



**Ananas Consolidated Group Limited v Sofi's Gallery Limited & another (Environment & Land Case E365 of 2024) [2025] KEELC 3974 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3974 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E365 OF 2024**

**CG MBOGO, J  
MAY 22, 2025**

**BETWEEN**

**ANANAS CONSOLIDATED GROUP LIMITED ..... PLAINTIFF**

**AND**

**SOFI'S GALLERY LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**TOMOCOA COFFEE KENYA LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me is the notice of motion dated 27<sup>th</sup> September 2024, filed by the defendants/applicants, and it is expressed to be brought under Section 6 of the [Civil Procedure Act](#), seeking the following orders:-
  1. Spent.
  2. That the suit filed by the plaintiff/respondent be struck out for being sub judice and an abuse of the court process.
  3. That the plaintiff's suit be struck out as against the defendants for being scandalous, vexatious, frivolous and an abuse of the court process.
  4. That the costs of this application and suit be borne by the plaintiff/ respondent.
2. The application is premised on the grounds inter alia that the matter canvassed in this suit are pending determination in ELCC No. E037 of 2023.
3. The application is supported by the affidavit of Adbulshakoor Hasham, learned counsel for the defendants/applicants sworn on even date. The learned counsel deposed that the parties and facts in this suit are identical to ELCC No. E037 of 2023 Sofi's Gallery Limited v Ananas Consolidated Group Limited. He further deposed that allowing the current suit to proceed will violate Section 6 of the



Civil Procedure Act. Further, that this suit is a clear abuse of the court process, intended to harass the defendants/applicants, and cause unnecessary inconvenience.

4. The plaintiff/respondent filed grounds of opposition dated 28<sup>th</sup> October, 2024 challenging the application on the following grounds:-
  - i. That the application is incompetent and does not lie under the provisions of the law under which it is expressed to be brought.
  - ii. That the plaintiff's claim is legally and factually sound.
  - iii. That the plaintiff has a legitimate cause of action for rent against the defendants.
  - iv. That the plaintiff's suit is not scandalous vexatious or an abuse of the court process as contended by the defendants.
5. The application was canvassed by way of written submissions. The defendants/applicants filed their written submissions dated 17<sup>th</sup> December 2024, where they raised the following issues for determination: -
  - i. Whether the suit violates the sub judice rule under Section 6 of the Civil Procedure Act.
  - ii. Whether the present suit constitutes an abuse of the court process.
  - iii. Whether the suit ought to be struck out.
6. On the first issue, and while relying on the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] EKLRL, the defendants/applicants submitted that the parties in this suit and in ELCC No. E037 of 2023 are similar, with the former suit pending before this court.
7. On the second issue, the defendants/applicants submitted that the institution of this suit is a clear abuse of the court process, and serves no legitimate purpose other than to create unnecessary procedural complications. To buttress on this submission, the defendants/applicants relied on the case of Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others [2009] eKLR.
8. On the third issue, the defendants/applicants submitted that the present suit is untenable in law and ought to be struck out to uphold judicial efficiency. Reliance was placed in the case of DT Dobie & Company (Kenya) Ltd v Muchina [1982] KLR 1.
9. The plaintiff/respondent filed its written submissions dated 24<sup>th</sup> January 2025, where it raised one issue for determination which is whether the plaintiff's suit for outstanding rent arrears against the defendants is sub judice, vexatious, frivolous, scandalous and an abuse of the court process.
10. On this issue, the plaintiff/respondent submitted that there is no evidence that it has filed any other suit for outstanding rent arrears from any of the defendants/applicants. It was submitted that the present suit is not a parallel suit neither is there overlapping subject matter or a duplication of reliefs as contended by the defendants/applicants.
11. The plaintiff/respondent further submitted that it filed a defence in E037 of 2023 claiming damages for alleged constructive eviction. Further, that the doctrine of sub judice is not applicable to the circumstances of the case as it has not been proven that there is another case seeking rent arrears. Further reliance was placed in the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] EKLRL.



12. I have considered the application, the grounds of opposition and the written submissions filed. I am of the view that the issue for determination is whether the instant suit is sub-judice.

13. Section 6 of the *Civil Procedure Act* 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 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.”

14. In *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties [202] eKLR)*, the Supreme Court of Kenya stated as follows:-

“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.”

15. From the above provision of the law and the cited authority, it is necessary to prevent the multiplicity of suits between the same parties, as such processes clog our judicial system creating case backlog. Where it is found that a similar suit has been filed, the court in its endeavor to ensure that there is justice, stay the proceedings in one matter to await the determination of the previously filed suit. In this case, the defendants/applicants did not provide this court with the pleadings in ELCC E037 of 2023, save to annex a copy of a witness statement. However, and upon perusal of the plaint dated 30<sup>th</sup> August, 2024 in this present suit, the plaintiff/respondent discloses the existence of the suit between the same parties in ELCC E037 of 2023 save to state that the issues of outstanding rent have not been raised in the former suit.

16. Whilst there may be litigation between the same parties over the same subject matter but pursuing different causes of action and raising different issues, it would be only fair that each party is given a chance to ventilate its issues. In this case, the parties may agree on consolidation of the files so that all the issues are determined once and for all.

17. From the above, this court is not fully persuaded by the arguments raised by the defendants/applicants. The notice of motion dated 27<sup>th</sup> September, 2024 is thus dismissed. Costs in the cause.

Orders accordingly.

**DATED, SIGNED & DELIVERED VIRTUALLY THIS 22<sup>ND</sup> DAY OF MAY, 2025.**

**HON. MBOGO C.G.**



**JUDGE**

**22/05/2025.**

In the presence of:

Ms. Betty Cheronno - Court assistant

Ms. Korir holding brief for Mr. Hasham for the Defendants/Applicants – present

Mr. Mutwiri holding brief for Mr. Kairaria for the Plaintiff/Respondent – present

