



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS
ENVIRONMENT AND LAND COURT
ELC. CASE NO. 49 OF 2013

KYALO MUNYAO.....1ST PLAINTIFF
MUSYOKA USUSU.....2ND PLAINTIFF
DANIEL MUTINDA.....3RD PLAINTIFF
PATRICK NGOVI.....4TH PLAINTIFF
SIMON KATHUMA.....5TH PLAINTIFF
KAVOI MASAI.....6TH PLAINTIFF
STEPHEN MULWA.....7TH PLAINTIFF

VERSUS

BONIFACE MAKAU MUIA.....1ST DEFENDANT
JOHN MAKUMI.....2ND DEFENDANT
PATRICK MUASA KATIKU.....3RD DEFENDANT
NGUNYA MUTETA.....4TH DEFENDANT

RULING

Coming before me for determination is the Notice of Preliminary Objection dated 24th October 2012 raised by the Defendants seeking for the suit to be dismissed on the following grounds:

1. That the Plaintiffs have instituted a similar suit CMCC NO. 1104 of 2011 before the Chief Magistrate’s Court at Machakos prior to filing this suit.
2. That the said CMCC NO. 1104 of 2011 (Machakos) is on the same subject matter and seeks the same prayers as this suit and was instituted before this one and is still pending before the said court.
3. That the application herein and the entire suit herein is filed in contravention of section 6 of the

Civil Procedure Act.

Both parties agreed to canvass the Preliminary Objection by way of written submissions on 14th November 2013 and the court ordered that they do so. However, only the Defendants had filed their written submissions as ordered by the court.

The argument brought forth by Counsel for the Defendants is that there is a pending case before the Chief Magistrate's Court in Machakos, namely CMCC NO. 1104 of 2011, and that therefore this court should not entertain this suit as this would amount to sub-judice.

The applicable law is to be found in **section 6** of the **Civil Procedure Act** which provides as follows:

“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 Plaintiffs/Applicants have chosen to remain silent on the issue whether they have already filed a similar suit before the Chief Magistrates' Court in Machakos. In the absence of their response to the Preliminary Objection, I am inclined to agree with the Defendants that indeed there is a similar suit before the Chief Magistrates' Court in Machakos regarding same subject matter as this suit and seeking similar prayers as are sought in this suit. I therefore proceed to find that this suit is sub-judice and proceed to dismiss it with costs to the Defendants.

It is so ordered.

SIGNED AND DELIVERED AT NAIROBI THIS 2ND DAY OF MAY 2014.

MARY M. GITUMBI

JUDGE