaintiff who took possession of the property. The Plaintiff on his part avers that he has been the proprietor of the suit property since **1996**. However, title to the property was issued to him on **25<sup>th</sup> November 2011**. The Plaintiff instituted this suit to restrain the Defendant from interfering with his quiet enjoyment of the property. The Defendant in response notified the Court of the Judicial Review proceedings instituted in Machakos High Court against the Registrar of Lands, Kajiado to quash the decision of revoking his title. This matter was heard and order issued to the Defendant's favour wherein the decision was quashed by an order of the Court dated **25<sup>th</sup> April 2012**. Following the decision of the High Court in Machakos, the Defendant did re-enter the property, according to the Plaintiff by demolishing his fence and erecting a new fence around the property.

It is this turn of events that has led to the two applications now before Court for determination. The Defendant seeks that this suit herein be dismissed for reasons that the Judicial Review proceedings at the Machakos High Court is still pending to which the Plaintiff is a party vide an application dated **10<sup>th</sup> July 2012** wherein he prayed, *inter-alia*, that the orders granted on **25<sup>th</sup> April 2012** be set aside. This application is yet to be prosecuted. Thus, in view of the pendency of another suit involving the same

parties and over the same subject matter, the suit herein is *res judicata* and/or *sub-judice*. The Plaintiff in his submission did not dispute the pendency of the Judicial Review proceedings but stated that he instituted this suit as there is no Environment and Land Court Judge in Machakos.

It is indeed factual that there is no Judge of the Environment and Land Court posted to serve litigants in Machakos County. However, the Judicial Review matter is before the High Court of Machakos. On perusal of the Plaintiff's application of **10<sup>th</sup> July 2012**, availed by the Defendant, it is evident that the Plaintiff has sought similar orders as in this suit, thereby instituting a new cause of action to seek the same remedy already sought in previous proceedings. **Section 6 of the Civil Procedure Rules** bars this Court from proceeding with a suit in which matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties where such suit or proceeding is pending in the same or other Court having jurisdiction in Kenya to grant the relief claimed. The principles of *res-judicata* and *sub-judice* is there to prevent an abuse of the court process where parallel proceedings are heard before two different courts of competent jurisdiction. The Court in the case of **Nyanza Garage vs. Attorney General Kampala HCCS No. 450 of 1993** aptly elaborated that:

*“In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits.”*

Instituting this suit whilst an application seeking similar reliefs is pending hearing and determination before a Court of competent jurisdiction, is clearly, an abuse of the Court process. It is for this reason that the Defendant's application is allowed. The Plaintiff's suit is hereby struck out and the Defendant shall have the costs.

Having struck out the Plaintiff's suit, then this court will not make any findings on the Plaintiffs Notice of Motion dated **27<sup>th</sup> March 2014**.

Dated, Signed and Delivered this **21<sup>st</sup> day of March 2016**

**L. GACHERU**

**JUDGE**

In the Presence of:-

.....for the Plaintiff/Applicant & Respondent

.....for the Defendant/Respondent & Applicant

..... Court Clerk

**L. GACHERU**

**JUDGE**