

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND DIVISION

ELC. CASE NO. 1546 OF 2014

PETER MUTERU KIMAMO.....1ST PLAINTIFF/APPLICANT

LUCY KIRIGO GACHIKI.....2ND PLAINTIFF/APPLICANT

NANCY NYAMBURA NG'ANG'A.....3RD PLAINTIFF/APPLICANT

LUCY WANGU RIGUU.....4TH PLAINTIFF/APPLICANT

VERSUS

MUKOE ESTATE LIMITED.....DEFENDANT/RESPONDENT

RULING

Coming up before me for determination is the Notice of Preliminary Objection dated 19th December 2014 in which the Defendant raised the point that this suit should be struck out as it contravenes the rule against multiplicity of suits under section 6 of the Civil Procedure Act which states as follows:

“Stay of suit

No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding 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 any other court having jurisdiction in Kenya to grant the relief claimed.”

The Defendant stated that this court has no jurisdiction to hear and determine this suit whilst **Civil Suit No. 6753 of 2014** is still pending hearing and determination at the Chief Magistrates Court, that the relief claimed in both suits is the same i.e. a permanent injunction against future trespass and that the Chief Magistrate’s Court has the pecuniary jurisdiction to hear and determine that suit. The Defendant stated further that though the Plaintiffs in this suit are not parties in **Civil Suit No. 6753 of 2014**, they should have sought to be enjoined as interested parties in that suit rather than instituting this suit since the issue in contention in both suits is the ownership of the suit property which is the same in both suits.

On their part, the Plaintiffs submitted that the Plaintiffs are proprietors of Plot Nos. 54, 41, 347 and 75 in Umoja II Zone 8 Nairobi which said plots were allocated to them by the Nairobi City Council (as it then was) vide allotment letters annexed. They further submitted that they are total strangers to the land parcel known as Nairobi/Block 107/1052 located in Umoja Estate which is the subject of **Civil Suit No. 6753 of 2014** and further that they are not parties to the said suit. They further submitted that the Plaintiffs’ said plots have been developed with permanent storey buildings and perimeter walls whose value could be in excess of Kshs. 50 million while in **Civil Suit No. 6753 of 2014** the suit property is undeveloped, pointing to the fact that the two suits arise from different causes of action. In a nutshell, the Plaintiffs submitted that the two suits are totally different with distinct causes of action, they touch on different subject matters and involve different parties.

In determining whether there is matter falls within the ambit of **section 6 of the Civil Procedure Act** cited above, I am to consider whether the matter in dispute in the two suits is the same, whether the parties are the same and finally whether the court before which the suits are have jurisdiction to determine them. I have perused the plaint filed in **Civil Suit No. 6753 of 2014**. The cause of action in that suit is the alleged trespass of the Defendants therein on parcel of land known as Nairobi/Block 107/1052 Umoja Estate. The plaintiff in that suit is Mukoe Estate Limited while the Defendants are Geogrey Ngatia Njoroge, Lucy Kirigo Gacheki and Kent Maina Muiyuro. On the other hand, in the instant suit, the Plaintiffs are Peter Muteru Kimamo, Lucy Kirigo Gachigi, Nancy Nyambura Nganga and Lucy Wangu Riguu while the Defendant is Mukoe Estate Limited. According to the plaint filed in the instant suit, the Plaintiffs are claiming Plot Nos. 54, 41, 347 and 75 in Umoja II Zone 8 Nairobi which the allege the Defendant is claiming. According to the Plaintiffs in the instant suit, the said plots have been developed with storey permanent buildings. However, in **Civil Suit No. 6753 of 2014**, the suit property is alleged to be vacant with only a site house. From this, I can deduce that the properties in dispute in the two suits are different. Further, the parties are different with the exception of Mukoe Estates Limited and Lucy Kirigo Gachigi who appear in both suits. From a consideration of all the foregoing, I have arrived at the finding that the two suits are distinct and do not involve the same subject matter or parties. Further, I find that the courts before which the two suits are being heard do have the necessary jurisdiction to determine them. In the circumstances, I direct that the two suits do proceed as before.

The Preliminary Objection is therefore dismissed. Costs shall be in the cause.

DELIVERED AND SIGNED AT NAIROBI THIS 10TH DAY OF APRIL 2015.

MARY M. GITUMBI

JUDGE