



**Independent Electoral & Boundaries Commission v Okeyo & another (Election  
Petition Appeal E003 of 2023) [2023] KEHC 19227 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19227 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
ELECTION PETITION APPEAL E003 OF 2023**

**KW KIARIE, J**

**JUNE 27, 2023**

**BETWEEN**

**INDEPENDENT ELECTORAL & BOUNDARIES COMMISSION .. APPELLANT**

**AND**

**BONDO VICKINS ..... 1<sup>ST</sup> RESPONDENT**

**ONGILI PETER OKEYO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> respondent /applicant moved the court by way of Notice of Motion dated 8<sup>th</sup> March 2023. The application is premised on sections 1, 3 and 6 of the *Civil Procedure Act*, Cap 21 Laws of Kenya & Articles, 47, 49, 50 and 159 of the *Constitution* of Kenya. The applicant is seeking the following orders:
  - a. That this matter be certified urgent and hearing date be fixed on priority, it being an election petition appeal. [Spent]
  - b. That election appeal number E003 of 2023 Independent Electoral and Boundaries Commission v Ongili Peter Okeyo and Bondo Vickins be struck out.
  - c. That cost of this application and the substantive petition E003 of 2023 be provided for.
2. The application was premised on the following grounds:
  - a. That the respondents have resorted to abuse the dignified court process with this appeal which has got copy-cat facts/grounds and prayers with election appeal E001 of 2023; Bondo Vickins v Ongili Peter Okeyo and Independent Electoral and Boundaries Commission.
  - b. That record will show that the appellants herein were served with Memorandum of Appeal in election appeal No E001 of 2023 which they acknowledged receipt on 13<sup>th</sup> February 2023.



- c. That they filed notice of appointment and have been participating in the said Election Petition Appeal No E001 of 2023 and cannot deny notice of it.
  - d. That with a bizarre motive of frustrating the 1<sup>st</sup> respondent, they have gone ahead and filed another appeal with similar facts, grounds and prayer as election petition Appeal No E001 of 2023.
  - e. That the impugned election appeal number E003 of 2023 instantly before this court has been filed out of the recommended 14 days as required by Rule 35 of [Election Petition Rules 2017](#) and without leave of court.
  - f. That the motive is to clog honorable court diary, to vex the parties and to abuse the honorable judicial process.
  - g. That if this matter is not certified as urgent and orders issued appropriately, the applicant is likely to suffer prejudice economically in defending two twin appeals filed against Section 6 of [Civil Procedure Act](#).
  - h. That the appeal is therefore sub judice and should be struck out with cost.
3. The second respondent did not oppose the application while the appellant opposed the application and contended that:
    - a. The application is made in bad faith and with ulterior motives to frustrate the ends of justice for the appellant will be denied justice.
    - b. Election Petition Appeal No E001 of 2023 by Bondo Vickins and the instant appeal herein are completely different in that whereas the former is based on both law and fact, the instant appeal is strictly based on law.
  4. Section 6 of [Civil Procedure Act](#) provides for the *sub judice* doctrine in the following terms:
 

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.
  5. The parties in Election Petition Appeal No E001 of 2023 and in the Election Petition Appeal No E003 of 2023 are the same. The subject matter in both appeals is essentially the same and arose from the same election. This therefore means that the instant appeal offends the doctrine of sub judice. The Supreme Court of Kenya in [Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others \(Interested Parties\)](#) (2020) eKLR on the issue of sub judice said:
    - (67) The term ‘sub-judice’ is defined in [Black’s Law Dictionary](#) 9<sup>th</sup> 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.

6. I therefore make an order to stay Election Petition Number E003 of 2023 to await the outcome in Election Petition Appeal No E001 of 2023. Costs of this application to the applicant.

**DELIVERED AND SIGNED AT HOMA BAY THIS 27<sup>TH</sup> DAY OF JUNE 2023**

**KIARIE WAWERU KIARIE**

**JUDGE**

