



**Horizon Hills Limited v Musembi & 3 others (Environment and Land Case Civil Suit E113 of 2022) [2024] KEELC 3379 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3379 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT E113 OF 2022**

**LN MBUGUA, J  
APRIL 18, 2024**

**BETWEEN**

**HORIZON HILLS LIMITED ..... PLAINTIFF**

**AND**

**CISSY KALUNDE MUSEMBI ..... 1<sup>ST</sup> DEFENDANT**

**PRISCA WAMBUA T/A WAMBUA AND MASENO LLP  
ADVOCATES ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR NAIROBI ..... 3<sup>RD</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff commenced this suit vide originating summons dated 17.3.2022 seeking a declaration that it is the registered proprietor of parcel LR No. 1870/11/200 Nairobi. Alongside the plaint, the Plaintiff filed a Notice of Motion application dated 17.3.2022 seeking an injunction restraining the 1<sup>st</sup> Defendant from interfering with the suit parcel. The same was dismissed on 19.5.2022 for want of prosecution.
2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a preliminary objection dated 12.5.2022 which is for determination. They contend that the suit offends the provisions of Section 6 of the Civil Procedure Rules for reason that the Plaintiff is a party (5<sup>th</sup> Defendant) in Milimani Elc Suit No. 100 of 2019; *Kenroid Limited v Aureum Limited & 8 others* (Consolidated with ELC Suit No. 227 of 2019; *Cissy Kalunde Musembi v Aureum Limited & another*) which is before Hon Justice Oscar Angote for hearing of the main suit. Thus this suit is subjudice to the other suit.
3. They also contend that in the said matter, the court issued interim orders of injunction restraining all parties from interfering with the suit property pending determination of the said suit.



4. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants are represented in the suit by the Attorney General and though the record indicates that they had also filed a preliminary objection dated 16.5.2022, the same is neither in the court file nor in the online filing system (CTS).
5. The question for determination is whether the 1<sup>st</sup> and 2<sup>nd</sup> Defendant's preliminary objection dated 12.5.2022 is merited.
6. Sub-judice is a rule provided for under Section 6 of the Civil Procedure Act which bars courts from trying a matter between similar parties and over the same subject matter provided that the matter is before another Court of competent jurisdiction.
7. In Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR the court stated that;  
  
    “...there exists the concept of sub judice which in Latin means “under Judgement.” It denotes that a matter is being considered by a court or judge. The concept of sub judice is that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on.”
8. I have perused the file ELC Suit No. 100 of 2019 in the digital platform and indeed the current plaintiff is the 5<sup>th</sup> defendant thereon. They have even filed a defence dated 2.6.2022 claiming to have been the previous registered owners of the suit property 1870/11/200. The subject matter in both suits is therefore the same.
9. In the circumstances, I find that the Preliminary Objection of the 1<sup>st</sup> and 2<sup>nd</sup> defendants is merited. To this end, the application dated 17.3.2022 and the entire suit are hereby struck out under the *sub-judice* rule. Each party is to bear their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

Sichangi for 2<sup>nd</sup> and 3<sup>rd</sup> Defendants

Court assistant: Eddel

