



**Njoroge Treasurer & another (Suing through Murigi Njogu - The Patron) v  
Kakuzi PLC; National Land Commission (Interested Party) (Environment & Land  
Case E014 of 2024) [2024] KEELC 13662 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13662 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE E014 OF 2024  
LN GACHERU, J  
DECEMBER 5, 2024**

**BETWEEN**

**NJOROGE TREASURER ..... 1<sup>ST</sup> PLAINTIFF**

**KIHINGANA SELF HELP GROUP (CBO) ..... 2<sup>ND</sup> PLAINTIFF**

**SUING THROUGH MURIGI NJOGU - THE PATRON**

**AND**

**KAKUZI PLC ..... DEFENDANT**

**AND**

**NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**RULING**

1. The Matter for determination is the Notice of Motion Application dated 12<sup>th</sup> June 2024, which is premised under Order 2 Rule 15(d) and Order 51 Rule 1 of the Civil Procedure Rules, as read together with on Sections 1A, 1B, 3A and 6 of the [Civil Procedure Act.](#), wherein the Defendant/ Applicant has sought for orders that; -
  - i. That present application be heard on priority basis and be heard before the hearing of the Plaintiff's injunction application dated 16<sup>th</sup> April, 2024.
  - ii. That this Honourable Court does not have jurisdiction to deal with ELCL No. 014 OF 2024; Njoroge Treasure and Kihinganda Self Help Group (CBO Suing through Murigi Njogu) The Patron vs Kakuzi Plc, National Land Commission (interested Party).
  - iii. That this Honourable Court be pleased to strike out the Plaint dated 16<sup>th</sup> April 2024.
  - iv. That the Defendant/Applicant be awarded the costs of this Application.



2. The instant Application is premised on the grounds stated on its face as well as in the Supporting Affidavit of Davis Gitaka, dated 12<sup>th</sup> June 2024, in his capacity as the Legal Manager of the Defendant/Applicant herein, wherein he averred that the Plaintiff/ Respondent lodged a claim with the Interested Party's Historical Land Injustices Committee in year 2018, claiming ownership over the Defendant/Applicant's land parcels Nos. L.R. 10731 and L.R. 11674 (the suit properties), on the basis that the said parcels are the Plaintiff's members' ancestral lands, which claim was registered by the Interested Party herein as NLC/HLI/049/2017.
3. The Defendant/Applicant contended that the Plaintiff's members claimed to have contributed Kshs.15,000/=, each resulting in a total sum of Kshs.41,250,000/=, which sum was paid to the Defendant/Applicant as consideration for the suit properties. Further, that the claim No. NLC/HLI/049/2017, is pending determination, and the Interested Party possesses the necessary legal mandate to entertain the instant claim.
4. It was further contended that the Ruling delivered by this Court on 12<sup>th</sup> May 2022, which dismissed the Defendant/Applicant's Application for stay of proceedings in view of the pending matters in NLC/HLI/049/2017, as well as Constitutional Petition No. 10 of 2020, has been appealed against by the Defendant/Applicant in Nyeri Court of Appeal No. E.063 of 2023, thereby rendering the instant suit sub-judice.
5. Further, that the Plaintiff/ Respondent has instituted Murang'a ELC No.18 of 2021 (Isaac Njoroge Kariuki & Others VS Kakuzi PLC and Others), which suit raises similar issues as the present suit. Citing the provisions of Section 6 of the *Civil Procedure Act*, the Defendant/Applicant's further averred that the prayer for interim relief raised by the Plaintiff/ Respondent in the current suit can be raised in either Murang'a ELC No.18 of 2021 (Isaac Njoroge Kariuki & Others V Kakuzi PLC and Others), or before the Interested Party in the proceedings in NLC/HLI/049/2017.
6. Further, the Defendant/Applicant accused the Plaintiff/ Respondent of material non-disclosure on account of the failure to disclose the existence of the above mentioned proceedings related to the suit properties, and urged the Court to strike out the Plaintiff's suit with costs.
7. Further, the Court was urged not to allow the Plaintiff/ Respondent to commence multiple proceedings in respect of the same subject matter, as it would compel the Defendant/Applicant to defend itself before different forums with respect to different cases pertaining to similar issues.

### **The Plaintiff/Respondent's Response**

8. The Plaintiff/Respondent opposed the instant Application vide the Replying Affidavit sworn by Murigi Njogu on 25<sup>th</sup> June 2024, in his capacity as the patron of the Plaintiff entity. He described the instant Application as frivolous and vexatious and a waste of valuable judicial time. It was the Plaintiff's contention that the Defendant/Applicant did file a similar Application dated 17<sup>th</sup> November 2021, wherein, it was contended that the said matter was sub-judice, and which Application was canvassed before this Court and dismissed vide a Ruling dated 12<sup>th</sup> May 2022.
9. The Plaintiff/ Respondent further contended that the Applicant appealed against the said Ruling, and also lodged a claim dated 30<sup>th</sup> January 2024, before the Interested Party, seeking that the Interested Party do hold that it lacked Jurisdiction to entertain the Plaintiff's claim, which claim is based on historical land injustices, allegedly committed by the Defendant/Applicant as against the Plaintiff's members.
10. The Plaintiff/Respondent refuted the Defendant/Applicant's claim that the Plaintiff's suit dated 16<sup>th</sup> April, 2024, is sub-judice and argued that the proceedings in NLC/HLI/049/2017, are in respect of



historical land injustices, while the suit dated 16<sup>th</sup> April 2024, is concerned with the fraudulent transfer of the suit properties by the Defendant/Applicant as attested to by a copy of this Court's Ruling dated 12<sup>th</sup> May, 2022.

11. Further, the Plaintiff/ Respondent contended that the subject matter of the suit herein is not directly and substantially in issue in any of the suit referred to by the Defendant/Applicant, and therefore, the suit dated 16<sup>th</sup> April 2024, needs to be heard on the merits.
12. Further, that the Plaintiff's members currently reside on the suit properties, and have lived therein for decades, and hence their prayer before this Court for a temporary injunction and for status quo to be maintained in order to restrain the Defendant/Applicant from harassing them as it is doing, pending the determination of NLC/HLI/049/2017. The Plaintiff/Respondent contended that the Defendant/Applicant only wish is to frustrate the expeditious disposal of the Plaintiff's suit.
13. The Plaintiff/ Respondent further contended that the powers vested in the Interested Party pursuant to the provisions of Article 67 of the Constitution, as read together with the National Land Commission Act, 2012, do not provide for injunctive reliefs, hence the filing of the suit dated 16<sup>th</sup> April 2024.

### **The Interested Party's Response**

14. The Interested Party opposed the instant Application through the Replying Affidavit sworn by Edmond Gichuru, on 24<sup>th</sup> July 2024, in his capacity as the Deputy Director, Legal Affairs and Dispute Resolution at the National Land Commission, and averred that the Interested Party derives its mandate from Article 67(1) and (2) (e) of the Constitution of Kenya, as read together with the National Land Commission Act No.5 of 2012.
15. Further, that Section 15 of the National Land Commission Act empowers the Interested Party either on its own motion, or acting upon a complaint to initiate investigations into present or historical land injustices and recommend appropriate redress.
16. The Interested Party affirmed that it registered the Plaintiff/Respondent's claim related to Historical Land Injustices as NLC/HLI/049/2017, wherein it was alleged that the Plaintiff's members were forcefully evicted from land parcel No. LR11674, by European (British) settlers and the Defendant/Applicant was allocated a lease over the said land.
17. It was the Interested Party's further averments that the said claim No. NLC/HLI/049/2017, is currently awaiting determination, and that it conducted a site visit in respect of the suit properties, and issued Hearing Notices to the parties in the dispute before it. Further, that the Plaintiff/Respondent suit dated 16<sup>th</sup> April 2024, seeks to preserve the suit property pending the determination of NLC/HLI/049/2017.
18. The Interested Party refuted the Defendant/Applicant's contention that the Interested Party is possessed of the necessary legal mandate to grant Injunctive prayers, and contended that the Defendant/Applicant brought an Application dated 30<sup>th</sup> January 2024, before the Interested Party, alleging that the Interested Party lacks jurisdiction to entertain the Historical Land Injustice claim registered as NLC/HLI/049/2017. Further, that there is no pending claim related to Injunctive Orders awaiting determination by the Interested Party, as adverted to by the Defendant/Applicant.
19. The Interested Party also contended that if this Court does not hear and determine both the Plaintiff/ Respondent's suit and Application seeking Injunctive Orders, then, NLC/HLI/049/2017, will be rendered nugatory. The Court was urged to dismiss the instant Application with costs, as it is misconceived, misplaced, and amounts to an abuse of the due process of the Court.



20. The instant Application was canvassed by way of written submissions.

### **The Defendant/applicant's Submissions**

21. The Defendant/Applicant filed its written submissions dated 24<sup>th</sup> July 2024, through the Law Firm of Kaplan & Stratton Advocates, wherein, three issues for determination were identified, being; -
- a. Whether this Honourable Court has jurisdiction to deal with the suit herein?
  - b. Whether the suit and Application herein are a gross abuse of the Court process?
  - c. Who should bear the costs of this Application?
22. The Defendant/Applicant submitted that the Plaintiff's suit is sub-judice pursuant to the provisions of Section 6 of the *Civil Procedure Act*, because the parties to the instant suit and the issues raised herein are similar to the parties, and issues found in Nyeri Court of Appeal No. E063 of 2023; Murang'a ELC No. 18 of 2021; and, NLC/HLI/049/2017. Reliance was sought in the holding of the Court in the case of Republic vs Paul Kihara Kariuki, AG and 2 others ex parte LSK [2020].
23. Further, the Defendant/Applicant's submitted that the issues raised by the Plaintiff/Respondent in the instant suit ought to have been raised in NLC/HLI/049/2017, as the Interested Party is invested with the requisite jurisdiction to issue preservative Orders including injunctions pursuant to the provisions of Section 15(9) (k) of the *National Land Commission Act*.
24. Further, that the Defendant/Applicant's Application which seeks the dismissal of the Plaintiff's claim in NLC/HLI/049/2017, was argued on 28<sup>th</sup> February 2024, and is pending determination by the Interested Party herein.
25. That the Plaintiff/Respondent has filed a multiplicity of suits over the same subject matter and properties, and which he failed to disclose to the Court. The Defendant/Applicant relied on the holding of the Court in the cases of Uhuru Highway Development Limited Vs Central Bank of Kenya & 2 others [1995] eKLR; and, Halima Haji Sarah Vs Multiple Hauliers (E.A.0 Limited & Another [2022] eKLR.
26. Further reliance was placed in the decisions of the Court in the case of Jetlink Express Limited Vs East African Safari Air Express Kenya Ltd [2015] eKLR; and, Sarak V Kotoye [1992] 9 NWLR 9 at 188-189.

### **The Plaintiff/respondent's Submissions**

27. The Plaintiff/Respondent filed their written submissions dated 15<sup>th</sup> August, 2024 through the Law Firm of Jasmeet Mayodi & Co. Advocates, and submitted that the Plaintiffs/Respondents approached this Court seeking an interlocutory injunction because the Interested Party lacks the legal mandate to grant such Orders.
28. Reliance was sought in the provisions of Order 40 Rule 1 of the Civil Procedure Rules, to buttress the argument that it is this Court that possesses the mandate to grant conservatory or interlocutory Orders, and not the National Land Commission. Further reliance was sought in the provisions of Section 6 (1) (2) and (3) of the *National Land Commission Act*. The Plaintiff further submitted that its suit dated 16<sup>th</sup> April 2024, is not sub judice; and that the filing of the said suit does not amount to a multiplicity of suits, nor, an abuse of the process of the Court.
29. The Interested Party did not file any written submissions and the Court relied on its Replying Affidavit, wholly in determination of this Application.



30. The above being the arguments in support and opposition to the instant Application, this court has carefully considered the said Application, the relevant provisions of law, the rival written submissions and the cited authorities and finds the issues for determination are; -
- i. Whether the Defendant/Applicant is entitled to the Order sought?
  - ii. Who shall bear the costs of the Application?
31. On the first issue, this Court vide its Ruling dated 12<sup>th</sup> May 2022, in dismissing the Defendant/Applicant's Application dated 17<sup>th</sup> September 2021, dealt in extenso with the question of sub judice as raised by the Applicant thereon. The Court determined that it possessed the requisite jurisdiction to entertain the matter, and that the Applicant failed to make out a case to warrant the dismissal of the Plaintiff/Respondent's suit.
32. The principle of sub judice is defined in Section 6 of the *Civil Procedure Act* as follows:
- “No Court shall proceed with the trial of any suit or proceeding on 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.”
33. In the case of Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] KESC 54 (KLR, the Supreme Court understood the meaning and import of the sub-judice rule as follows:
- “The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the 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. This means that 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 res 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.”
34. Further, in the case of Abdulkadir A. Khalif v Principal Secretary, Ministry of Lands and Physical Planning & 6 others [2018] EKLR, the Court held that;
- “The basic purpose and the underlying object of Section 6 of the Code is to prevent 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.”



35. Again in the case of *Kandara Residents Association & 4 others v Delmonte (K) Limited & 4 others* [2020] eKLR, the Court reasoned as follows:

“To test the doctrine of subjudice, the Court would have to apply the twin doctrine of resjudicata, that is whether on a final decision being reached in the previous suits such decision would render the current suit resjudicata. In other words, can the Plaintiff get the same relief in this suit if the earlier suit had been determined. With regard to the Petition the Court found as a fact that it did not have jurisdiction to determine the matter and therefore the matter was not heard and finally decided by the Court. This suit therefore does not run afoul of either the doctrines of sub judice nor resjudicata.”

36. From the pleadings herein, it is clear that the Nyeri Court of Appeal No. E.063 of 2023, as filed by the Defendant/Applicant challenges this Court’s Ruling dated 12<sup>th</sup> May 2022, on the question of sub-judice while the Plaintiff’s suit dated 16<sup>th</sup> April, 2024, alleges fraud on the part of the Defendant/Applicant with respect to the ownership the suit properties. Further, the Plaintiff/Respondent is seeking Injunctive Orders to restrain the Defendant/Applicant from interfering with the suit properties, pending the determination of NLC/HLI/049/2017, filed before the Interested Party.

37. Upon a careful reading of the instant Notice of Motion Application, the Court is persuaded that the said Application reiterates the exact claims made by the Applicant in its Application dated 17<sup>th</sup> September 2021, save for the contention that the Plaintiff’s suit is rendered sub-judice on account of the filing of Nyeri Court of Appeal No. E.063 of 2023.

38. It is evident that the issues raised in Nyeri Court of Appeal No. E.063 of 2023, are not similar to those raised in the Plaintiff’s suit herein, and their Application for Injunctive Prayers. In the suit herein, the Plaintiff has raised the issue of fraud, with accompanying Application for injunction. The matter in Nyeri Court of Appeal, is an Appeal on a Ruling, and therefore the issues cannot be the same.

39. Accordingly, the Court finds and holds that the Defendant/Applicant’s argument and submissions that the Plaintiff’s suit dated 16<sup>th</sup> April 2024, is rendered sub-judice on account of the proceedings in Nyeri Court of Appeal No. E.063 of 2023 is devoid of merit and cannot stand.

40. In the Notice of Motion Application herein, the Defendant/Applicant argued, averred and submitted that the Interested Party is vested with the legal mandate to grant Injunctive reliefs pursuant to the provisions of Section 15(9) (k) of the *National Land Commission Act*; and therefore, the Plaintiff/Respondent ought to present its prayer for Injunctive Orders before the Interested Party. In response, the Interested Party denied being invested with the legal mandate to grant Injunctive Orders.

41. Section 15(9) (k) of the *National Land Commission Act* stipulates as follows:

“The Commission, after investigating any case of historical land injustice referred to it, shall recommend any of the following remedies—

(k) declaratory and preservation orders including injunctions.”

42. From the phraseology of Section 15(9) (k) of the *National Land Commission Act*, as above stated, it is clear that Injunctive Orders contemplated under the foregoing provision are in the nature of final remedies, which the Interested Party is empowered to issue only upon completion of its own investigations in respect of claim founded on historical land injustices.

43. The above stated injunction is distinguishable from an Injunctive Order ordinarily issued by Courts pending the determination of a matter before them, in order to preserve the subject-matter in



dispute. By the Defendant/Applicant's own admission, the Plaintiff's /Respondent's claim NLC/ HLI/049/2017, was argued on 28<sup>th</sup> February 2024, and was pending determination by the Interested Party herein by the time of filing the instant Application and submissions. Therefore, the provisions of Section 15(9) (k) of the [National Land Commission Act](#), cannot be operationalized as the Interested party is still conducting investigations in relation to the suit properties.

44. Having carefully considered the instant Notice of Motion Application and having regard to the foregoing analysis, this court finds and holds that the instant Application is not merited, and consequently, the orders sought cannot be granted.
45. Accordingly, the court finds and holds that the Defendant/Applicant's Notice of Motion Application dated 12<sup>th</sup> June, 2024 is not merited, and the same is dismissed entirely with costs to the Plaintiff/ Respondent as well as the Interested Party.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIS 5<sup>TH</sup> DAY OF DECEMBER 2024.**

**L. GACHERU**

**JUDGE**

**5/12/2024.**

Delivered online in the presence of:

Joel Njonjo – Court Assistant

N/A for the Plaintiff/ Respondent

N/A for Defendant/ Applicant Ruling date was taken in presence

N/A for Interested Party of the advocates for the parties.

