



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

CIVIL SUIT NUMBER E137 OF 2020

IDRIS BARASA BONGO.....1ST PLAINTIFF
JOHN PETER WAMBUGU GICHIMU.....2ND PLAINTIFF
NANCY WAIRIMU KIRUGA.....4TH PLAINTIFF
BENSON MAINGI MUTAHL.....5TH PLAINTIFF
SIMON CHEGE KINYANJUL.....6TH PLAINTIFF
HILLARY ODUOR OMONDI.....8TH PLAINTIFF
MARSEL PAUL OMONDI.....9TH PLAINTIFF
DAVID KIBE KIARIE STEFANO.....10TH PLAINTIFF
JAMES NGOTHO KIRONGOTHI.....11TH PLAINTIFF
CHEBET RIDAH.....12TH PLAINTIFF
MURNARDS HOLDING LIMITED.....13TH PLAINTIFF
LAWRENCE MAINA MIGWI.....14TH PLAINTIFF
EMMANUEL MURAGE NJERU.....15TH PLAINTIFF
JOHN CHARAGU KIHKA.....16TH PLAINTIFF
ESTHER NJERI MWAURA.....17TH PLAINTIFF
MICHAEL WAITITU MAINA.....18TH PLINTIFF

VERSUS

KIAMBU DANDORA FARMERS CO. LTD.....1ST DEFENDANT

THE CABINET SECRETARY,

MINISTRY OF INTERIOR AND CO-ORDINATION OF

NATIONAL GOVERNMENT.....2ND DEFENDANT

THE INSPECTOR GENERAL OF POLICE.....	3 RD DEFENDANT
DEPUTY COUNTY COMMISSIONER, EMBAKASI SUB-COUNTY.....	4 TH DEFENDANT
NAIROBI CITY COUNTY.....	5 TH DEFENDANT
NAIROBI METROPOLITAN SERVICES.....	6 TH DEFENDANT
HON. ATTORNEY GENERAL.....	7 TH DEFENDANT
WILSON MWANGI.....	8 TH DEFENDANT
JOSEPH NDUATI NGENDO.....	9 TH DEFENDANT
JAMES MWANGI.....	10 TH DEFENDANT
JOHN KINGA.....	11 TH DEFENDANT
KENNETH NDENGWA NJAU.....	12 TH DEFENDANT
IBRAHIM ADAN.....	13 TH DEFENDANT
MOHAMMED ABDULLAHI SHEIKH.....	14 TH DEFENDANT
ADAMSON BUNGEL.....	15 TH DEFENDANT
BASHIR IBRAHIM ALI.....	16 TH DEFENDANT
DAVID WAKABA WANJIKU.....	17 TH DEFENDANT
ERIC OTIENO HESBON.....	18 TH DEFENDANT

AND

ROYALFAM BROTHERS LTD.....	3 RD PLAINTIFF
----------------------------	---------------------------

RULING

(In respect to the Preliminary Objection dated 15th December 2020)

1. The 1st, 9th and 12th Defendants filed a Notice of Preliminary objection dated 15th December 2021. The gist of the preliminary objection was that the suit filed herein was *sub judice*.
2. Pursuant to the directions of the Court differently constituted issued on 29th September 2021 and 2nd November 2021, the Court directed that the preliminary objection be canvassed through written submissions. The 1st, 2nd, 4th – 6th, 8th to 18th Plaintiffs filed their written submissions dated 26th October 2021 through **M/S Macharia Nderitu & Co. Advocates** while the 3rd Plaintiff filed their submissions dated 9th November 2021 separately through **M/S Nyongesa Nafula & Co. Advocates**. The 5th Defendant filed submissions dated 29th September 2021 through **M/S Kithi & Co. Advocates** in support of the Preliminary objection. There were no submissions on record for the 1st, 9th and 12th Defendants at the time of preparation of this ruling.
3. The preliminary objection delimited only one ground focusing on the suit, it stated that the suit was sub judice in view of **ELC Petition No. 47 of 2011, Abilahi Muiruri Muigai v The National Land Commission and Others as well as ELC 352 OF 2019 Dr. Benard Nzioka Mua and Others v Kiambu Dandora Farmers Company Limited and Miscellaneous Application Number 35 of 2018 Republic v The National Land Commission Exparte Samuel Wachira Wanja and ELC 243 OF 2020 Dynamic Sisters Enterprises Limited v Kiambu Dandora Farmers Company Limited and 10 others** which are currently pending before various therefore this court lacks jurisdiction to entertain the suit and the application.
4. In support of the Preliminary objection, the 1st, 9th and 12th Defendants together with the 5th Defendant maintained that the instant suit was *sub judice* pursuant to the provisions of **Section 6 of the Civil Procedure Act**.
5. It was submitted that this Court lacked the jurisdiction to entertain the suit in view of aforementioned pending cases which have similar issues with the current suit. As such this court cannot proceed to hear the suit when other similar matters are pending before other courts of

competent jurisdiction.

6. It was also submitted that if this court was to allow the current suit to proceed, the pending cases would be heard parallel to each other and this would not only be an affront to the *sub judice* rule but would also be in violation of the overriding objective of the Civil Procedure Act which require under **Section 1B** that there be an “**efficient use of the available judicial and administrative resources**”

7. The Plaintiffs opposed the preliminary objection. They contended that the suit was properly before this Court and that the same was not *sub judice*.

8. It was their contention that the dispute before this court is different from the suits referred to by the Defendants. The Plaintiffs also submitted and distinguished how those suits were different, it was stated that in **ELC Petition No. 47 of 2011 Abdullah Muiruri Muigai and Others v A.G.**, the parties were different to the current suit and also the acts of trespass committed by the Defendants herein from June 2020 and afterwards was not part of the issues for determination in that petition. It was also submitted that the suit relates to L.R No. 11397/3 which is a distinct parcel of land from the suit property herein. It was further submitted that the suit property in **Milimani ELC 352 of 2019 and ELC 243 of 2020** relate to different parcels of land with titles registered in the names of the respective Plaintiffs. Orders of injunction relating to those properties does not protect the suit property owned by the Plaintiffs and does not deter acts of trespass perpetrated by the Defendants herein.

9. It was further submitted that in **Nairobi J.R Number 35 of 2018, Republic v National Land Commission Exparte Samuel Wachira Wanja & Others**, the dispute before the court was a decision or determination made by the National Land Commission that affected the rights of the Exparte Applicants over their land. The Judicial review orders sought to quash that determination in respect to L.R No. 11379/3.

10. In **Milimani ELC No. 352 of 2019 Dr. Benard Nzioka Mua & Others v Kiambu Dandora Farmers Company Limited**, the subject properties listed in the plaint dated 11th November 2019 filed in the aforementioned suit are different from the suit property. The parcels of land in dispute in **Milimani ELC Number 352 of 2019** are land Reference Numbers 15400/11; 15400/30; 15400/14; 15400/20; 15400/37; 15400/38; 15400/10; 15400/43; 15400/44; 15400/13; 15400/47; 15400/35; 15400/45; 15400/36; 15400/39; 15400/17; 15400/29; 15400/12; 15400/16; 15400/24; 15400/27; 15400/31; 15400/40; 15400/26; 15400/28; 15400/146; 15400/142; 15400/57; 15400/148; 15400/84; 15400/208; 15400/125; 15400/83; 15400/150; 15400/106; 15400/136; 15400/168; 15400/75; 15400/165; 15400/128; 15400/141; 15400/97; 15400/132; 15400/85; 15400/154; 15400/58; 15400/130; 15400/127; 15400/149; 15400/158; 15400/121; 15400/95; 15400/143; 15400/307; 15400/360; 15400/159; 15400/494; 15400/50; 15400/164; 15400/124; 15400/53; 15400/91; 15400/115; 15400/79; 15400/56; 15400/54; 15400/138; 15400/94; 15400/144; 15400/167; 15400/147; 15400/160; 15400/109; 15400/112; 15400/145; 15400/157; 15400/116; 15400/120; 15400/96; 15400/66; 15400/76; 15400/139; 15400/090; 15400/104; 15400/107; 15400/544; 15400/172/340; 15400/485; 15400/172/420; 15400/595; 15400/171; 15400/172/398; 15400/526; 15400/172/402; 15400/397; 15400/530; 15400/512; 15400/516; 15400/172/319; 15400/172/323; 15400/469; 15400/299; 15400/539; 15400/422; 15400/583; 15400/587; 15400/380; 15400/511; 15400/172/324; 15400/172/297; 15400/172/407; 15400/172/318; 15400/172/346; 15400/172/396; 15400/172/389; 15400/172/342; 15400/172/362; 15400/172/382; 15400/172/345; 15400/172/395; 15400/172/419; 15400/172/308; 15400/172/341; 15400/172/401; 15400/172/383; 15400/172/409; 15400/172/316; 15400/172/367; 15400/172/375; 15400/172/294; 15400/172/311; 15400/172/337; 15400/172/349; 15400/172/425; 15400/172/405; 15400/172/325; 15400/172/421; 15400/172/467; 15400/172/305; 15400/172/424; 15400/172/306; 15400/172/377; 15400/172/378; 15400/172/336; 15400/172/425; 15400/172/301; 15400/172/296; 15400/172/478; 15400/172/376; 15400/172/394; and 15400/172/410. Further, the suit was filed in 2019, way before the acts of trespass that are complained of by the plaintiffs in this matter which occurred from June 2020 and afterwards.

11. It was also submitted that, Dynamic Sisters Enterprises Limited was previously the 7th plaintiff in this suit and is the plaintiff in **Milimani ELC 243/2020, Dynamic Sisters Enterprises Limited vs Kiambu Dandora Farmers company Limited and 10 others.** The 7th plaintiff had subsequently filed a Notice of Withdrawal of Suit dated 26th February 2021 and therefore was not a party to this suit. This suit therefore, does not stand to offend the doctrine of *sub judice* with regards to **Milimani ELC 243/2020.**

12. According to the 3rd Plaintiff, it was submitted that the parcels of land which are the subjects of the dispute in the various suits being referred to by the defendants were subdivisions from L.R No. 15400 wherein each party has a separate parcel and as such is expected to bring a distinct suit to deal with their unique problems. The 3rd Defendant further reiterated that various suits that were listed by the Defendants do not deal with the current subject matter at hand and that in some of them, the Plaintiffs are not a party hence *sub judice* was not applicable.

13. In opposition to the preliminary objection, reference was made to a number of cited authorities which included the following; **Kenya National Commission on Human Rights v Attorney General, IEBC & 16 Others [2020], Edward Akong'o Oyugi & 2 Others v Attorney General [2019] eKLR, among others.**

14. The Plaintiffs concluded their submissions by urging the Court to dismiss the preliminary objection with costs and allow the matter to proceed to its logical conclusion.

15. I have considered the preliminary objection and the written submissions filed by the parties. The main issue for determination is whether this suit is *sub judice*.

16. The case of **Mukisa Biscuit Manufacturing Co Ltd v West End Distributors Ltd [1969] EA 696** has been the watershed as to what constitutes preliminary objections. The Court of Appeal in **Nitiin Properties Ltd v Singh Kalsi & another [1995] eKLR** also pellucidly captured the legal principle when it stated as follows:

“...A Preliminary Objection raises a pure point of law, which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

17. This statement of the law has been echoed time and again by the courts: see for example, Oraro –v- Mbaja [2007] KLR 141.

18. In Hassan Ali Joho & another –v- Suleiman Said Shabal & 2 Others SCK Petition No. 10 of 2013 [2014] eKLR the Supreme Court stated that

“... a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit”.[emphasis added]

19. The *sub judice* principle is captured in **Section 6 of the Civil Procedure Act**, which stipulates as follows: -

“6. 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.”

20. In this regard, **section 6 of the Civil Procedure Act** expressly provides that 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.

21. The basic purpose and the underlying objective 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.

22. 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, had occasion to pronounce itself on the subject of *sub judice*. It aptly stated: -

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”.

23. In the case of David Ndi & others versus Attorney General & Others 2021 eKLR, a bench of five Judges inter alia stated;

“The rationale behind this provision (Section 6 of the Civil Procedure Act) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will....”

24. The Defendants did not attach the pleadings in the referenced suits so as to establish the nexus with the current suit. However, the court was able to peruse the said pleadings and returns a finding that the current suit is not *sub judice* in view of ELC Petition No. 47 of 2011, Abilahi Muiruri Muigai v The National Land Commission and Others as well as ELC 352 OF 2019 Dr. Benard Nzioka Mua and Others v Kiambu Dandora Farmers Company Limited and Miscellaneous Application Number 35 of 2018 Republic v The National Land Commission Exparte Samuel Wachira Wanja and ELC 243 OF 2020 Dynamic Sisters Enterprises Limited v Kiambu Dandora Farmers Company Limited and 10 Others.

25. In conclusion, **it is therefore the finding of this Court that the preliminary objection is unmerited since the 1st, 5th, 9th and 12th Defendants have failed to establish a case of *sub judice* and the same is hereby dismissed with costs to the 1st - 6th Plaintiffs and 8th to 18th Plaintiffs.**

26. It is so ordered.

Dated, Signed and Delivered at Nairobi this 31st day of January 2022

E. K. WABWOTO

JUDGE

In the Virtual Presence of:-

N/A for 1st, 2nd, 4th – 6th, 8th to 18th Plaintiffs.

N/A for 3rd Plaintiff.

N/A for 1st, 9th and 12th Defendants

N/A for 5th Defendant.

Court Assistant: Caroline Nafuna.