



**Cherwon v County Government of Uasin Gishu (Environment & Land
Case E012 of 2023) [2025] KEELC 4337 (KLR) (21 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4337 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E012 OF 2023**

CK YANO, J

MAY 21, 2025

BETWEEN

ANGELINE CHEPKOECH CHERWON PLAINTIFF

AND

COUNTY GOVERNMENT OF UASIN GISHU DEFENDANT

RULING

1. The Defendant filed a Notice of Preliminary Objection dated 10th November, 2023, challenging the jurisdiction of the court to entertain the suit as filed. The Notice of Preliminary Objection was raised on the grounds THAT: -
 - a. The suit against the Defendant is bad in law in light of Section 6 of the *Civil Procedure Act*, Cap 21 Laws of Kenya. This suit is sub judice Eldoret ELC No. 64 of 2016 (Formerly Eldoret HCC No. 71 of 2006) Hosea Ruto v Eldoret Municipal Council & Eldoret ELC Judicial Review No. 2 of 2019 R v The Land Registrar – Uasin Gishu County & 2 Others Ex-parte Hosea Kibet Ruto;
 - b. The issue of the Plaintiff's proprietary rights over the suit land Eldoret Municipality/Block 8/350 is also an issue in question before the trial court in Eldoret ELC No. 64 of 2016 (Formerly Eldoret HCC No. 71 of 2006) Hosea Ruto v Eldoret Municipal Council & Eldoret ELC Judicial Review No. 2 of 2019 R v The Land Registrar – Uasin Gishu County & 2 Others Ex-parte Hosea Kibet Ruto, which are matters currently pending before this Honourable Court.
 - c. The suit is thus bad in law and is an abuse of the court process and the same should be struck out with costs to the Defendant.



2. The Preliminary Objection was canvassed by way of written submissions. The Plaintiff filed her submissions dated 24th April, 2025 while the Defendant filed their submissions dated 24th July, 2024, which I have read, considered and summarized as hereunder.

Defendant's Submissions;

3. Counsel for the defendant submitted on one issue; whether the suit as filed is sub judice. He relied on the provisions of section 6 of the *Civil Procedure Act* which defines and gives the elements of the doctrine of sub judice.
4. It was his claim that the plaintiff's proprietary rights over the suit land Eldoret Municipality/ Block 8/350 is also directly and substantially an issue in question before the trial court in Eldoret ELC No. 64 of 2016 (Formerly Eldoret HCC No. 71 of 2006) Hosea Ruto v Eldoret Municipal Council & Eldoret ELC Judicial Review No. 2 of 2019 R v The Land Registrar – Uasin Gishu County & 2 Others Ex-parte Hosea Kibet Ruto. He thus maintained that both suits are currently pending before this court and are at the hearing stage.
5. Counsel also quoted and relied on the decision in the case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others, where the court defined the doctrine of sub judice, outlined its purpose and the elements that need to be proved.
6. It was therefore submitted that in the event that the court finds that this suit is sub judice, then it should proceed to stay the proceedings, until the earlier suit is heard and finally determined.
7. They thus urged the court to find that the suit offends the provisions of section 6 of the *Civil Procedure Act* and urged the court to dismiss the same with costs.

Plaintiff's Submissions;

8. Counsel for the plaintiff mainly submitted on the 2 issues; whether the preliminary Objection meets the set threshold in the Mukhisa biscuit case and whether the suit is sub judice.
9. On the first issue, it was submitted that it is trite that a preliminary objection ought to raise a pure point of law and argued on the assumption that all the facts pleaded by the other side are correct and it cannot be raised if any fact has to be ascertained. He maintained that the issues raised herein require probing of evidence and require the court to look into matters of fact.
10. Further, it was their claim that from a cursory look at the pleadings in Eldoret ELC No. 64 of 2016 (Formerly Eldoret HCC No. 71 of 2006) Hosea Ruto v Eldoret Municipal Council; the subject matter in the said case are known as Eldoret Municipality/ Block 8/715, 8/716, 8/717 and 8/718 and not Eldoret Municipality/ Block 8/350 as alleged.
11. That in addition, the plaintiff herein is not a party in the said suit.
12. In conclusion, he maintained that no link had been demonstrated between the present suit and the earlier suit and thus the court cannot be able to determine the preliminary objection without ascertaining the facts in issue. He urged the court to dismiss the preliminary objection with costs.

Analysis and Determination

13. It is my considered opinion that the issues arising for determination include;
 - i. Whether the Notice of Preliminary Objection dated 10th November, 2023 meets the threshold of what amounts to a Preliminary Objection.



- ii. Whether the Preliminary Objection is merited.
- iii. Costs

I. Whether the Notice of Preliminary Objection dated 10th November, 2023 meets the threshold of what amounts to a Preliminary Objection

14. The preliminary objection has been raised on account of the doctrine of sub judice. It is the defendant's claim that the issues directly and substantially in issue in the instant suit are similar to those directly and substantially in issue in the earlier cases filed vide, Eldoret ELC No. 64 of 2016 (Formerly Eldoret HCC No. 71 of 2006) and Eldoret ELC Judicial Review No. 2 of 2019; which are both pending before this court.
15. The law on what constitutes a preliminary objection is now well settled. In Mukhisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd 1969 E.A. 696; the Court defined Preliminary Objection as follows;

“...is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
16. The Supreme Court in the case of Aviation & Allied Workers Union v Kenya Airways Ltd & 3 Others, Application No. 50 of 2014 [2015] eKLR restated the position in Mukhisa case and held as follows;

“Thus, a preliminary objection may only be raised on a pure question of law. To discern such a point of law, the court has to be satisfied that there is no proper contest to the facts. The facts are deemed agreed, as they are prima facie presented in the pleadings on record.”
17. The plaintiff disputed the averments made by the defendant and argued that she is neither a party in the Eldoret ELC Case No. 64 of 2016 nor is the subject matter in the instant suit Eldoret Municipality/ Block 8/350 similar to the subject matters in the said suit which are Eldoret Municipality/ Block 8/715, 8/716, 8/717 and 8/718.
18. In Oraro v Mbaja [2005] 1KLR 141, the court held as follows: -

“Anything that purports to be a Preliminary Objection must not deal with disputed facts and it must not derive its foundation from factual information which stands to be tested by rules of evidence”.
19. The question that therefore follows is whether the grounds in the preliminary objection are pure points of law and whether there is no contest as to the facts.
20. My answer to the above is in the negative. I have carefully considered the grounds in the preliminary objection and the rival position of the parties herein with regards to issues on parties and the matters that are directly and substantially in issue in both suits.
21. The preliminary objection has not only raised grounds which are not pure points of law but is also marred with contested factual issues. In determining the correctness of the said averments, this court will be required to probe evidence adduced, call for the 2 files, ELC Case No. 64 of 2016 and Eldoret Judicial Review Case No. 2 of 2019 and look at the pleadings therein, examine and interrogate the same in order to ascertain whether the parties, subject matter and issues are similar and which may then lead to the exercise of judicial discretion.



22. The doctrine of sub judice is outlined in section 6 of the *Civil Procedure Act*, which states as follows: -

“No court shall proceed with the trial of any suit or proceedings 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 the 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.”

23. In the case of *Margaret Wachu Karuri v John Waweru Ribiro* [2021] eKLR, the Court in dealing with the doctrine of sub judice raised as a ground of preliminary objection held as follows held that: -

“For the Court to determine whether the issues herein were directly and substantially in issue with the other suit, it is this court’s considered view that it will have to ascertain facts and probe evidence by ascertaining whether the issues raised in the instant suit are the same as the ones in the Appeal aforesaid and further interrogate the prayers sought whether they are the same and relate to the same issues. On whether or not the same is sub-judice, facts have to be ascertained and a preliminary objection cannot be raised on disputed facts. Therefore, this court holds and finds what has been raised by defendant/objector does not amount to a preliminary objection, and thus the preliminary objection is not merited.”

24. Guided by the above decision, it is the finding of this court that an issue of sub-judice cannot be determined by way of the Preliminary Objection for the reasons outlined hereinabove. Therefore, the said objection is hereby overruled.

Costs:

25. It is a well settled principle that costs follow the event unless the court deems otherwise. In this case, having held that the notice of Preliminary Objection is not merited I find that the plaintiff is entitled to the costs.

26. In the premises, I accordingly find that the Notice of Preliminary Objection dated 10th November, 2023 is not merited and is hereby dismissed with costs to the Plaintiff.

27. It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 21ST DAY OF MAY, 2025.

HON. C. K. YANO

ELC, JUDGE

Ruling delivered in the presence of: -

Mr. Aseso for the Plaintiff.

No appearance for the Defendant.

Court Assistant – Laban

