



REPUBLIC OF KENYA



**Peroh v Peroh & 3 others (Environment & Land Case
89 of 2019) [2023] KEELC 31 (KLR) (18 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 31 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 89 OF 2019
MN GICHERU, J
JANUARY 18, 2023**

BETWEEN

MICHAEL PEROH PLAINTIFF

AND

ISHMAEL MOSHI PEROH 1ST DEFENDANT

WINFRED MUKAI PEROH 2ND DEFENDANT

ISAAC PEROH 3RD DEFENDANT

STEPHEN PEROH 4TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated October 13, 2022. The motion seeks the following main prayers.
 - (i) Consolidation of this suit with High Court Commercial Case no E965 of 2021, Isaac Peroh and 3 others v Michael Peroh.
 - (ii) That in the alternative to the above prayer, there be a stay of proceedings in the above suit.
2. The application which is under sections 1A (3), 1B (1) (a), 3A and 63 (e) of the *Civil Procedure Act* and all enabling provisions of law is based on seven grounds and it supported by an affidavit sworn by the third defendant Isaac Peroh.

The gist of the above material is that the crux of the matter in the dispute is simply whether the parties contributed together to the purchase of the suit properties. This being the case, if the two suits were to proceed simultaneously, there will be a real danger of two conflicting decisions being given on the same set of facts and issues.



3. The application is opposed by the plaintiff Michael Peroh who has sworn a replying affidavit filed in court on October 17, 2022 in which he raises the following issues.

Firstly, he challenges the institution of Civil Suit no E965/2021 at the High Court when this case is pending as irregular, if the issues in both suits are similar.

Secondly, the plaintiff urges that the consent order dated December 5, 2019 is working to his detriment and to the advantage of the defendants hence their desire to delay the conclusion of this suit. While the defendants reap income from their other assets the plaintiff is excluded from his only source of rental income. The defendants do not mind the case taking as long as possible. They suffer no loss while the plaintiff suffers great prejudice.

Thirdly, this court and the High Court do not exercise concurrent jurisdiction hence it is not possible for the High Court to deal with matters within the special jurisdiction of this court.

For these and other reasons, the plaintiff prays for the dismissal of the Notice of Motion dated October 13, 2022.

4. I have carefully considered the notice of motion dated October 13, 2022 in its entirety including the affidavits, grounds, annexures and the law applicable. Learned counsel for the parties were to file and serve written submissions by December 20, 2022 but they did not comply with the timelines. This ruling has been written without the benefit of the said submissions.

5. I find that the entire application has no merit and I dismiss it for the following reasons.

Firstly, the reliefs sought by the plaintiff in paragraphs 20 (a) to (e) of the plaint dated October 3, 2019 can only be granted by the Environment and Land Court but not by the High Court.

6. Article 162(2) (b) of the Constitution of Kenya and section 13 (2) of the Environment and Land Court Act vest that jurisdiction exclusively in this court. If the suit were transferred to the High Court or consolidated with the suit pending there, such court would be unable to exercise any jurisdiction over the suit.

7. The prayers disclose a rent dispute, the right to occupy land parcel no B409 Ongata Rongai Trading, release of letter of allotment, an order of injunction and an order to withdraw a caveat. None of them is within the purview of the High Court.

Secondly, it is a requirement of law under order 4 rule 1 (f) of the Civil Procedure Rules that a plaintiff discloses that there is no other pending or previous suit between the same parties over the same subject matter.

8. The defendants are saying in grounds 5 and 6 of the notice of motion dated October 13, 2022 that the issues raised in both matters are the same and the two courts are likely to give conflicting decision. The defendants are solely to blame for this. Why file a second suit when the pending one can resolve the dispute?

9. This filing of the second suit flies in the face of order 4 (I) (f) Civil Procedure Rules which provides as follows.

The plaint shall contain the following particulars –

- (f) An averment that there is no other pending suit, and there have been no pending proceedings, in any court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff names in the plaint”.

10. I need not say no more.



11. Finally on the release of funds held in the joint account relating to plot no B409 Ongata Rongai, I find that counsel did not file any submissions as agreed. It is admitted by Isaac Peroh in his statement dated October 14, 2022 that the plaintiff contributed kshs 6, 403, 301.73 as net capital towards the development of that particular property.
12. On a pro rata basis, I find that since the total cost of the project is kshs 17, 810, 191.83, the plaintiff's undisputed contribution equals 35.953%. Whatever the outcome of the case, the plaintiff will not get less than this percentage of the proceeds of rent because it is undisputed.
13. For the reasons given herein before, I make the following orders.
 - (i) Notice of motion dated October 13, 2022 is dismissed.
 - (ii) 35.953% of the funds held in the joint account of the counsel for the parties relating to rent income from plot no B409 Ongata Rongai to be released to the plaintiff.

The balance to remain in the account pending the hearing and determination of this suit.
 - (iii) Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF JANUARY, 2023

M N GICHERU

JUDGE

