



**Mbiyu v Mpoe & 23 others (Environment & Land Case E083 of 2024) [2025] KEELC 1130 (KLR) (6 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1130 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E083 OF 2024**

**A OMBWAYO, J  
MARCH 6, 2025**

**BETWEEN**

**MARGARET NJERI MBIYU ..... PLAINTIFF**

**AND**

**JOSEPHAT MPOE ..... 1<sup>ST</sup> DEFENDANT**

**JOSEPH MPOE & 22 OTHERS & 22 OTHERS & 22 OTHERS & 22 OTHERS ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of two applications. The first application by the Plaintiff is dated 27th December, 2024 seeking the orders that this honorable court be pleased to grant a permanent injunction restraining the 1st and 2nd Defendants from leasing to third parties and particularly the 3rd to 24th Defendants by entering into, invading, occupying, committing acts of trespass, working on or in any way whatsoever interfering with the proprietorship rights of the Plaintiff in Muthera Farm LR No 8669/3 Mau Narok. Moreover, that this honourable court be pleased to grant permanent injunction against the 3rd to 4th Defendants from cultivating into, invading, occupying, committing any acts of trespass, working on, ploughing, planting, grazing and in any way whatsoever interfering with the proprietorship rights of the Plaintiff in MUthera Farm LR No 8669/3 Mau Narok. That the Plaintiff prays for an order of permanent injunction against the 3rd and the 4th Defendant from excavating and caring off, cutting away top soil form Muthera Farm to Bomet County and elsewhere until determination of this suit. That costs of this application be in the cause.
2. The Application was based on grounds set out and supported by the Affidavit of Margaret Njeri Mbiyu the Plaintiff herein sworn on 27th December, 2024. She stated that she was one of the administrators of the estate of Mbiyu Koinange vide the letter of confirmation of grant dated 7th March, 2020. She further stated that she was granted ownership of Muthera Farm (LR NO 8669/3 Mau Narok) the suit property herein. She stated that since confirmation of the grant, all the administrators and beneficiaries



have been enjoying quiet possession of the suit property. She further stated that the land was to be equally shared among the administrators and beneficiaries with 800 acres remaining for sale to cover the estate liabilities. That the administrators have been unable to fully distribute and use the land as the 1st and 2nd Defendants have since invaded the land without their consent and caused the same to be occupied by the 3rd to 24th Defendants. She went on to state that the 1st and 2nd Defendants using forged title documents, have been leasing the land to the 3rd to 24th Defendants. She added that the Lands registry confirmed that the same were forgery. She stated that they have been denied lease from the sums paid by the 3rd parties. She urged the court to allow the application as prayed.

3. The 1st and 2nd Defendants filed their application dated 21st January, 2025 seeking orders that that the plaint dated 27th December, 2024 and the application dated 27th December, 2024 be struck out.

That the costs of this suit and application be borne by the Plaintiff.

4. The Application was based on grounds set out and supported by the Affidavit of Josephat Munke Mpoe the 1st Defendant herein sworn on 21st January, 2025. He stated that he was the co administrator of the estate of the late Kikenye Ole Mpoe the registered proprietor of LR. NO 8669/3 the suit property herein. He further stated that the Plaintiff admits that there is a separate suit being Nakuru ELC E013 of 2020 in respect of the suit parcel. That the Plaintiffs have instituted the suit in their capacity as administrators and beneficiaries of the estate of Paul Mbatia Mbiyu Koinange (deceased). He went on to state that in ELC E013 of 2020, he has been sued as the 7th Defendant. He also stated that there were two suits in the same court over the same subject matter and same parties. He added that by dint of Section 6 and 7 of the Civil Procedure Act, the suit herein amounts to an abuse of the court process and must be struck out. He stated that the instant suit can neither be stayed or consolidated with the previous suit since the parties are suing and being sued in their capacities as administrators of the estate. He further stated that the only remedy to the Plaintiff was to apply to be enjoined as a co-Plaintiff in ELC E013 of 2020.

### Response

5. The Plaintiff filed her replying affidavit sworn on 3rd March, 2025 where she averred that Kikenye Mpoe was not the registered proprietor of the suit land. She further averred that the ad litem grant issued was only limited to filing or defending the case in Nakuru ELC No E013 of 2020. She added that the present suit and ELC E013 of 2020 are distinct as they both seek different reliefs. She averred that ELC E013 of 2020 sought for eviction and permanent injunction orders against the Defendants from interfering with LR No. 8669 Muthera Farm while E083 of 2024 sought for loss of land use where the claim was for Kshs. 1,334,400,000/=. She also averred that the 1st and 2nd Defendants do not reside on the land but they have leased the same to the 3rd to 24th Defendants purporting to own the land. That the Director of Lands claimed that the alleged title for Kikenye Ole Mpoe did not originate from their office. She averred that the claim of loss of land use and injunction against leasing the suit land to the 3rd to 24th Defendant is not a claim capable of being canvassed in the present suit. She urged the court to dismiss the application with costs.

### Submissions

6. Counsel for the Plaintiff filed his submissions to the application dated 21st January, 2025. He submits that the matters in question in ELC E013 of 2020 are not related to the present suit. He relied on the case in Republic v Registrar of Societies Kenya & 2 Others Ex parte Moses Kirima & 2 Others [2017] eKLR and argues that the 1st and 2nd Defendants failed to meet the requisite conditions in sub judice. He further relied in the case in Thika Min Hydro Co. Ltd v Joshat Keru Ndwiga [2013] eKLR and submits that the substance of both cases are very different. He argues that the subject matter in ELC



E083 of 2024 cannot be adjudicated upon in ELC E013 of 2020. He submits that Section 7 of the *Civil Procedure Act* does not apply since there are no similar case, parties and issues. He further submits that there was no pending determination in ELC E013 of 2020. Counsel urged the court to dismiss the application with costs.

### **Analysis and Determination**

7. This court has considered both applications and is of the view that the main issue for determination is whether the applications are merited.
8. Regarding the first application dated 27th December, 2024 the Plaintiff prays for a permanent injunction against the 1st and 2nd Defendants from leasing out the suit land to the 3rd to 24th Defendants. The Plaintiff claims that as one of the administrators of the estate of Mbiyu Koinange (deceased), they have been unable to fully distribute and use the land as the 1st and 2nd Defendants have since invaded the land without their consent. It is not in dispute that the Plaintiff filed a substantive suit where under prayers 4 and 5 she sought for an order of permanent injunction. It is also not in dispute that the matter is yet to be heard on merit. In the case of *Kenya Power & Lighting Co. Limited v Sheriff Molana Habib* [2018] eKLR the court held as follows:

“It is apparent from the pleadings that the Respondent was seeking a permanent injunction against disconnection of his electricity by the Appellant. A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the defendant in order for the rights of the plaintiff to be protected.”

9. It is this court’s view that there is no gainsaying that an order of permanent injunction is an order which can only issue after hearing of the substantive suit at the tail end of the matter.
10. In view of the foregoing, the prayer for permanent injunction sought for herein is premature as no such order can issue on the basis of a temporary application. Consequently, the application is without merit and is hereby dismissed. Going to the second application dated 21st January, 2025, the 1st and 2nd Defendants contend that there are two suits in the same court over the same subject matter and same parties. He further contends that the suit herein amounts to an abuse of the court process and must be struck out. The Plaintiff on the other hand maintains that the present suit and Nakuru ELC No E013 of 2020 are distinct as they both seek different reliefs.

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.”

11. In the case of *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others* [2002 eKLR, the Supreme Court of Kenya held as follows:

“The purpose of 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-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 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”.

12. From an analysis of the party’s pleadings, it is not in dispute that there is a pending suit before this court being Nakuru ELC E013 of 2020. I have perused the Plaintiff dated 5th November, 2020 and the same relates to the suit property herein. I also note that the Plaintiff in the said suit is a coadministrator to the Plaintiff herein and that the orders sought are similar.
13. This court is satisfied that the claim herein can be litigated in Nakuru ELC No. E013 of 2020 since there is no justification in having the two cases being heard parallel to each other. It is my view that allowing the two matters will be an insult to the sub judice rule and violation of the overriding objective of the *Civil Procedure Act* and efficient use of the available judicial and administrative resources. The upshot of the foregoing is that find that the 1st and 2nd Defendant’s application dated 21st January, 2025 is merited and I proceed to strike out this suit with costs for being subjudice. Each party shall bear its own costs of the application. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

**The Judiciary of Kenya**

