



**Okendo v Ngugi (Civil Miscellaneous E269 of 2025)  
[2025] KEHC 12211 (KLR) (Civ) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 12211 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CIVIL**

**CIVIL MISCELLANEOUS E269 OF 2025**

**TW CHERERE, J**

**MAY 15, 2025**

**BETWEEN**

**CAROLINE ACHIENG OKENDO ..... APPLICANT**

**AND**

**JAMES MWANGI NGUGI ..... RESPONDENT**

**RULING**

“In dispensing justice, courts must not only act fairly and within the bounds of the law, but also in a manner that upholds public confidence by guarding against parallel proceedings and the risk of conflicting decisions.”

1. Before the Court is a Notice of Motion dated 05<sup>th</sup> March 2025 brought under Order 1 Rule 10(2), Order 45 of the [Civil Procedure Rules](#), and Sections 1A, 1B and 3A of the [Civil Procedure Act](#). The Applicant seeks, *inter alia*:
  1. Leave for the firm of Beyo & Company Advocates to come on record;
  2. Review and setting aside of a consent order dated 10th August 2023 and all consequential orders;
  3. Stay of execution of warrants of attachment issued on 27th January 2025;
  4. Orders for release and/or protection of motor vehicle registration number KDN xxxx;
  5. Investigative directions to the DCI regarding alleged collusion and fraud between the legal representatives in Civil Suit No. MCCC/E948/2022.
2. The application is supported by the affidavit of the Applicant sworn on even date and is premised on the following grounds:



1. A consent order was recorded on 10<sup>th</sup> August 2023 in Milimani MCCC E943 of 2022 between two law firms, in which the firm of Urbanus K 7 Associates allegedly misrepresented the Applicants.
  2. At the time the consent was recorded, the Maxwell Okey Omondi, the Defendant in the trial court was already deceased.
  3. The deceased could not have authorized the consent, rendering the order fraudulent and void ab initio.
  4. Judgment was entered without proper service of summons.
  5. The 1<sup>st</sup> Applicant was also not served with any proclamation notice before the intended attachment of movable property.
  6. The law firm that filed the application on 21<sup>st</sup> June 2023 could not have been instructed by the deceased, raising questions as to who authorized them.
  7. The Applicant have reported both firms to the Advocates Complaints Commission, the Law Society of Kenya, and the Judicial Service Commission.
  8. The 1<sup>st</sup> Applicant has received warrants of attachment for her vehicle, allegedly stemming from the impugned consent.
  9. An injunction has been sought to prevent the sale or disposal of motor vehicle KDN xxxx pending fraud investigations.
  10. The consent order has already been challenged before the trial court and a ruling is pending.
3. The Respondent opposes the application by way of a replying affidavit sworn by Ichaura Wachira Advocate on 13th March 2025, on the following grounds:
1. That this Court lacks jurisdiction to entertain the present application.
  2. That a similar application dated 05<sup>th</sup> February 2025 is pending determination before the trial court in Milimani MCCC No. E948 of 2022
  3. That the current application offends the *sub judice* rule under Section 6 of the [Civil Procedure Act](#)
  4. That the Applicant is abusing the court process and is on a fishing expedition.
4. I have considered the application in light of the affidavits on record and annexures thereto.
  5. The first prayer seeks leave for the firm of Beyo & Company Advocates to come on record for the Applicant. This prayer is brought pursuant to Order 9 Rule 9 of the [Civil Procedure Rules](#), which provides that once judgment has been entered, a change of advocates must be effected with leave of the court or by consent of the parties. Considering that judgment had already been entered and there is no evidence of consent between the outgoing and proposed advocates, the Court is satisfied that leave is properly sought. The application for leave to come on record is therefore allowed.
  6. The main issue that arises thereafter is whether the substantive prayers are whether the application is properly before this Court in light of *sub judice* rule.
  7. The *sub judice* principle, as codified under Section 6 of the [Civil Procedure Act](#), prohibits this Court from proceeding with a suit or proceeding in which the matter in issue is directly and substantially



in issue in a previously instituted suit between the same parties, pending in a court of competent jurisdiction.

8. Section 6 of the Civil Procedure Act provides:

“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... pending in the same or any other court having jurisdiction...”

9. The Applicant has candidly acknowledged that she has filed a similar application before the trial court in MCCC No. E948 of 2022, in which she seeks the same orders as those now sought in this Court. That matter is pending ruling. This admission brings the application squarely within the scope of Section 6.

10. The Court of Appeal in The Independent Electoral and Boundaries Commission v Maina Kiai & 5 Others [2017] eKLR affirmed the purpose of the *sub judice* rule:

“The purpose of the *sub judice* rule is to prevent a multiplicity of suits between the same parties over the same subject matter. It seeks to protect the court system from abuse, to avoid conflicting decisions, and to uphold the integrity of the judicial process.”

11. Similarly, in Nyanza Garage v Attorney General [1997] eKLR, the Court noted:

“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... 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.”

12. From the foregoing, I find that it would be an affront to judicial consistency and economy for this Court to proceed with a parallel application when the same prayers are under active consideration by a court of competent jurisdiction. This amounts to forum shopping and undermines the authority of the trial court.

13. Accordingly, it is hereby ordered:

1. The firm of Beyo & Company Advocates is deemed as properly on record for the Applicant in place of the previous advocates
2. The other prayers in the Notice of Motion dated 05<sup>th</sup> March 2025 are *sub judice*, and are hereby disallowed.
3. Costs of this application shall be borne by the Applicant.
4. This being a miscellaneous file, it is hereby closed

**DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF MAY 2025**

**WAMAE.T. W. CHERERE**

**JUDGE**

Appearances

Court Assistant - Abdirizack

For Applicant - Ms. Saida for Beyo & Co. Advocates



For Respondent - Ms. Kiptanui for Waiganjo Wachira & Co. Advocates

