



REPUBLIC OF KENYA



**Hassan & 5 others v Mzee & 3 others (Environment & Land Case E039 of 2024) [2025] KEELC 3100 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3100 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE E039 OF 2024**

**JO OLOLA, J  
APRIL 3, 2025**

**BETWEEN**

**BIADI RAJAB HASSAN ..... 1<sup>ST</sup> PLAINTIFF  
SAUMU JUMA MZIMBA ..... 2<sup>ND</sup> PLAINTIFF  
SAIDI OMAR RAJAB ..... 3<sup>RD</sup> PLAINTIFF  
OMAR ALI ..... 4<sup>TH</sup> PLAINTIFF  
UMMY JUMA ..... 5<sup>TH</sup> PLAINTIFF  
ALI OMAR RAJAB ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**BEDUI ATHMAN MZEE ..... 1<sup>ST</sup> DEFENDANT  
ABDALLA ATHAMAN MZEE ..... 2<sup>ND</sup> DEFENDANT  
ADAM ATHMAN MZEE ..... 3<sup>RD</sup> DEFENDANT  
RIZIKI ATHMAN MZEE ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated 24<sup>th</sup> October, 2024, the four (4) Defendants urge the court to be pleased to stay or strike out the current proceedings on account that they offend the mandatory provisions of Section 6 of the *Civil Procedure Act*.
2. The Application which is supported by an Affidavit sworn by Bedui Athman Mzee (the 1<sup>st</sup> Defendant) is premised on the grounds that:
  - a. That there is a similar suit pending being Kilifi SPMCC No. E026 of 2023 involving the same parties over the same subject matter;



- b. That in the said case the Defendants herein are the Plaintiffs while the Plaintiffs in this matter are sued as the Defendants in the Kilifi case.
  - c. That to evade the consequences of Section 6 of the *Civil Procedure Act*, the Plaintiffs herein have cunningly crafted their names herein to appear as if they are different parties;
  - d. The proceedings in the Kilifi case should take precedence as they were filed earlier and the same are before a court of competent jurisdiction; and
  - e. That there are chances that the courts may arrive at conflicting judgments.
3. The six (6) plaintiffs are opposed to the application. In a Replying Affidavit sworn on their behalf by Biadi Rajab Hassan (the 1<sup>st</sup> Plaintiff) and filed herein on 2<sup>nd</sup> December, 2024, the Plaintiffs term the application as one that is frivolous, scandalous and a waste of the court's time.
  4. The Plaintiffs aver that the parties before this court are not absolutely those sued and suing in the Kilifi Case. It is their case that in the instant suit, they are seeking for orders of cancellation of the resultant titles held by the Defendants after the Defendants illegally and fraudulently mutated the mother title in respect of the title No. 4579/III/MN. The Plaintiffs further aver that they are seeking eviction orders against the Defendants whereas in their suit as filed in Kilifi, the Defendants are merely seeking permanent injunctive orders against the Plaintiffs.
  5. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties.
  6. By their application before the court, the Defendants have urged the court to either stay or strike out the current proceedings on the basis that the same offend the mandatory provisions of Section 6 of the *Civil Procedure Act* as there is a similar suit pending in Kilifi between the same parties over the same subject matter. On their part, the plaintiffs contend that the application is frivolous and untenable as the same does not meet the threshold laid down under Section 6 of the *Civil Procedure Act*.
  7. Section 6 of the *Civil Procedure Act* captures the legal doctrine of sub-judice and provides as follows:-
 

“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 proceedings between the same parties or between parties under whom they or any of them claim litigating under the same title, where such suit or proceedings is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”
  8. Considering the legal doctrine in Kenya National Commission of Human Rights –vs- Attorney General, Independent Electoral Boundaries Commission & 16 Others (2020) eKLR, the Supreme Court of Kenya held as follows:
 

“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



a court 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 revoke 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 a court of competent jurisdiction and lastly, that the suits are between the same parties or their representatives.”

9. In the matter before me, there was no dispute that there were two suits filed by the parties herein. The first suit, Kilifi SPM ELC. Case No. E026 of 2023 was instituted by the four (4) Defendants herein against some 10 Defendants including the 6 Plaintiffs herein.
10. In the Kilifi matter the Defendants herein have urged the court to issue a permanent order of injunction restraining the individuals sued therein from in anyway interfering with, trespassing, invading and/or in any other manner entering upon the parcel of land described as Title No. CR 79438 being a sub-division of Title No. 12709 (original No. 4579) of Section III Mainland North and measuring some 1.139 Ha. The Defendants are further seeking the eviction of the said 10 individuals from the said property.
11. The basis of the said suit can be discerned from a perusal of Paragraph 15 and 16 of the Plaint dated 27<sup>th</sup> February, 2023 wherein the Defendants herein assert that at all material times they were the joint proprietors of the said parcel of land. They accuse the 10 individuals sued therein of invading and trespassing upon the land without any lawful reason or excuse.
12. Some 1 year after the Kilifi suit was filed, 6 of the 10 individuals instituted this claim against the 4 Defendants seeking a declaration that the late Kombo Bin Juma was the rightful legal owner of the entire parcel of land which they describe as Title No. 4579/III/MN. It is the claimants’ case that both the Defendants and themselves are the legitimate beneficiaries of the said parcel of land and that they have equal rights thereto.
13. The 6 Claimants further seek an order requiring the Land Registrar Mombasa to revoke the Defendants’ names and to reinstate the name of the late Kombo Bin Juma in the register for the suit property. They also seek an order of injunction to restrain the Defendants from dealing with the land as well as their eviction therefrom.
14. The basis of the claim by the Plaintiffs in this present suit can be discerned from a perusal of Paragraphs 3 to 9 of their Plaint dated 22<sup>nd</sup> May, 2024. It is the Plaintiff’s case that the suit property was the ancestral land to both themselves and the Defendants. They accuse the Defendants of illegally and fraudulently proceeding to sub-divide the land and to register the same in their name to the exclusion of the Plaintiffs and other beneficiaries of the estate of the late Kombo Bin Juma.
15. From the material placed before the court, it was evident to me that the parties herein were materially the same parties engaged in litigation before the Senior Principal Magistrate’s Court at Kilifi. It was also clear to me that, contrary to the Plaintiffs claim that the orders they sought herein were different from what was being sought by the Defendants in the Kilifi case, what was in issue was the ownership of the parcel of land originally known as Title No. 4579/III/MN.
16. That being the case, it was apparent to me that this was a dispute that was already before the Kilifi Court for determination. That suit was filed a year before this one and the Plaintiffs have not denied that the court has jurisdiction to determine the issues in dispute. The two suits are essentially between the same parties and/or their representatives and it was unclear to me why the Plaintiffs had not filed a counter claim in the Kilifi suit to ask for the prayers they have made herein.



17. In the premises I do find merit in the Motion dated October 24, 2024. This suit is accordingly hereby stayed pending the hearing and determination of Kilifi SPM ELC Case No. E026 of 2023.

18. The Defendants shall have the costs of this application.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT  
MOMBASA THIS 3<sup>RD</sup> DAY OF APRIL, 2025**

.....

**J.O. OLOLA**

**JUDGE**

In the presence of:

a. Ms. Firdaus Court Assistant.

b. Mr. Munga Advocate for the Defendant/Applicant

c. Ms. Mboya for the Plaintiffs/Respondents

