



Olembo & 4 others (Suing on their own behalf and on behalf of over seven hundred (700) members of Wilson Mutumba Women Group a duly registered self-help group) v Attorney General & another (Land Case E019 of 2024) [2024] KEELC 13930 (KLR) (17 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13930 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E019 OF 2024
LN MBUGUA, J
DECEMBER 17, 2024

BETWEEN

GERALDINE INYANGALA OLEMBO 1ST PLAINTIFF
STEPHEN ANYONA OGETO 2ND PLAINTIFF
FLACIAH NJOKI MUIRURI 3RD PLAINTIFF
ANNE MARY WANGARI GITHU 4TH PLAINTIFF
NANCY WAMBUI KAMAU 5TH PLAINTIFF
SUING ON THEIR OWN BEHALF AND ON BEHALF OF OVER SEVEN
HUNDRED (700) MEMBERS OF WILSON MUTUMBA WOMEN GROUP A
DULY REGISTERED SELF-HELP GROUP

AND

THE ATTORNEY GENERAL 1ST DEFENDANT
THE CHIEF LAND REGISTRAR 2ND DEFENDANT

RULING

1. Vide a plaint dated 17.1.2024, the plaintiffs filed this suit claiming ownership to parcel L.R. 209/14582, having been allocated the said land in year 1990 and that they have a title to that effect, adding that they have been occupying the said land with their families from that time of allocation. They were however violently evicted from the said land in year 2005 by the police.
2. They contend that a suit, being Environment and Land Court Case No. 2028 of 2007 (formerly High Court Civil Case No. 1057 of 2006) was filed by one Benta Kalara Achieng, Evelyne Achieng Onyango



and others but the plaintiffs have withdrawn their names and interest from the case hence the plaintiffs have no duplicity of suits.

3. They therefore seek the following orders in this suit;
 - a. A declaration that the Plaintiffs are the legal owners of the suit property LR 209/14582 situated in Nairobi County.
 - b. An order that any certificate of title for property LR 209/10610 issued to the Permanent Secretary for Treasury on behalf of Ministry in Charge of Internal Security of the Police be and is hereby cancelled.
 - c. An order that the chief land registrar Nairobi, do effect and/or restore the registration of the plaintiffs through its officials in the land registrar and relevant documents for title LR 209/14582 and issue them with a certificate of title and any other documents of ownership.
 - d. An order that the Inspector General of Police and the National Police Service and any other person on the suit property do vacate the suit property.
 - e. Mesne profits and compensation for loss of user from the time the plaintiffs were unlawfully evicted to the time of judgment and handing over the property back to the plaintiff.
 - f. The defendants do pay the land rents and county rates owing to the ministry of lands and Nairobi county from the time when the plaintiffs were evicted to date.
 - g. General damages.
 - h. Special damages to be proved and determined at the hearing hereof.
 - i. Costs of the suit.
 - j. Interests at court rates on the above where relevant.
 - k. Any other orders deemed suitable in the circumstances of the case.
4. Soon after the suit was filed, the plaintiffs filed an application dated 31.1.2024 seeking orders of maintenance of status quo on the suit property as well as an order that the matter be referred for Arbitration or the Court Annexed mediation.
5. In response thereof, the defendants filed a Notice of Preliminary Objection dated 22.4.2024 seeking orders to have the suit struck out on the grounds that the suit herein is subjudice to NAIROBI ELC NO. 2028 OF 2007, NAIROBI ELC MISC APPLICATION E212 OF 2021, NAIROBI ELC NO. 051 OF 2022 AND NAIROBI ELC NO. E215 OF 2021. It is also averred that the suit is an abuse of court process, it is frivolous and vexatious.
6. This ruling is therefore in respect of both the above mentioned application and the preliminary objection in terms of the directions given by the court on 18.7.2024.
7. The plaintiffs case as set out in their application dated 31.1.2024 is that they are the owners of the property known as LR 209/14582 . That the said property was initially part of a larger portion of land known as LR 209/10610 which had not been allocated to anyone; and in the year 1987, the property LR 209/10610 was subdivided into two portions namely LR 209/14582 and LR 209/11418, with the first parcel being allocated to the plaintiffs and the latter to Rimbuki Ltd, a company understood to be associated with former head of Criminal Investigation Department or Intelligence, one Noah Arap Too.



8. The Inspector General (formerly Commissioner of Police) later wrongfully claimed the property and forcibly evicted the Plaintiffs from the same. Then in the 2011, over 12 years after the subdivision, he caused the Land Registry to issue them with a title deed for parcel LR 209/10610, yet that number had been extinguished upon subdivision.
9. That the National Land Commission adjudicated on the dispute and by the determination dated 13.11.2018 published in Kenya Gazette Notice Vol CXX1/27 dated 1.3.2019 the National Land Commission (NLC) confirmed the rights and interest of Wilson Mutumba Women Group in the parcel of land known as LR 209/14582 and directed the parties to explore Alternative Dispute Resolution (ADR) to resolve the dispute, but to date, the said directive has not been complied with. That is why the plaintiffs are seeking an order that in the first instance, the matter be referred to ADR.
10. The plaintiffs aver that they are apprehensive that the Defendants, including the National Police Service and the Ministry of interior are likely to alienate the suit property, thereby permanently affecting the Plaintiff's rights on that land. That previously, the defendants have interfered with the suit property, for instance, through tender No MLPWHUD/SDHUD/AHP/067/2022-2023 where they invited private developers to construct houses on the suit property for a proposed affordable housing project.
11. The plaintiffs contend that the intended development would create complexity in the case as both the developers and those who will be awarded those houses will claim rights of ownership and it will be difficult or more complicated to enforce the judgment of this court against third parties.
12. Further, the plaintiffs state that the actions of the Defendants will change the status of the property, thus it is imperative that the status quo of the suit property be maintained pending the determination of this suit.
13. One Stephen Anyona Ogeto, a member of the plaintiff has sworn an affidavit dated 31.1.2024 to support the application and has availed various documents including the allotment letter as well as the certificate of title issued in favour of Wilson Mitumba women group.
14. In their submissions, the plaintiffs contend that it is necessary to issue orders of maintenance of status quo so that there is no further construction on the suit land, and to prevent any alienation of the said land, noting that the suit land has been advertised for construction of the Affordable Housing Units. On this point reference has been made to the case of Kenya Airline Pilots Association (KALPA) V Co-operative Bank of Kenya Limited & Another [2020] eKLR.
15. It is further submitted that Alternative dispute Resolution Mechanism is necessary since even the National Land Commission had delivered a ruling concerning the dispute on 7.2.2019 stating that;

“Taking into account the long standing dispute among the parties herein. The commission directs the parties to explore Alternative Dispute Resolution (ADR) to amicably bring a rest to the seemingly endless litigation process with a view to the National Police Service (Respondents) giving up/surrendering a suitable amount of land to the Claimant group”
16. On the Preliminary Objection, the plaintiffs contend that none of them are parties in the case ELC 2028 OF 2007, that they are strangers to the case ELC 212 OF 2021, and ELC 051 OF 2022, while the JR CASE NO. 51 OF 2019 was closed on 26.7.2023. They further state that they are also suing on their personal capacity, hence this suit is not sub-judice to any other suit. To buttress this point, the plaintiffs have cited the cases of; Human Rights v Attorney General; *Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) (Advisory Opinion Reference 1 of 2017)* [2020]



KESC 54 (KLR) Constitutional and Human Rights) (7 February 2020) (Ruling) and Geoffrey K. Sang v Director of Public Prosecutions & 4 Others [2020] eKLR.

17. In their submissions the defendants reiterate that the matter is sub-judice in light of the pending matters in cases no. ELC 2028 OF 2007, MISC Appl. E212 of 2021, ELC 051 of 2022, and ELC E215 OF 2021. They contend that proceeding with this suit while parallel suits are pending would send a precarious precedence and would result in litigants engaging in forum shopping or strategic maneuvering designed to manipulate the processes of the court. In support of this argument the defendants rely on the cases of Kenya National Commission on Human Rights vs Attorney General; Independence Electoral and Boundaries Commission and 16 Others (interested parties) [2020] eKLR and Frankline Langat vs Julius Osanga Abuti and 3 Others [2022] eKLR.
18. On whether the orders sought by the plaintiffs are merited it is argued that the suit property is owned by the government of Kenya and in 1987 it was designated for construction of housing units for police officers. That the government invested substantial financial resources into development of the said housing units which since 1990 have been occupied by the police force. To this end, it is argued that the plaintiffs have not defined the status quo on the land and therefore the court should not issue an order of status quo vaguely. On this point reference has been made to the case of Shimmers Plaza Limited vs National BANK of Kenya Limited 2015 eKLR and Bia Tosha Distributers Limited vs Kenya burearies Limited and 6 Others (Pet 15 of 2020) (2023) KESC 40 (KLR) (Constitutional and judicial review) (17 February 2023) (Judgment).
19. It is argued that there are already other matters brought forth by the same self help group, hence this particular matter cannot be referred for arbitration while other matters are proceeding for hearing.

Determination

20. I have considered all the rival arguments and I find that the issues falling for determination are; Whether this suit is subjudice to the cases ELC 2028 OF 2007, MISC Appl. E212 of 2021, ELC 051 of 2022, and ELC E215 OF 2021 and whether this matter should be referred for alternative dispute resolution mechanisms such as arbitration or court annexed mediation.
21. The law governing the sub-judice rule is anchored under the provisions of Section 6 of the [Civil Procedure Act](#) which stipulate that:

“No court shall proceed with the trial of any suit or proceedings 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 relieve claimed.”
22. In the case of Republic vs Registrar of Societies – Kenya & 2 Others ex-parte Moses Kirima & 2 Others [2017] eKLR the court had this to say on the sub-judice rule:

“...For the principle to apply, certain conditions precedent must be shown to exist: First, the matter in issue in the subsequent suit must also be directly and substantially in issue in the previously instituted suit, proceedings must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title; and such suit or proceeding must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed....”



23. While in the case of *Thika Min Hydro Co. Ltd vs Josphat Karu Ndwiga* [2013] eKLR the court opined that:

“It is not the form in which the suit is framed that determines whether it is sub judice. Rather it is the substance of the suit and looking at the pleading in both cases.”

24. In the case at hand, the plaintiffs have introduced themselves in the plaint as officials of Wilson Mutumba Women Group being the current chairperson, vice chairperson, treasurer and other officials “suing on their own behalf and on behalf of Wilson Mutumba Women Group” which is a self help group registered in 1988 and consisting of over 700 members. At paragraph 45 of the said plaint, the plaintiffs contend that ELC 2028 of 2007 was filed by Benta Karara Achieng, Evelyn Achieng Onyango and others but the current the plaintiffs have withdrawn their names and interest from that case, thus there is no duplicity of the suit.

25. However, a perusal of the plaint in the case ELC 2028 of 2007 (originally filed in the High Court as 1057 of 2006) indicates that the said suit was filed by Benta Karara, Everline Atieno and Cecilia Wanjiru as executive members of the Wilson Mitumba Group and they were claiming ownership of parcel L.R.209/14582. That suit has been proceeding before this court and is scheduled for hearing on 24th and 25th of March 2025!

26. Going by the above analysis, it is clear that if this court was to proceed with this matter EO19 OF 2024, the court would in essence be dealing with the same subject matter, and the same group albeit differently fashioned with what can only be termed as rival factions apparently advancing the interest of the group in different suits. Such a situation is likely to cause confusion and even conflicting decisions which is unacceptable and untenable. It is not fathomable that the plaintiffs having been part and parcel in the case ELC 2028 of 2007 (actually filed in 2006), would 18 years later attempt to advance their interests in a fresh suit ostensibly because they are also pursuing their personal interests in the suit property. I find that the conduct of filing the current suit is not only sub-judice, but the same amounts to an abuse of the courts, processes.

27. In the case of *Republic vs Paul Kihara Kariuki, Attorney General and 2 others Ex-parte Law Society of Kenya* [2020] EKLR the court had this to say on the rule of sub judice.

“The sub judice rule like other maxims of law has a salutary purpose. The basis, 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.”

28. Still in the above cited case of *Republic vs Paul Kihara Kariuki, Attorney General and 2 others Ex-parte law society of Kenya* (Supra) the court went on to state that:

“Abuse of court process creates a factual scenario where a party is pursuing the same matter by two-court process. In other words, a party by the two court process is involved in some gamble; a game of chance to get the best in the judicial process. [25] A litigant has no right to pursue paripassu two processes, which will have the same effect in two courts at the same time with a view of obtaining victory in one of the process or in both. In several decisions of this court, I have stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process



where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process.”

29. As pointed out by the defendants, there are many other suits filed by the group known as Mitumba women group, some of which include case number E051 OF 2022 which was withdrawn on 8.6.2022 after a preliminary objection was raised on the basis of the existence of the case 2028 of 2007, while yet another case filed by the same group being JR 051 OF 2019 was withdrawn on 9.9.2023. The court has not managed to get the particulars of the other mentioned files, but the Court’s Tracking System (CTS) search engine reveals that the same group had filed case No. 171 of 2007 which was dismissed for want of prosecution on 25.11.2011, and case No. 163 of 2007 which was withdrawn on 22.6.2007!
30. This far, it is clear beyond peradventure that the plaintiffs are involved in some gamble and are engaging in a game of chance to get the best in the judicial process. Such maneuvers should not be allowed to continue and in that regard, the court cannot delve into the merits of their application. In the end, I find that the Preliminary Objection dated 22.4.2024 is merited. This suit is hereby struck out with costs to the defendants.

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

LUCY N. MBUGUA

JUDGE

In the presence of:

M/s Njeru for Plaintiff

M/s Kubai for Defendant

Court Assistant: Vena

