



REPUBLIC OF KENYA



**Kiplagat & another v Longori & 3 others (Environment & Land Case
E001 of 2022) [2022] KEELC 2684 (KLR) (7 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 2684 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT CHUKA
ENVIRONMENT & LAND CASE E001 OF 2022**

EO OBAGA, J

JULY 7, 2022

BETWEEN

JACOB K KIPLAGAT 1ST PLAINTIFF

SALOME EWOI 2ND PLAINTIFF

AND

SAMUEL LONGORI ALIAS NYOKA 1ST DEFENDANT

SARAH AREGAE LOPEYOK 2ND DEFENDANT

UASIN GISHU COUNTY LAND REGISTRAR 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

RULING

1. This is a ruling in respect of a preliminary objection by the second Defendant on the ground that this suit is subjudice. The 2nd Defendant contends that there is another suit before the Chief magistrate's court Eldoret being CM E&L E001 of 2022 (Sarah Aregae Lopeyok –Vs- Jacob k. Kiplagat and Salome Ewoi) over the same subject matter.
2. The 2nd Defendant therefore contends that this suit is an abuse of the process of the court as it offends the principle of sub-judice. The parties herein were directed to file written submissions on the preliminary objection. The 2nd Defendant filed her submissions on 9th March, 2022. The Plaintiffs filed their submissions on 15th February, 2022.



3. I have gone through the submissions by the parties and the only issue for determination is whether this suit is sub-judice. The principle of sub-judice is predicated on section 6 of Civil procedure Act which states 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.”

4. There is no contention that Eldoret CMC E&L E001 of 2022 is the one which was filed earlier than the present case. The dispute in both suits revolve around Uasin Gishu/Kuinet Settlement Scheme/84 (suit property). Save for the 1st, 3rd and 4th Defendants, the rest of the parties herein are also parties in CMC E001 of 2022.
5. In CMC E&L E001 of 2022, the Plaintiff is seeking to have the Plaintiffs in this case who are Defendants in that case evicted from the suit property. In the present suit, the Plaintiffs who are Defendants in CMC E & L E001 of 2022 are seeking to have the title held by the 2nd Defendant who is the Plaintiff in CMC E & L E001 of 2022 cancelled on the ground that they had purchased 4 acres and 2 acres respectively from the 1st Defendant who later on fraudulently transferred title to the 2nd Defendant.
6. In Republic –vs- Registrar of societies –Kenya & 2 others Ex-parte Moses Kirima & 2 others (2017) eKLR, held as follows: -

“...therefore for the principle to apply certain conditions precedent must be shown to exist: First, the matter in issue in subsequent suit must also be directly and substantially in issue in the previously instituted suit; proceedings must be between the same parties or between parties under whom they or any of them claim, litigating under the same title; and such suit or proceeding must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed....”.

7. In the case of Kenya National Commission on Human Rights -vs- Attorney General; Independent Electoral & Boundaries Commission & 16 others (interested parties) (2020) 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 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. In Kampala High Court Civil suit No. 450 of 1993 *Nyanza Garage –vs- Attorney General* the Court stated as follows:-

“In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits”.

9. The subject matter in both suits is the same. The addition of the 1st, 3rd and 4th Defendants in the present suit does not alter the substance of the case. The Chief magistrate’s court is competent to grant the relief which the Plaintiffs in this suit are claiming. What they only need to do is to introduce a counter-claim where they will seek the relief which they are seeking herein.

10. It has been submitted that the earlier suit has been stayed pending the directions of this court. The stay in that suit may have been made at the instance of the Plaintiffs herein but that does not give this court leeway to deal with this. Parties are better advised not to file a multiplicity of suits as this ends up clogging the courts with unnecessary suits which ought to be handled in one suit. I find that the present suit is sub-judice. I order that the suit be stayed pending the hearing and determination of Eldoret CMC E&L E001 of 2022. The Plaintiffs shall pay the costs of this application to the 2nd defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 7TH DAY OF JULY, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Maritim for 1st and 2nd Defendants/Respondents.

Mr. Omusundi for 1st and 2nd Plaintiffs/Applicant.

Court Assistant –Albert

E. OBAGA

JUDGE

7TH JULY, 2022

