



Aveco Ltd v John Joseph Ndung'u Mwenja & Partners Ltd & 2 others (Environment and Land Miscellaneous Application E131 of 2023) [2024] KEELC 7007 (KLR) (17 October 2024) (Ruling)

Neutral citation: [2024] KEELC 7007 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E131 OF 2023
LN MBUGUA, J
OCTOBER 17, 2024

BETWEEN

AVECO LTD PLAINTIFF

AND

JOHN JOSEPH NDUNG'U MWENJA & PARTNERS LTD 1ST DEFENDANT

SHAMJI KALYAN PINDORIA LIMITED 2ND DEFENDANT

NAIROBI COUNTY GOVERNMENT 3RD DEFENDANT

RULING

1. This miscellaneous suit was filed by way of a notice of motion application dated 22.5.2023 where the applicant is seeking injunctive orders. The said application was dismissed for want of prosecution on 3.7.2024. The applicant however filed an application dated 6.7.2023 for reinstatement of the earlier application which prayer was allowed on 9.10.2024. It however emerged during the prosecution of the application dated 6.7.2024 that there is a substantive suit filed by the applicant as Appeal no E40 of 2023. In the ruling of 9.10.2024, the court stated that the issue of existence of another suit can only be raised when this matter is active.
2. Thus on 15.10.2024 after the suit was reinstated, the protagonists submitted on the issue as to whether this suit should be sustained or not.
3. It was argued for the respondent that there is an ongoing suit appeal no E40 of 2023 coming up for directions before judge Omenge on 16.10.2024. The respondents indicated that they are not sure as to why this suit was filed.
4. In response, the applicants do not refute that they have filed the appeal. They contend that the basis of filing this suit was to have the suit property preserved as they had been served with an eviction notice.



5. I have considered the arguments raised herein and I have also keenly looked at the prayers sought in the application dated 22.5.2023. In the said application, the applicants seeks orders interalia “the grant of a temporary order of injunctionpending the hearing and determination of the appeal.....no.40 of 2023”. It follows that the substantive appeal had already been filed when this matter was filed. There is hence no plausible explanation advanced by the applicants as to why they could not file this application in the substantive suit. I therefore find that the filing of this suit amounts to an abuse of the court process.
6. In the case of Republic v Paul Kihara Kariuki, Attorney General & 2 Others Ex Parte Law Society of Kenya [2020] eKLR, the court had this to say on multiplicity of suits.

“The multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.”
7. There being no good reasons as to why this suit was filed, then the same is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17th DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Odinga holding brief for Mugada for Applicant

Andango holding brief for Ocho for 1st & 2nd Respondent

