



REPUBLIC OF KENYA



**Ndirangu v Wanja (Environment & Land Case 42 of 2023)  
[2024] KEELC 5342 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5342 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 42 OF 2023  
LC KOMINGOI, J  
JULY 11, 2024**

**BETWEEN**

**NJUGUNA NDIRANGU ..... PLAINTIFF**

**AND**

**ANNAH WANJA ..... DEFENDANT**

**RULING**

1. By a Complaint dated 4<sup>th</sup> May 2023, the Plaintiff filed this suit against the Defendant, seeking ;
  - a. A declaration that property known as Ngong/ngong/29613 belongs to the Plaintiff.
  - b. An order directing the defendant, her agent, employees, servant or whosoever is acting under her to give vacant possession of Ngong/ngong/29613.
  - c. An order do issue directing the defendant, her agents, employees, servants or whomsoever is acting under her to remove or cause the removal of a caution filed by the defendant on 3<sup>rd</sup> November 2019 failing which the Land Registrar, Kajiado North do remove it.
  - d. Costs of the suit.
2. In response the Defendant filed a statement of defence dated 22<sup>nd</sup> June 2023 claiming beneficial interest to the suit property. She also filed the Preliminary Objection dated 12<sup>th</sup> June 2023.
3. The grounds are;
  1. The instant suit is sub judice under section 6 of the *Civil Procedure Act* as the subject matter and issues that is L.r. Ngong/ngong/29613 are similar as those under litigation in High Court At Nairobi Matrimonial Case No. E038 OF 2020 which is pending before this Honourable Court.



2. That the Honourable court has no jurisdiction over the subject matter property since it is alleged part of determination of matrimonial property.
4. In response to the Preliminary Objection the Plaintiff filed a Replying Affidavit sworn on the 21<sup>st</sup> September 2023.
5. On the 19<sup>th</sup> September 2023, the court with the consent of the parties directed that the Preliminary Objection be canvassed by way of Written Submissions.
6. The Defendants submissions are dated 18<sup>th</sup> March 2024 while the Plaintiff's are also dated 18<sup>th</sup> March 2024.
7. In their submissions counsel have substantiated their clients respective positions stated in their respective pleadings. It is now appropriate to consider the facts that have emerged and the legal principles applicable.
8. Section 6 of the [Civil Procedure Act](#) provides that;

“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 the claim, litigating under the same title, where such suit or proceeding is pending in the same or any other having jurisdiction in Kenya to grant the relief claimed.”

In the case of [Kenya National Commission on Human Rights v Attorney General, Independent Electoral & Boundaries Commission & 16 Others \(Interested Parties\)](#) the Supreme Court of Kenya stated as follows;

“[67] 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 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 re 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.”

9. It is not in dispute that the Plaintiff and the Defendant were husband and wife. It is admitted by the Plaintiff that there exists another suit in the High Court in Nairobi being Matrimonial Cause No.E038 of 2020 in respect of the suit property. This said suit is pending before the Honourable Court. The same was filed prior to the suit herein.
10. From the foregoing I find that this court has no jurisdiction to hear and determine suits which relate to matrimonial property.
11. The Plaintiff has maintained that the suit property is not matrimonial since he inherited it from his father. As to whether this is the case or not will be determined in the suit filed in Nairobi High Court.



12. I find that the Preliminary Objection herein satisfies the parameters set out in the case of *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696.
13. In conclusion I find merit in this Preliminary Objection and the same is upheld. The suit is hereby struck out with costs to the Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11<sup>TH</sup> DAY OF JULY 2024.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

N/A for the Plaintiff.

Ms. Wachira for Mr. Mungai for the Defendant.

Court Assistant – Mutisya.

