



Seet Karoi Welfare Group v Eastern Produce Limited & 5 others (Environment & Land Petition E001 of 2024) [2025] KEELC 4271 (KLR) (5 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND PETITION E001 OF 2024
GMA ONGONDO, J
JUNE 5, 2025**

BETWEEN

SEET KAROI WELFARE GROUP PETITIONER

AND

EASTERN PRODUCE LIMITED 1ST RESPONDENT

NANDI TEA ESTATE 2ND RESPONDENT

THE NATIONAL LAND COMMISSION 3RD RESPONDENT

THE COUNTY GOVERNMENT OF 4TH RESPONDENT

THE COUNTY LAND REGISTRAR, NANDI 5TH RESPONDENT

ATTORNEY GENERAL 6TH RESPONDENT

RULING

1. By a Notice of Motion application dated 29th July 2024 and lodged in court on even date under Rule 3(8) of *the Constitution* Practice and Procedure Rules 2013 and Section 6 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, the applicant, who is the 1st respondent herein, through the firm of Kaplan and Stratton Advocates, has sought the following orders;
 - a. That this Honourable Court does not have jurisdiction to deal with this suit.
 - b. That this Honourable Court be pleased to strike out the Petition.
 - c. That the Defendant be awarded the costs of the Petition and this application.
2. The application is premised on grounds I to III set out on the face of the same thus:
 - a. The petitioners have filed historical land injustice claims with the 3rd respondent as follows: NLC/HLI/232, 233, 235, 236, 238, 239, 240, 242, 243 and 247 of 2018. The said claims are



part heard before the 3rd respondent who is yet to set down the claims for defence hearing so that the 1st respondent can be heard on its defence. This Honourable Court does not have the jurisdiction to deal with the petition under the doctrine of exhaustion. The 1st respondent has written to the 3rd respondent to have the matter set down for a pre-trial conference so that the 3rd respondent can give directions on defence hearing.

- b. In accordance with Section 6 of the *Civil Procedure Act*, this Honourable Court does not have jurisdiction to deal with the present petition as the same is the subject matter of the 3rd respondent's cases cited above and this petition was filed later. The present petition is thus sub judice. The issues raised in the petition herein can be addressed in the above cited claims.
 - c. The present petition is a gross abuse of the Court process and the court ought not to allow the Petitioner to file multiple proceedings in respect of the same subject matter and the same suit property. The filing of multiple claims by the petitioner will result in the 1st respondent having to defend different cases pertaining to similar issues in different forums thus resulting to a breach of the 1st respondent's constitutional right to a fair hearing under Article 50(1) of *the Constitution*. There is also an imminent risk of conflicting decisions.
3. Also, the application is founded upon the applicant's supporting affidavit of even date, sworn by Mr. Denis Gitaka, the Legal Manager of the applicant, who reiterated the grounds of the application and urged the court to allow the same and grant the orders sought therein.
 4. The petitioner/respondent through Mugumya and Company Advocates, opposed the application by way of a replying affidavit of twelve paragraphs sworn on 11th March 2022 by Isack Misoi and Sally Chepchirchir, its Chairperson and Secretary respectively, and duly filed herein on even date. The respondent deposed in part that allowing the instant application will render prayer (d) of the petition dated 21st June 2024 nugatory as the petitioner had sought an order of declaration that the 3rd respondent has abdicated its constitutional obligation under Article 67(2)(e) by failing to deliver a verdict on the petitioner's complaints lodged before it. That the claims so lodged were heard and the petitioners cross-examined on 17th May 2018, 10th July 2018 and 11th July 2018 in the presence of the then Legal Managers of the applicant.
 5. Furthermore, that vide a letter dated 12th March 2024, the petitioner requested the 3rd respondent to furnish them with a verdict with respect to their claims but the 3rd respondent failed to do so thereby violating the petitioner's right to fair administrative action that is expeditious and efficient as stipulated under Article 47 of *the Constitution*. That the exhaustion doctrine does not apply in this case, since its application herein would defeat important constitutional values. That the instant application is an abuse of the court process, is devoid of merit and ought to be struck out.
 6. The 2nd respondent through Kaplan & Stratton Advocates, filed Grounds of Opposition dated 29th July 2025 in opposition to the petition wherein it averred that the petitioners have mounted historical land injustice claims with the 3rd respondent and the same are part heard. That this Honourable Court does not have the jurisdiction to deal with the petition due to the doctrine of exhaustion and that the petition herein is sub judice. That furthermore, the present petition is a gross abuse of the Court process and the court ought not to allow the Petitioner to file multiple proceedings in respect of the same subject matter and the same suit property as that could result in conflicting decisions.
 7. In response thereto, the 1st respondent filed a Further Affidavit sworn on 4th April 2025 and averred that it is keen on defending the claims filed by the petitioner before the 3rd respondent and has filed a Memorandum of Defence therein. That further, vide a letter dated 29th July 2024, it requested the 3rd respondent to list the claims for pre-trial conference and thereafter set down the same for hearing. That



the petitioner has not exhausted the recourse as stipulated in Statute and has lodged the instant petition prematurely. That in any event, the petitioner ought to have initiated Judicial Review proceedings against the 3rd respondent to compel it to finalize the hearing and determination of the claims. That the parties, facts and prayers sought in the claims lodged before the 3rd respondent are similar to those in this case.

8. Similarly, the 2nd respondent, filed a Further Affidavit sworn on even date by Mr. Bernard Langat, the Estate Accountant, wherein he reiterated the averments in the 1st respondent's Further Affidavit, emphasizing that the Petition has been lodged prematurely.
9. The application was heard by way of written submissions further to this court's directions of 25th February, 2025.
10. By the 1st and 2nd respondents' submissions dated 4th May 2025 and filed in court on even date, Learned Counsel identified twin issues for determination thus: whether this Honourable Court has jurisdiction to deal with the Petition filed herein and who should bear the costs for this application and the petition? Counsel submitted that this Court lacks jurisdiction to hear and determine the petition since the said petition is sub judice on account of the claims filed before the 3rd respondent by the petitioner, which claims are pending determination. That the parties in the claims are the same as in this petition, the issues for determination are the same and the reliefs sought are also the same. That hence, this Petition constitutes an abuse of the court process.
11. That furthermore, the petition herein is an affront to the doctrine of exhaustion since the cause of action giving rise to the Petition is in the nature of a historical land injustice which falls within the jurisdiction of the National Land Commission. That in any event, the petitioner ought to have lodged Judicial Review proceedings against the 3rd respondent to compel it to finalize the hearing and determination of the claims. Thus, Counsel urged the Court to find that the Petition dated 21st June 2024 is an abuse of the court process and dismiss the same with costs. To buttress the submissions, Counsel cited the Supreme Court decisions in *Petition No. 3 of 2020 Benson Ambuti Adegwa & 2 others -vs- Kibos Distillers Limited & 5 others (2020) eKLR* and *Mumba & 7 others (Sued on their own behalf and on behalf of predecessors and or successors in title in their capacities as the Registered Trustees of Kenya Ports Authority Pensions Scheme) v Munyao & 148 others (Suing on their own behalf and on behalf of the Plaintiffs and other Members/Beneficiaries of the Kenya Ports Authority Pensions Scheme) [2019] KESC 83 (KLR)*, among other authoritative pronouncements.
12. In the petitioner's submissions dated 8th May, 2025, Learned Counsel identified four issues for determination thus:
 - a. Whether the petition herein is sub judice.
 - b. Whether the petition herein should be struck out
 - c. Whether the applicant slumbered on its right to be heard.
 - d. Who should bear the costs of this application.
13. Briefly, Learned Counsel submitted that the petition dated 21st June 2024 is not sub judice since the doctrine of sub judice only applies to cases with the same subject matter being prosecuted before two courts. That in the face of the many families represented by the petitioner herein and the grave violation of their constitutional rights, the petition herein is exempt from the doctrine of exhaustion. That therefore, this Court has jurisdiction to hear and determine the petition. That the applicant slept on its rights by failing to defend the claims filed before the 3rd respondent. That the complaint of historical land injustices that birthed the petition herein was placed before the 3rd respondent nearly



seven years ago and despite hearing the petitioner's case, the 3rd respondent has failed to deliver a verdict. That the instant application is an afterthought and an abuse of court process aimed at delaying the determination of the petition thus, should be struck out with costs. Counsel relied on various authorities to reinforce the submissions including *Mwilu vs Judicial Service Commission and 2 others; Director of Public Prosecutions & another (Interested Parties)* [2021] KEHC 245 (KLR), *Kakuzi Division Development Association vs Attorney General & another; Kakuzi PLC (Interested Party)* [2021] KEELC 1538 (KLR), among others.

14. I have duly considered the entire application, the replying affidavit, the grounds of opposition, further affidavits and the rival submissions. On that score, I am of the considered view that the issues for determination are:

- a. Whether the petition herein dated 21st June 2024 is sub judice on account of the historical land injustice claims lodged by the petitioner before the 3rd respondent, to wit, NLC/HLI/232, 233, 235, 236, 238, 239, 240, 242, 243 and 247 of 2018.
- b. Whether the exhaustion principle is applicable in this suit.
- c. Orders to issue herein to meet the ends of justice.

15. On the first issue, the Black's Law Dictionary 9th Edition, defines sub judice to mean;

“...before a court or judge for determination...”

16. Section 6 of *Civil Procedure Act*, Chapter 21 Laws of Kenya provides for the sub-judice doctrine 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...”

17. Essentially, the doctrine of sub-judice prevents a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with a previously instituted suit between the same parties, pending before same or another court with jurisdiction to determine it.

18. The Supreme Court of Kenya in *Kenya National Commission on Human Rights –vs- Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* (2020) eKLR, had occasion to pronounce itself on the subject of sub judice and aptly stated in part that:

“ ...

(67) 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...”

19. In the present case, it is notable that the petitioner has lodged various claims before the 3rd respondent, a Commission as stipulated under Article 248 (2)(b) of *the Constitution* of Kenya and not a Court of law. Plainly, for the doctrine of sub judice to apply, a matter ought to be before the Court or Judge



for determination as succinctly stated in the Kenya National Commission on Human Rights case, the Black's Law Dictionary (both supra), among others. In view of the foregoing, it is my considered view that the doctrine of sub-judice is not applicable herein.

20. Turning to the second issue, *the Constitution* of Kenya at Article 67 (2)(e) provides that one of the functions of the 3rd respondent, a function embodied in Section 15 of the *National Land Commission Act* as amended by the Land Laws (Amendment) Act, 2016, which commenced on 21st September 2016, is “to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress.”
21. In Benson Ambuti Atega case (supra) the Supreme Court of Kenya stated in part that:

“...Judicial abstention, as with judicial restraint, is a doctrine not founded in constitutional or statutory provisions, but one that has been established through common law practice. It provides that a Court, though it may be vested with the requisite and sweeping jurisdiction to hear and determine certain issues as may be presented before it for adjudication, should nonetheless exercise restraint or refrain itself from making such determination, if there would be other appropriate legislatively mandated institutions and mechanism...”
22. I have studied the petition and reflected on the substance of the dispute. It is clear from the wording of the petition and from the reliefs sought therein that the petitioners are challenging the alleged illegal displacement from their ancestral parcels of land, before and during colonial times. Certainly, the cause of action giving rise to the Petition is in the nature of a historical land injustice and falls within the jurisdiction of the National Land Commission in the first instance; see Benson Ambuti case and Article 67(2)(e) (both supra).
23. It is quite clear that the exhaustion principle is applicable in this petition since where mechanisms exist outside court, the court does not have jurisdiction in the first instance in the matter in question; See Speaker of the National Assembly v James Njenga Karume [1992] eKLR and Geoffrey Muthinja Kabiru and 2 others-vs-Samuel Muguna Henry and 1756 others (2015) KLR.
24. Moreover, I subscribe to the Supreme Court of Kenya decision in the case of Albert Chaurembo Mumbo and 7 others -vs- Maurice Munyao and 148 others (2019) eKLR on the exhaustion doctrine where the court held that:

“...even where superior courts had jurisdiction to determine profound questions of law, the first opportunity had to be given to relevant persons, bodies, tribunals or any other quasi-judicial authorities and organs to deal with the dispute as provided for in the relevant parent statute...”
25. Clearly, this court does not have jurisdiction to entertain the dispute in the petition at this point. The same has been invoked prematurely, before exhausting the dispute resolution mechanisms provided under *the Constitution* and the *National Land Commission Act* as amended by the Land Laws (Amendment) Act, 2016. The petitioner ought to have resorted to the prescribed mechanism in ventilating its grievances against the conduct of the 3rd respondent herein.
26. In the foregone, it my finding that this court is devoid ofz jurisdiction to determine the petition in the first instance, subject to among others, the doctrine of judicial deference, abstention doctrine as well as the exhaustion principle. The petition is hereby, struck out.
27. Given the nature of the application, the petition and being guided by the Supreme Court of Kenya decision in Rai & 3 others vs Rai & 4 others [2014] eKLR, parties to bear their own costs.



28. It is so ordered.

DATED, DELIVERED AND SIGNED AT KAPSABET THIS 5TH DAY OF JUNE, 2025.

G. M.A ONGONDO

JUDGE

Present;

1. Mr. Mugumya, Learned Counsel for the petitioner
2. Mr. Rickard Bett holding brief for Ms. Opiyo, Learned Counsel for the 1st and 2nd respondents
3. Mr. Kutei holding brief for Ms. Ruth Rop, Learned Counsel for the 5th and 6th respondents
4. Walter, Court Assistant

