

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 19 OF 2014

ESTHER NZINGO KALUME.....PLAINTIFF

=VERSUS=

STEPHEN JUMA.....1ST DEFENDANT

BAHATI KAHINDI JUMA.....2ND DEFENDANT

R U L I N G

Introduction:

1. What is before me is the Defendant's Preliminary Objection dated 24th July 2014. In the Preliminary Objection, the Defendant has averred that there is a similar suit pending in court being HCCC NO. 299 of 2013, Masha Birya Dena & Others where the Defendants are among the 111 Plaintiffs and the Plaintiff herein is one of the Defendants in the said suit.
2. In her Ground of Opposition, the Plaintiff has deponed that the Defendant's Notice of Preliminary Objection is misconceived, fatally defective and intended to delay the suit.
3. The parties field their respective submissions.
4. The Defendants' advocate submitted that a court cannot proceed with the trial of any suit where there is an existing similar suit; that this matter is res sub judice; that the res sub judice is meant to prevent a court of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue and that the Mombasa suit is a representative suit dealing with the same subject matter herein.
5. The Plaintiff's counsel submitted that the present case is not res sub judice the Mombasa case; that none of the parties in the current suit are parties in the Mombasa case and that in any case the preliminary objection does not consist pure points of law.

Analysis and Findings:

6. The Defendants' preliminary objection is premised on the ground that the present suit is similar to a suit in Mombasa.
7. Whether this suit is res sub judice pursuant to the provisions of Section 6 of the Civil Procedure Rules can only be ascertained after the court has perused the pleadings in both matters. The facts of Mombasa HCCC No. 299 of 2013 must be ascertained first before the court can decide on the competence of this suit.
8. The issues raised in the present Notice of Preliminary Objection is not a purely points of law considering that the Mombasa file is not before this Court. The Defendant should have filed a formal application and annexed the pleadings in the Mombasa case to enable this court determine if the current suit is indeed res sub judice.
9. For those reasons, I dismiss the Notice of Preliminary Objection dated 24th July 2014 with costs.

Dated and delivered in Malindi this 20th day of February, 2015.

O. A. Angote

Judge