



Key Export Company Limited v Mediheal Hospital (Parklands) (Environment & Land Case 28 of 2024) [2024] KEELC 4754 (KLR) (13 June 2024) (Ruling)

Neutral citation: [2024] KEELC 4754 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 28 OF 2024**

J OMANGE, J

JUNE 13, 2024

BETWEEN

KEY EXPORT COMPANY LIMITED PLAINTIFF

AND

MEDIHEAL HOSPITAL (PARKLANDS) DEFENDANT

RULING

1. In the application dated 24th January, 2024 the Plaintiff had sought eviction orders against the Defendant on grounds that the Plaintiff and the Defendant had entered into a tenancy agreement to lease the suit premises at a monthly rent of Kshs. Three Million Twenty-Two Thousand Six Hundred and Eighty-Four (3,022,684).
2. That the Defendant had failed to meet the rent obligations which had accumulated to an amount of Kshs 31,412,019. The Plaintiff sought an order of reentry and repossession of the suit premises in addition to the distress proceedings which are ongoing. The application was supported by the affidavit of Mouz Husnan Director of the Plaintiff.
3. The Defendant who was served with the application did not file a response but opted to file an application dated 14th May, 2024 seeking that the Plaintiff's Notice of Motion should be struck out as there is a pending suit at the Chief Magistrates Court MCCCCMISC /E1552/2023. The Defendant's Director swore an affidavit in support of the application in which he deposed that there are interim orders in the case before the Chief Magistrates Court which had not been discharged.
4. The Plaintiff opposed this application arguing that the interim orders in the case in the Chief Magistrates Court had been vacated by virtue of the Lower Courts Ruling which had ordered that if the Tenant who is the Respondent in the Magistrates Court did not file a response the ex parte orders were to be vacated. It is the contention of the Plaintiff that given that the Defendant did not comply with the orders of the Magistrates Court issued on 22nd December, 2023 the orders were vacated automatically.



In any event it was the argument of the Plaintiff that both matters could proceed simultaneously as one sought for distress and the other sought for an eviction.

5. None of the parties had filed submissions as at the point of the court writing the Ruling. I will consider the second application by the Defendant first as it touches on the court's jurisdiction to hear the matter.

6. Section 6 of the Civil Procedure Act which section provides;

“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.”

7. The ingredients for the court to make a determination that a matter is sub judice are; the matter in issue must substantially be the same; the proceedings in the two cases must be between two parties and the matters must be before a court with jurisdiction to determine the case.

8. The doctrine of sub-judice is not only intended to ensure that courts do not issue conflicting orders but is also meant to avoid a scenario where a litigant is sued simultaneously in different courts. It also adds to backlog when parties pursue multiple suits before different courts.

9. Although as correctly pointed out by the Plaintiff the interim orders were vacated in the Magistrates Court, the suit is still subsisting as it has not been finalized. I find that the situation is one that calls for the court to be guided by the observations by Mativo J, in Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR where he stated as follows: -

“...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 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. In such a situation, order is passed by the subsequent court to stay the proceeding and such order can be made at any stage.”

10. In the circumstances, this court stays the proceedings in this suit to await the final determination of the earlier suit filed in the Magistrates Court. Costs to abide the final outcome.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS ON 13TH JUNE, 2024.

JUDY OMANGE

JUDGE

In the Presence of:-

Ms. Obuya for Nduati for the Plaintiff -

Mr. Kangogo for Defendant

