



Gichunge v Murimi & 4 others (Environment and Land Miscellaneous Application E001 of 2024) [2024] KEELC 13304 (KLR) (20 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13304 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2024
CK YANO, J
NOVEMBER 20, 2024**

BETWEEN

LAWRENCE KAMUNDI GICHUNGE APPLICANT

AND

GORDON MURIMI 1ST RESPONDENT

JANE MUTHONI WANG'OMBE 2ND RESPONDENT

DOMINIC KIRIMI GICHUNGE 3RD RESPONDENT

CATHERINE MUTHONI KAMUNDI 4TH RESPONDENT

REGISTRAR OF TITLES CHUKA 5TH RESPONDENT

RULING

1. By a notice of motion dated 21st February, 2024 brought under Order 2 rules 15(1) (b) & (d) & 3 of the Civil Procedure Rules 2010, the 1st, 2nd, 3rd & 4th Respondents are seeking for orders that the court dismisses the suit in its entirety and the costs of the suit be borne by the applicant.
2. The application is based on the grounds set out on the face of the application supported by the affidavit dated 25th February, 2024 sworn by Dominic Kirimi Gichunge. The respondents aver that there is pending for hearing and determination Chuka CM ELC Case No. 25 of 2016 that raises matters that are directly in issue in this suit and between the same parties. That the said suit is yet to be heard and determined and therefore this suit is scandalous, frivolous, vexatious and an abuse of the court process and should be dismissed to avert the possibility of multiple court determinations on the same issue by different courts.
3. The respondents aver that the dispute in this suit is similar in nature, pleadings and reliefs sought in Chuka CM ELC Case No. 25 of 2016. The deponent has annexed a copy of the amended plaint marked "DKG1".



4. The respondents aver that the said suit is active with a ruling which was set for 29th February, 2024 in respect of a preliminary objection. A copy of the objection marked “KDG 2” has been annexed. That it is therefore inexplicable why the applicant would institute the suit while a similar one has not been determined or withdrawn. The respondents accuse the applicant for forum-shopping and deliberately failing to disclose in the suit that he is actively litigating over the same parcels of land against the same parties in the subordinate court.
5. The respondents aver that the applicant’s conduct is meant to wear them down and irritate them. That the institution of the suit amounts to an abuse of the judicial process. They further aver that the likelihood of resulting in two conflicting decisions over the same subject matter renders the conduct of the applicant untenable. They prayed that the suit be dismissed with costs.
6. The Applicant filed a replying affidavit dated 8th October, 2024 wherein he avers that Chuka CM ELC Case No. 25 of 2016 has different parties of which the matter has two plaintiffs against four defendants while the current application has one applicant against five respondents. That in Chuka CM ELC Case No. 25 of 2016, the applicant is litigating in different capacity as the 1st Plaintiff while in the current application he is an applicant. That in Chuka CM ELC Case No. 25 of 2016, the plaintiffs are seeking for only one relief, that is cancellation of titles Muthambi/U.Karimba 1982, 1983 and 1984 while in the current application, the applicant is seeking for a total of five reliefs of which cancellation of titles is not one of them.
7. The Applicants states that in Chuka CM ELC Case No. 25 of 2016 the suit properties mentioned are only three, including Muthambi/U.Karimba/1982, 1983 and 1984 while the current suit properties are 6, including Muthambi/U.Karimba/1483, 1457, 1563, 1982, 1983 and 1984. The applicant has annexed an amended plaint marked “LKG1”.
8. The Applicant contends that the court should find that his application has merit and hear it to full conclusion.
9. The 5th respondent is not opposed to the application.
10. The application was canvassed by way of written submissions which were duly filed by the parties. The 1st, 2nd, 3rd and 4th respondents filed their submissions dated 18th July, 2024 through the firm of M/S Basilio Gitonga Muriithi & Associates Advocates while the Applicant filed his dated 8th October, 2024 through the firm of FB Kisia & Company Advocates.
11. The respondents submitted that the application under consideration has been instituted pursuant to the provisions of Order 2 rule 15 of the Civil Procedure Rules 2010. The respondents submitted that the basis of their application is that there is a pending Chuka CM ELC Case No. 25 of 2016 that involves the same parties and subject matter as shown in the amended plaint that has been annexed to the supporting affidavit.
12. It was submitted that the institution of multiple suits relating to the same subject matter is improper and is an abuse of the court process. The respondents cited Section 6 of the *Civil Procedure Act*.
13. The respondents submitted that a comparative perusal of the amended plaint in Chuka CM ELC Case No. 25 of 2016 and the amended originating summons will reveal that save for the Registrar of Titles, the other parties are similar. Further, that the relief sought in both suits is remarkably similar and intended to arrive at the cancellation of the titles involved. The respondents relied on the cases of Ephraim Miano Thamani Vs. Nancy Wanjiru Wangai & 2 Others (2022)eKLR which cited the passage in Kenya National Commission on Human Rights Vs. Attorney General and Independent Electoral and Boundaries Commission and 16 Others (2020)eKLR.



14. It was submitted by the respondents that the suit is an abuse of the court process being sub-judice Chuka CM ELC Case No. 25 of 2016 which was filed earlier and urged the court to have the entire suit struck out.
15. In his submissions, the Applicant highlighted the difference between the current suit and Chuka CM Case no. 25 of 2016, namely, that there are different parties, that in both cases, the Applicant is litigating in different capacities and is seeking different reliefs and that the suit properties are different in the two suits.
16. The Applicant relied on the case of Naisiano Olonge Jek & Another Vs. Salau Ole Solou Limurinke & Another [2020]eKLR and urged the court to dismiss the respondents application and proceed to hear the suit herein on merit.

Analysis and Determination

17. I have considered the application, the response as well as the rival submissions. The issue for determination is whether the present suit is sub judice.
18. The applicant has pleaded that the suit offends the principle of res sub-judice due to the existence of pending proceedings in Chuka CM ELC Case No. 25 of 2016 that raises matters that are directly in issue in the suit herein and between the same parties.
19. The doctrine of sub judice is found under Section 6 of the *Civil Procedure Act*, Cap 21 which provides as follows: - “6. 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.”
20. Numerous decisions have put the issue in perspective. The Supreme court of Kenya in *National Commission on Human Rights Vs. Attorney General; IEBC & 16 Others* (2002)eKLR held: “The purpose of sub-judice 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 and diminish the chances of courts, with competent jurisdiction, issuing conflicting decisions over the same subject matter...When two or more cases are filed between the same parties on the same subject matter before courts with jurisdiction, the matter that is filed later ought to be stayed in order to await the determination to be made in the earlier suit. A party that seeks to invoke the doctrine of sub-judice must therefore establish that; there is more than one suit over the same subject matter; that one suit was instituted before the other; that both suits are pending before courts of competent jurisdiction and lastly; that the suits are between the same parties or their representatives.”
21. The sub-judice rule like other maxims of law has a salutary purpose. The basic purpose and the underlying object of sub judice is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.
22. I have perused the pleadings annexed hereto in Chuka CM ELC case No. 25 of 2016 – *Lawrence Kirimi Gichunge & Another Vs. Dominic Kirimi Gichunge & Others*. The subject matter are the properties known as Muthambi/U. Karimba/1982, Muthambi/U. Karimba/1983 and Muthambi/U. Karimba/1984 which are the same subject matters of the suit herein. The two suits filed are with respect



to the same subject matters. Secondly, the Plaintiff/Applicant herein is the same as the Plaintiff in the suit before the subordinate court. The Defendants are more or less the same. In my view, the matter in issue is directly and substantially the same matter in issue in Chuka CM ELC Case No. 25 of 2016.

23. It is clear from the pleadings that in both suits, the Applicant has pleaded fraud on the part of the Defendants/Respondents.
24. Having perused the materials on record, I opine and I come to the inescapable conclusion that this suit is sub judice. I cannot however, dismiss the suit as urged by the respondents in their application dated 21st February, 2024. Instead, I allow the application but stay this suit pending the determination of Chuka CM ELC Case No. 25 of 2016.
25. The costs of the application are awarded to the 1st, 2nd, 3rd and 4th respondents.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 20TH DAY OF NOVEMBER, 2024.

Court Assistant – Mwangi

Kisia for Applicant/Respondent

Muriithi for 1st – 4th Respondents/Applicants

No appearance for 5th Respondent

C. K. YANO

JUDGE

