



**Gathecha v Mwaura & 3 others (Environment & Land Case  
127 of 2022) [2024] KEELC 5415 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5415 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 127 OF 2022**

**BM EBOSO, J**

**JULY 12, 2024**

**BETWEEN**

**GEORGE MURITU GATHECHA ..... PLAINTIFF**

**AND**

**JOHANA MUGO MWAURA ..... 1<sup>ST</sup> DEFENDANT**

**NJOROGE WA NGUGI ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR THIKA ..... 3<sup>RD</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Falling for determination in this ruling is the notice of motion dated 13/4/2023, brought by the 1st and 2nd defendants. The application was filed on 13/4/2023. It seeks an order dismissing this suit on the ground that the suit is *sub judice*.
2. The application is anchored on the grounds outlined on the face of the motion and in the supporting affidavit sworn on 13/4/2023 by Johanna Mugo Mwaura. It was canvassed through written submissions dated 30/10/2023, filed by M/s Mwenda Njagi & Co Advocates.
3. The case of the applicants is that in August 2022, the plaintiff filed Thika CMC E & L Case No 71 of 2022 ventilating a cause of action and seeking reliefs similar to the cause of action and the reliefs in the present suit. It is the position of the applicants that this suit amounts to an abuse of the process of the court and should be dismissed.
4. The plaintiff/respondent opposed the application through a replying affidavit dated 24/4/2023 and written submissions dated 23/10/2023, filed by M/s Muiruri, Cheserek & Co Advocates. The plaintiff admits that he indeed filed Thika CMC E & L Case No 71 of 2022 ventilating the cause of action that is being ventilated in this suit and seeking the same reliefs as those that are sought in the present suit.



It is, however, his case that, prior to the filing of a defence in Thika CMC E & L Case No. 71 of 2022, he informed his advocate that the value of the suit property was “in the range” of Kshs 100,000,000 and his advocate advised him that the Chief Magistrate Court did not have jurisdiction to handle the dispute. He adds that he, consequently, instructed his advocate to withdraw Thika CMC E & L Case No 71 of 2022 and file the present suit. It is his case that Thika CMC E & L Case No 71 of 2022 was subsequently withdrawn. He has exhibited a notice of withdrawal of suit dated 7/2/2023, expressed as having been received by the Thika CMC Registry on 8/2/2023.

5. I have considered the application; the response to the application; and the parties’ respective submissions together with the authorities cited. I have also considered the relevant legal framework and jurisprudence. The two key issues to be answered in this ruling are: (i) Whether this suit is subjudice; and (ii) If the answer to the question above is in the affirmative, what order should be made? The two issues will be analyzed and disposed simultaneously.
6. The common law doctrine of *sub judice* prohibits a court against proceeding with the hearing of a dispute that has previously been filed before another court of competent jurisdiction and is under consideration by that other competent court. In Kenya, the doctrine has been legislated into statute law and is contained in Section 6 of the [Civil Procedure Act](#) which 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.”

7. In the case [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.”

8. There is no contest that Thika CMC E & L Case No 71 of 2022 was instituted by the plaintiff against the defendants. It is also not contested that the cause of action and the reliefs sought in the said suit were the same as the cause of action and the reliefs sought in the present suit. The plaintiff contends that he withdrew Thika CMC E & L Case No 71 of 2022 when he realized that the Chief Magistrate Court lacked pecuniary jurisdiction to handle the claim. He has exhibited a notice withdrawing the said suit. The notice is expressed as having been received by the Chief Magistrate Court Registry on 8/2/2023. The applicants have not controverted the allegation that the said suit, Thika CMC E & L Case No 71 of 2022, was withdrawn on 8/2/2023 as contended by the plaintiff.



9. This suit was filed on 31/10/2022. What emerges from the totality of the evidence that was placed before this court is that, at the time of filing this suit, Thika CMC E & L Case No 71 of 2022 had not been withdrawn. However, at the time of bringing the application under consideration, Thika CMC No 71 of 2022 had been withdrawn. To this extent, I do not think, at this point, the present suit is sub judice. This suit is not sub judice at this point because Thika CMC E & L Case No 71 of 2022 no longer subsists; it was withdrawn on 8/2/2023
10. The suit is also not irregular, vexatious and an abuse of the process of the court at this point in time because the plaintiff realized his folly in February 2023 and filed a notice withdrawing Thika CMC E & L Case No 71 of 2022. The remedy available to the defendant at this point lies in an award of costs of the withdrawn suit.
11. On costs of the present application, the plaintiff did not demonstrate that he had served the notice of withdrawal by the time the defendants brought the present application. He infact misled the court that Thika CMC E & L No 71 of 2022 was withdrawn prior to the filing of the present suit. The correct position is that Thika CMC E & L Case No 71 of 2022 was withdrawn on 8/2/2023, long after the present suit had been filed. Given the above background, the plaintiff was obligated to demonstrate to the court the date when he served the notice withdrawing the previous suit. He elected to withhold that important evidence. In the circumstances, the plaintiff will bear costs of the application. The costs are assessed at Kshs 25,000 and are to be paid to the 1st and 2nd defendants' advocates within 30 days from today. In default, this suit shall stand struck out with costs to the defendants.
12. In the end, the application dated 13/4/2013 is declined on the ground that at the time the application was brought, the plaintiff had substantially remedied the breach against the doctrine of sub judice. The plaintiff shall pay the 1st and 2nd defendants' advocates Kshs 30,000 within 30 days, being costs of the application. In default, this suit shall stand struck out with costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF JULY 2024**

**B M EBOSO**

**JUDGE**

**Court Assistant: Hinga**

