



Sare Developers v Airo & another (Environment and Land Case E002 of 2023) [2025] KEELC 5283 (KLR) (17 March 2025) (Ruling)

Neutral citation: [2025] KEELC 5283 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND CASE E002 OF 2023**

**MN KULLOW, J
MARCH 17, 2025**

BETWEEN

SARE DEVELOPERS PLAINTIFF

AND

CHARLES AIRO 1ST DEFENDANT

BARRACK OTIENO DACHE 2ND DEFENDANT

RULING

1. The Defendant had vide Notice of Preliminary Objection on Point of Law sought for orders that the Plaintiff suit is hopelessly misconceived and devoid of any merit as the same is subjudice and this the court has no jurisdiction to determine the instant suit.
2. The preliminary Objections on Point of Law was subsequently disposed off by way of Written Submissions. It is the Defendant's contentions that the Plaintiff herein had filed a suit being Migori C.M.C ELC No. 96 of 2021 seeking for same orders as in the Instant Suit which suit was struck out with costs to the Defendant. He stated that the Plaintiff herein upon the striking out of the suit filed an Appeal No. 13 of 2022 seeking the setting aside of the Lower Court's decision and the reinstatement of the suit and the Appeal is still pending in court. However, despite the extension of the Appeal, the Plaintiff proceeded to file the instant Suit against the same parties seeking the same Orders.
3. The Plaintiff on his part opposed the Preliminary objection stating that the Preliminary Objection as raised is not a true Preliminary Objection in the sense of the Law as the suit is not subjudice.
4. I have considered the preliminary Objection by the Defendant and the submissions filed together with the Plaintiff submissions in opposition to the same and the issue for determination is whether the suit herein is subjudice.



5. What constitutes a Preliminary Objection on a Point of Law is settled in the case of *Mukisa Biscuit Manufacturing Co. Ltd. v West End Distributors Ltd.* [1969] EA 69 in which the court authoritatively stated a Preliminary objection consists of a Point of Law which has been placed or arises by clear implication of the Proceedings and if argued as a Preliminary objection may dispose off the suit.
6. In the Instant Case is the Defendant's argument that this suit is subjudice to the extent that a similar suit was filed vid Migori C.M.C ELC No. 96 of 2021 which suit was dismissed and consequently the Plaintiff filed the Instant Suit which and Appeal executed in respect of the said suit this whether this amounts to subjudice.
7. Section 6 of the *Civil Procedures Act* which deals with what constitutes subjudice provides that no court shall proceed with the trial of any suit or proceedings in which the matter in issue is also directly and substantially an issue in a previously instituted suit or proceeding and matter herein is subjudice.
8. The upshot of the above is that the Preliminary Objections dated 2/6/2023 is merited and I find that the suit herein is subjudice and the same is struck out without costs

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 17TH DAY OF MARCH, 2025.

MOHAMMED N. KULLOW.

JUDGE

In the presence of:

Vincent Court Assistant

No appearance For the Plaintiff

No appearance for the Defendant

