



**Kimani & another v Kimandu & Ndegwa Co. Advocates; Kariiyu
(Interested Party) (Environmental and Land Originating Summons
E062 of 2022) [2024] KEELC 3750 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3750 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E062 OF 2022
LN MBUGUA, J
APRIL 18, 2024**

BETWEEN

MARY WANJIRU KIMANI 1ST APPLICANT

RUTH WANJIKU KOORO 2ND APPLICANT

AND

KIMANDU & NDEGWA CO. ADVOCATES RESPONDENT

AND

JEFFERSON MUNGAI KARIYU INTERESTED PARTY

JUDGMENT

1. Vide the Originating Summons dated 18.11.2022, amended on 13.2.2023, the applicants seek the following orders;
 1. A declaration that the Applicants herein are entitled to be supplied with all documents and information relating to the transaction for the sale and purchase of Land Parcel LR No. 209/2360/1 IR No. 131154.
 2. An order directed at the Respondent for immediate delivery up to the Applicants through their Advocates on record herein of the following documents and information:
 - i. The original Certificate of Title for LR No. 209/2360/1 IR No. 131154.
 - ii. The duly executed Transfer together with passport photographs and PIN Certificates.
 - iii. Any other completion document in the Respondent's custody relating to the transaction for the sale and purchase of Land Parcel LR No. 209/2360/1 IR No. 131154.



2. The interested party was joined in this suit on 7.3.2023 through his application dated 13.2.2022. Thereafter, parties agreed to have the matter heard by way of written submissions, of which all parties have duly complied.

Case for the Applicants

3. The case for the applicants is contained in the body of the Originating Summons and the supporting Affidavit of Mary Wanjiru Kimani (1st applicant). The applicants contend that they purchased the property known as LR. No. 209/2360/IR 131154 vide a sale agreement dated 17.9.2007. That their advocate was by then Kimandu Gichohi advocates who received all the completion documents from the vendors. But the land was not registered in their favour, nor were they furnished with the completion documents.
4. In support of their case, the applicants availed the sale agreement as well as a copy of the letter where their current advocates requested for the documents from the respondent.
5. In their submissions dated 5.9.2023, the applicants contend that the respondent has admitted to there having been an advocate –client relationship as the said respondent is claiming to have a right of lien on the said documents. Adding that the claim of outstanding costs is but an after thought.
6. It was further submitted that the dispute in the case ELC 690 of 2012 concerns monies unlawfully collected by the interested party from the suit property.

Case for the Respondent

7. The respondent opposes the suit vide their replying affidavit dated 21.2.2023 sworn by Daniel Ndegwa Wokabi, as well as Grounds of opposition of even date. The deponent contends that indeed the respondent, by then trading as Kimandu Gichohi advocates did act for the applicants alongside Patrick Macharia Kooro (now deceased), Ruth Wanjiku Kooro and Jerfferson Mungai Kariyu in the purchase of the suit property.
8. That before their firm could register the transfer, the applicants herein with Patrick Macharia Kooro filed the case ELC 690 of 2012 against Rahab Mwihaki Karoki where restraining orders were issued. Thereafter, the interested party applied to be joined in that suit claiming a legal or equitable interests thereon.
9. That vide a letter dated 21.11.2017, the advocates for the applicants wrote to the respondents asking them to continue holding the documents in question in safe custody, of which the respondents gave a positive confirmation.
10. The respondents further contend that their firm has an advocates’ right of lien on the documents in their custody on account of unpaid legal fees.
11. They also aver that the lease in question had expired and was required to be extended.
12. In their submissions dated 22.9.2023, the respondents reiterated their averments set out in the replying affidavit and grounds of opposition, and also submitted at length on the events taking place in the case ELC 690 of 2012, adding that this matter is *subjudice* to the aforementioned case. They have relied on the cases of;
 - i. *Joel K. Yegon & 4 Others vs John Rotich & 4 Others* [2004] eKLR.
 - ii. *Christopher Mutiembu Machimbo & 3 Others v County Surveyor, Trans Nzoia & 4 Others* [2022] eKLR.



- iii. [Daykio Plantations Limited v National Bank of Kenya Limited & 2 Others](#) [2019] eKLR.
- iv. [Booth Manufacturing Africa Limited\) –vs- Dumbeyia Nelson Muturi Harun t/a Nelson Harun & Company Advocates](#) [2014] eKLR.

Case for the interested party

13. The Interested Party opposes the suit vide his Replying affidavit dated 29.3.2023. He contends that the applicants and himself (through his mother Rahab Mwihaki) purchased the suit property vide the sale agreement of 17.9.2007. Later a dispute on ownership and the exact share proportions arose giving rise to the case ELC 690 of 2012 where the applicants herein were terming Rahab Mwihaki as a trespasser. Adding that the issues raised herein ought to have been tabled in the other case.
14. He contends that the applicants are not the only clients who were represented by the respondent, and in his case, he never gave consent for this case to be filed. He desires that the documents should remain in custody of the advocate.
15. In his submissions dated 26.9.2023, the interested party reiterated the averments set out in his replying affidavit, adding that the applicants have not approached this court with clean hands. To this end, he has relied on the case of; [Ruaba Concrete Co. Ltd et al versus Paramount Universal Bank Ltd et al](#), HCCC No. 430 of 2002 as cited in [Halima Haji Sarah v Multiple Haurliers \(E.A\) Limited & Another](#) [2022] eKLR.

Determination

16. The uncontroverted issue is that the respondent was the advocate for the applicants with others in the purchase of the suit property vide the sale agreement of 17.9.2007. By then, the respondent was trading as Kimandu Gichohi advocates. It is also common ground that the transfer was not effected and that the completion documents are still in custody of the respondent. There is also no evidence of a dispute between the purchasers and the vendors.
17. The question falling for determination is whether the documents in question should be handed over to the applicants.
18. The main bone of contention advanced by the respondent is that they have a right of lien over the said documents, and that the matter is *subjudice* to the case ELC 690 of 2012. The interested party too claims that the other suit is still active, and that himself as a purchaser, he never gave consent for this suit to be filed.
19. On the issue of lien, there is nothing to indicate that any demand for fees was ever made for the last 15 or so years by the respondent. Further, there is nothing to indicate that the respondents ever filed a suit for recovery of any costs since year 2007. That claim must fail.
20. On *subjudice*, I make reference to the provisions of Section 6 of the [Civil Procedure Act](#) which stipulate that:

“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.”



21. In *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR, the Court stated that;
- “..... for the doctrine of *subjudice* to apply the following principles ought to be present:-
- (a) There must exist two or more suits filed consecutively;
 - (b) The matter in issue in the suits or proceedings must be directly and substantially the same, the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title, the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”
22. In *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested parties)* [2020] eKLR the Supreme Court affirmed that;
- “The purpose of the *subjudice* rule is to stop the filing of a multiplicity of suits between the same parties or those claiming under them over the same subject matter so as to avoid abuse of the court process & diminish the chances of courts with competent jurisdiction, issuing conflicting decisions over the same subject matter.”
23. I have perused the documents/pleadings filed in the case ELC 690 of 2012, including the injunctive orders issued in that suit. The said suit relates to the control and management of the suit property, where by the current applicants accuse Ruth Mwhiki of taking up the property and collecting rent to their exclusion. The dispute has nothing to do with the issue of completion documents. The injunctive orders issued there in were against Rahab and again, they do not have nexus with the documents in question.
24. What is clear is that the sale agreement was done more than a decade ago on 17.9.2007 where the purchasers were; Patrick Macharia Kooro, Ruth Wanjiku Kooro, Jefferson Mungai and Mary Wanjiku Kimani. None of the parties have availed the letter of instructions by the purchasers to the respondent. But again, there is nothing to indicate that the respondent was to have any other assignments beyond the sale agreement. On what basis can the respondent then retain the completion documents for a period of over 16 years! None. I conclude that the matter is not *subjudice* to the case ELC 690 of 2012.
25. On the issue that the interested party did not give consent, for the filing of the case, again the fall back is the assignment given to the respondent relating to the sale agreement of year 2007. Having pronounced that the respondent had no legal basis of going beyond his assignment, then it matters not that one of the purchasers desires that the respondent should continue to keep the said documents. And in absence of the letter of instructions, then the interested party cannot be heard to oppose the application.
26. On the letter of 21.11.2017 where the current advocates for the applicants were instructing the respondents to continue holding the documents in safe custody, such instructions came to an end vide the letter of 6.10.2022, where the advocates for the applicants made a demand for the release of the said documents.
27. Having failed to cause the registration of the suit property soon after year 2007, there being no evidence of a dispute between the purchasers and the vendors, then I conclude that it is not the place for the respondent to get entangled into the dispute now between the purchasers.
28. In the end, I find that the applicants have proved their case on a balance of probabilities and I grant the following orders;



1. An order is hereby issued directing the Respondent to immediately release the following documents to the applicants through their advocates:
 - i. The original Certificate of Title for LR No. 209/2360/1 IR No. 131154.
 - ii. The duly executed Transfer together with passport photographs and PIN Certificates.
 - iii. Any other completion document in the Respondent's custody relating to the transaction for the sale and purchase of Land Parcel LR No. 209/2360/1 IR No. 131154.
2. Each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF APRIL, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Sahi for Applicant

Wangui holding brief for Ndegwa for Respondent

Kariuki for Interested Party

Court Assistant: Eddel

