



REPUBLIC OF KENYA



**Gucokaniriria Kihato Farmers & Traders Company Limited & 5  
others v Registrar of Companies & 8 others (Civil Suit E508 of 2024)  
[2025] KEHC 11028 (KLR) (Commercial and Tax) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11028 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)  
COMMERCIAL AND TAX  
CIVIL SUIT E508 OF 2024  
FG MUGAMBI, J  
JULY 25, 2025**

**BETWEEN**

**GUCOKANIRIRIA KIHATO FARMERS & TRADERS COMPANY  
LIMITED ..... 1<sup>ST</sup> PLAINTIFF  
SAMUEL MBUGUA NJUGUNA ..... 2<sup>ND</sup> PLAINTIFF  
JOSEPH GATHURA MUHIA ..... 3<sup>RD</sup> PLAINTIFF  
SOSPETER MWITHIGA GATHUI ..... 4<sup>TH</sup> PLAINTIFF  
JOHN NDIRITU MATHENGE ..... 5<sup>TH</sup> PLAINTIFF  
DR STEPHEN NDICHU ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**REGISTRAR OF COMPANIES ..... 1<sup>ST</sup> DEFENDANT  
JONAH MWANGI ICHOYA ..... 2<sup>ND</sup> DEFENDANT  
MAINA NDIRITU MUTHUI ..... 3<sup>RD</sup> DEFENDANT  
SUSAN WANJIKU KAMAU ..... 4<sup>TH</sup> DEFENDANT  
DAVID GITOME KUHIGUKA ..... 5<sup>TH</sup> DEFENDANT  
PETER KIARIE KAMAU ..... 6<sup>TH</sup> DEFENDANT  
PAUL RONALD NDEGWA THIGE ..... 7<sup>TH</sup> DEFENDANT  
JOPHECE OBONYO YOGO ..... 8<sup>TH</sup> DEFENDANT  
JOSPHAT NJOROGE MAGU ..... 9<sup>TH</sup> DEFENDANT**



## RULING

1. Pending determination are two applications and a preliminary objection. The first application is dated 26<sup>th</sup> September 2024. It is brought under Order 40 Rules 1 and 2 of the [Civil Procedure Rules](#) and Section 3A of the [Civil Procedure Act](#). The applicants seek injunctive orders to restrain the defendants and their agents from interfering with their assumption of office as directors of the 1<sup>st</sup> plaintiff. They also seek to stop the defendants from transacting any business on behalf of the 1<sup>st</sup> plaintiff, including dealing with its bank accounts, shares and assets.
2. The application is supported by an affidavit sworn by Samuel Mbugua Njuguna. The plaintiffs challenge the validity of an Annual General Meeting (AGM) held on 10<sup>th</sup> August 2023 at Stadion Hotel, Kasarani, where the 2<sup>nd</sup> to 9<sup>th</sup> defendants were purportedly elected as directors. They claim the meeting was conducted irregularly using an outdated 2015 register that excluded a majority of the current 4,000 members; was poorly publicized; improperly relocated from Nanyuki to Nairobi; and attended by unauthorized individuals including unverified proxies and non-members.
3. They further allege that the 1<sup>st</sup> defendant unlawfully registered the 2<sup>nd</sup> to 9<sup>th</sup> defendants as directors on 21<sup>st</sup> August 2024 without ensuring legal compliance. Since then, the defendants have begun asserting control over the company's land dealings. The plaintiffs argue that unless restrained, the defendants' actions will cause irreparable harm to the company and its shareholders. They seek orders invalidating the AGM, nullifying the directorship registration and cancelling the same.

### Application of 18<sup>th</sup> October 2024:

4. The 2<sup>nd</sup> to 9<sup>th</sup> defendants also filed an application under Articles 50 and 159 of the [Constitution](#), Sections 1A, 1B, 3A, 6 and 7 of the [Civil Procedure Act](#), and the inherent powers of the Court. They seek orders to strike out the plaintiffs' applications dated 27<sup>th</sup> August 2024 and 26<sup>th</sup> September 2024 and to have the entire suit dismissed with costs. In the alternative, they request the matter be transferred to the High Court at Nyeri for hearing and determination.
5. The application is supported by an affidavit sworn by David Gitome. The defendants argue that the present suit and applications are barred by the doctrines of res judicata, sub judice and issue estoppel, as they raise matters that have either already been determined or are pending in other courts. They cite five related suits: Nyeri HCCC Nos. 010 and 015 of 2022 (both concluded with costs); Nyeri Misc Appln No. 45B of 2023 (formerly Milimani E625 of 2023, also concluded); Milimani HCCC No. E151 of 2023 (stayed); and Nyeri HCCC No. E006 of 2024 (formerly Milimani HCCC No. E104 of 2024), currently pending mention.
6. The central issue in all these cases, they argue, is the management and directorship of the 1<sup>st</sup> plaintiff and the multiplicity of suits amounts to forum shopping and abuse of the court process.
7. The application is opposed through a replying affidavit sworn by Samuel Mbugua Njuguna on 12<sup>th</sup> February 2025. The plaintiffs deny that the present suit violates the principles of res judicata or sub judice, contending that it raises new and distinct issues, namely, the legality of the AGM held on 23<sup>rd</sup> August 2023 and the subsequent registration of the 2<sup>nd</sup> to 9<sup>th</sup> defendants as directors on 21<sup>st</sup> August 2024.
8. They argue that the convening and conduct of the AGM contravened the [Companies Act](#). They further submit that that some of the current plaintiffs, particularly the 2<sup>nd</sup> to 6<sup>th</sup>, were not parties in the previous



suits and are suing in their capacity as shareholders. The plaintiffs also challenge the application on grounds that the defendants have not produced pleadings from the previous cases to establish that the issues raised are identical.

### **The Preliminary Objection:**

9. The 1<sup>st</sup> defendant raised a preliminary objection seeking the dismissal of the suit on grounds that it offends the doctrines of sub judice and res judicata and amounts to an abuse of the court process. Specifically, the 1<sup>st</sup> defendant argues that the suit is sub judice due to the existence of two pending suits involving similar issues and parties:
  - a. Nairobi HCCC No. E151 of 2023: *Gucokaniriria Kihato Farmers and Traders Company Limited V Jonah Ichoya, David Gitome, Peter Kiarie, Paul Thige & Registrar of Companies (Interested Party)*.
  - b. Nairobi HCCC No. E104 of 2024: *Esther Muthoni Sospeter V Gucoaniriria Kihato Farmers and Traders Company Limited, Jonah Ichoya, David Gitome, Peter Kiarie & Business Registration Service (Interested Party)*.
10. The objection also invokes the doctrine of res judicata, stressing that the issues raised have already been heard and determined in the following concluded suits:
  - a. Nyeri HCCC No. E010 of 2022: *Gucokaniriria Kihato Farmers and Traders Company Limited V Jonah Mwangi Ichoya, Maina Nderitu Muthui, Josphat Njoroge Mathui & Registrar of Companies*.
  - b. Nyeri HCCC No. E015 of 2022: *Gucokaniriria Kihato Farmers and Traders Company Limited V David Gitome, Peter Kiarie, Paul Thige & Registrar of Companies*.
11. Accordingly, the 1<sup>st</sup> defendant contends that the suit contravenes Sections 6 and 7 of the [Civil Procedure Act](#) and should be struck out in limine for being scandalous, frivolous, vexatious and an abuse of the court process.

### **Analysis and Determination**

12. I have considered the pleadings, the submissions on record, and the authorities cited. The 1<sup>st</sup> defendant's preliminary objection takes precedence as it raises pure points of law that, if successful, would dispose of the suit without the need for further proceedings.
13. The objection is grounded on the doctrines of res judicata and sub judice, as well as the contention that the suit is an abuse of court process. These are threshold issues which go to the jurisdiction of the court to entertain the matter. It is therefore necessary to first determine whether the suit is barred under Sections 6 and 7 of the [Civil Procedure Act](#) before delving into the merits of the substantive applications.
14. The decision of the Supreme Court in [Kenya National Commission on Human Rights V Attorney General; Independent Electoral & Boundaries Commission & 16 Others \(Interested Parties\)](#), [2020] eKLR is particularly instructive. The Supreme Court stated as follows:

“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 res 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.”

15. The doctrine of sub judice is in turn derived from Section 6 of the *Civil Procedure Act*. The doctrines of res judicata and res sub judice are distinct, though they share a common objective, which is preventing multiplicity of proceedings and promoting finality and judicial economy. The 1<sup>st</sup> defendant’s objection invokes both doctrines. It is contended that several suits involving the same parties and subject matter are currently pending and at the same time, it is argued that some of the issues raised in the present suit were previously determined.
16. It is not correct, as alleged by the plaintiffs, that there are no pleadings to support the defendants’ claim regarding the multiplicity of suits. Upon reviewing the material placed before the Court, I am satisfied that there exists substantial documentation demonstrating that numerous disputes have been filed before different courts involving the same or substantially the same parties. These disputes all touch on the management and directorship of the 1<sup>st</sup> plaintiff company, and equally question the validity and conduct of the impugned AGM. Some of these matters were litigated before the High Court in Nyeri.
17. While the plaintiffs concede the existence of the cited suits, they seek to distinguish the present case by contending that it raises distinct issues, particularly the legality of the AGM held on 23<sup>rd</sup> August 2023 and the subsequent registration of the 2<sup>nd</sup> to 9<sup>th</sup> defendants as directors of the 1<sup>st</sup> plaintiff company. They argue that these matters were neither pleaded nor adjudicated in the previous or pending suits and thus fall outside the scope of res sub judice.
18. This position cannot be sustained in light of the broader principles governing the doctrine of res sub judice. It must be remembered that the doctrine is not confined to issues expressly raised in another suit. Rather, it extends to matters that might and ought to have been reasonably raised in the earlier proceedings. The mischief sought to be prevented is the fragmentation of disputes arising from the same transaction or subject matter into multiple suits, thereby burdening the judicial system and exposing parties to unnecessary expense and the risk of conflicting decisions.
19. In the present case, the plaintiffs do not dispute that the impugned AGM and the dispute over directorship relate to the management and governance of the 1<sup>st</sup> plaintiff company. This matter also forms the core of the earlier and pending suits. The attempt to isolate specific events or decisions, such as the convening of the AGM or the filing of returns with the Registrar of Companies, and litigate them separately from the broader governance dispute, amounts to artificial segmentation of a single controversy.
20. Even assuming, arguendo, that some factual developments postdate the earlier suits, the plaintiffs would still bear the burden of demonstrating that these developments are so legally and factually distinct as to warrant independent adjudication. In the absence of such demonstration, the plaintiffs cannot justify filing separate suits arising from the same course of events. To do so would defeat the overriding objective of the *Civil Procedure Act* and amount to forum shopping, contrary to the principles of judicial economy and consistency.



21. I therefore, have no difficulty in finding that the preliminary objection is meritorious. In the circumstances, it is unnecessary to delve into the merits of the applications currently before this Court. Any grievances or disputes arising from similar affairs of the 1<sup>st</sup> plaintiff company ought to be ventilated within the framework of the suits already pending before competent courts.

**Disposition**

22. Accordingly, the preliminary objection dated 27<sup>th</sup> November 2024 is hereby upheld. The plaintiffs' suit is struck out with costs. It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF JULY 2025.**

**F. MUGAMBI**

**JUDGE**

