



**Saina v Sitienei (Environment & Land Case E018 of 2022)
[2022] KEELC 13338 (KLR) (4 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13338 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE E018 OF 2022
MN MWANYALE, J
OCTOBER 4, 2022**

BETWEEN

JOSEPH KIMUTAI SAINA PLAINTIFF

AND

ANTHONY KIPTUM SITIENEI DEFENDANT

RULING

1. Through an application dated 14th June 2022 the Applicant seeks the following orders.
 - i. Spent
 - ii. Spent
 - iii. That, pending hearing and determination of this suit, this Honorable Court be pleased to issue an order of temporary injunction restraining the Respondent, his agents, servant, assigns, personal representatives, employees and anyone claiming under them whatsoever from evicting and/or interfering with the Applicants use, possession, occupation and /or dealing whatsoever on the Plaintiffs land parcel measuring 6.2 acres of the said suit land parcel Nandi/ndalat/ settlement Scheme/82.
 - iv. That, the costs of this application be provided for.
 - v. That, such other order be issued as the Honorable Court deems fit.
2. The application is premised on the grounds on the face of it and supported by affidavit of Joseph Kimutai Saina, the Plaintiff herein. He avers that he purchased the suit property in the year 1988 and has since enjoyed possession and utilization of the same to date. He also avers that the instant application was necessitated by the Respondent's move to graze his cattle on Applicant's portion of land in May 2022 as well as a demand notice served on him by Respondent's Advocate in December 2021.



3. The Respondent opposed the application by filing a Notice of Preliminary Objection dated 22nd June 2022 however, the said Preliminary Objection was withdrawn by Respondent's Advocate on 27th June 2022. In its place, Counsel filed a replying affidavit sworn by Anthony Kiptum Sitienei, the Defendant herein. In his reply, the Respondent contends that there exists a similar suit being Kapsabet ELC case No. 26 of 2022, where he sued the Applicant herein for injunction and eviction orders. That the suit is active and pending before Court. As a result the Respondent prays that the application be dismissed with costs.
4. The applicant, upon service of reply affidavit, filed a further affidavit dated 15th July 2022 claiming that he was not aware of the existence of Kapsabet ELC Case No. 26 of 2022.
5. Directions were given by this Court that the application be canvassed by way of written submissions. Accordingly, parties complied and filed their respective submissions.

Analysis and Determination: -

6. I have considered the application herein, the Replying Affidavit together with submissions filed by respective parties. I find that the main issue for determination is whether the application is merited. Before determining the aforementioned issue, this Court will first consider the issue raised by the Respondent in their replying affidavit with respect to the existence of a similar sit being Kapsabet ELC case No. 26 of 2022. In essence, the Respondent has raised the doctrine of sub judice.
7. Section 6 of the [Civil Procedure Act](#) provided for this doctrine of sub judice in the following terms;

“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 parties under whom they are 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.”
8. The rationale behind this provision and doctrine is to prevent having conflicting orders emanating from two or more different Courts over the same subject matter. In the case of [David Ndiu & Others vs Attorney General & Others](#) (2021) eKLR, the Court stated

“The rationale behind this provision (Section 6 of the [Civil Procedure Act](#)) is that, it is vexatious and oppressive for a claimant to sue concurrently in two Courts. Where there are two Courts faced with substantially the same question or issue, the question or issue should be determined in only one of those Courts.....”
9. I have perused the Annexure herein relating to the previous suit instituted by parties herein and noted that the Plaintiff/Applicant in this suit is the Defendant in the previous suit while the Defendant/Respondent in this suit is the Plaintiff in the previous suit. Similarly the subject matter being Nandi/ndalat Settlement Scheme/82 is the same in both suits. It is therefore quite obvious that the two suits are substantially the same hence sub judice doctrine is applicable. Moreover, there being no ruling or judgment finalizing the previous suit, I am satisfied that the same is pending before the Honourable Court.
10. In the premises and noting of the existence of the other suit, I find that this suit is sub judice, hence the application having been founded on a suit that is sub judice therefore lacks merit and the same is dismissed as is the suit. The interim orders previously issued are hereby discharged. Parties to proceed with the suit pending before the Chief Magistrate's Court being Kapsabet CM ELC 26 of 2022.



11. Orders accordingly.

DATED AT KAPSABET THIS 4TH OCTOBER, 2022.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

No appearance for Parties/Counsel

