



**Singh also known as Rajuinder Kaur Mohinder (Suing as the Executrix of the Estate of Mohinder Singh Bamrah) & another v Kiproop t/a Kiproop & Company Advocates (Civil Case E167 of 2024) [2025] KEHC 9917 (KLR) (Civ) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9917 (KLR)

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

**CIVIL**

**CIVIL CASE E167 OF 2024**

**JN MULWA, J**

**JULY 10, 2025**

**BETWEEN**

**RAJVINDER KAUR SINGH ALSO KNOWN AS RAJUINDER KAUR  
MOHINDER (SUING AS THE EXECUTRIX OF THE ESTATE OF MOHINDER  
SINGH BAMRAH) ..... 1<sup>ST</sup> PLAINTIFF**

**RAJUINDER KAUR MOHINDER ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**PATRICK KIPTOO KIPROP T/A KIPROP & COMPANY  
ADVOCATES ..... DEFENDANT**

**RULING**

1. Before this court for determination is the Defendant's Preliminary Objection dated 29<sup>th</sup> January 2025 to the plaintiffs case on grounds, firstly that it offends Sections 4 (1) (a) and 4 (2) of the Limitations of Actions Act, Cap 22 Laws of Kenya for being Statute barred, and secondly that it undermines jurisdiction of various suits filed in various courts in Nairobi, Milimani and therefore contrary to the doctrine of sub judice as enacted under Section (5) (1) of the Judicature Act.
2. Directions were issued that the application be canvassed by way of written submissions. Both parties have filed submissions.

**Defendant's Submissions.**

3. The Defendant submits that the Plaintiffs claims under the alleged Advocate-Client Contract (Contractual Negligence) or for the tort of negligence are statute time barred under both Sections 4(1) (a) and Section 4(2) of the Limitation of Actions Act.



4. The Applicant posits that as pleaded in paragraphs 49, 50 and 51 of the Amended Plaintiff, the Plaintiffs' Cause of Action is premised upon breach of contract and/or the tort of negligence whose limitation period for instituting a suit is 6 years for breach of contract and 3 years for negligent Breach of Duty (Tort) from the dates when the cause of action accrued being between 16th June 2016 and 26th May 2017, that Six (6) years lapsed in June 2022 or May 2023 with regard to the Cause of Action premised upon Contract while three (3) years lapsed in or about June 2019 and July 2020 under sections 4(1) and 4(2) of the Limitation of Actions Act, respectively.
5. On the second issue, the Defendant argues that the instant case calls upon this Honourable Court to hear and determine issues that are directly and or correlated to matters to be determined in Nairobi ELC 677 OF 2016 Mohini Singh Bamrah Vs Iqbal Sder Ingh Ghale And Others, Nairobi CMCC 6618 Of 2016 Mohinder Singh Bamrah Vs Byant Singh Sehmi and Nairobi HCCOMMA E131 Of 2022 Rajwinder Kaur Mohinder Singh Vs Byant Singh Sehmi And Another, and others pending at the Environment and Land court, and at the Lower Courts.
6. The Defendant while relying on the Doctrine of Sub Judice states that this suit should be struck out with costs to the Defendant for lack of jurisdiction regarding related cases pending in the Environment and Land Court, The lower court and/or this Honourable Court.

#### **Respondents/Plaintiffs Submissions.**

7. The Respondents in laying a basis for its argument, stated that Mohinder Singh Bamrah (hereinafter "Bamrah") who instructed the Defendant in the year 2016 died on 6<sup>th</sup> April 2022 (death certificate attached) contrary to the claim by the defendant in its submissions at page 2.
8. The Respondents state that the following suits which the Defendant seems to be relying on in its objections to substantiate the claim of lapse of time were filed on 22<sup>nd</sup> June 2016 and 27<sup>th</sup> September 2016 respectively; nairobi HCELC NO. 677 of 2016; Mohinder Singh Bamrah-VS- Iqbal Singh Ghale, Byant Singh Sehmi & The Estate Of Kashmira Singh Jandu and Chief Magistrates' Court, Milimani being Civil Suit No. 6618 of 2016: Mohinder Singh Bamrah-Vs-Byant Singh Sehmi.
9. It is the Respondents further submission that, paragraphs 48, 49 and 50 of the Plaintiffs' plaint clearly set out the particulars of negligence and breach of contract by the Defendant. A careful reading of those three paragraphs and the entire Plaint reveal that most of the particulars of negligence and or breach of contract were committed and or omitted to be done by the Defendant from May 2022 until late 2022 when the current firm was appointed by the plaintiffs following the death of their father, Bamrah on 6th April 2022.
10. The Respondents' state that it is imperative to note that the Defendant represented the plaintiffs in various suits between the years 2016 to about October 2022 when the current law firm came on record. At the time of change of advocates, the suits, the subject of the negligence/breach of Advocate/Client contract were still alive in different courts. Paragraph 50 (a)-(q) of the plaint sets out seventeen (17) particulars of professional negligence and or breach of Advocate/Client contract that were committed and or omitted by the defendant during the period that he was on record for either the late Bamrah or the plaintiff.
11. The Plaintiffs argued that the doctrine of sub judice is inapplicable herein and that the legal rationale is to prevent a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.



12. The Plaintiffs submitted that it was curious to know from the Defendant the applicability of the Doctrine of Sub Judice to this matter because the cases cited in the Notice of Preliminary Objection were actually filed by the Defendant when he was still acting for Bamrah; they involve different parties and the subject matter in those cases is land/property while the current matter is about professional negligence/breach of contract.
13. In conclusion, the Plaintiffs pointed out that they had initially filed this claim at the Chief Magistrates' Court, Milimani Civil Suit No. E2481 of 2023; Rajvinder Kaur Singh also known as Rajuinder Kaur Mohinder (suing as the Executrix of the Estate of (Mohinder Singh Bamrah) -vs- Patrick Kiptoo Kipropt/a kipropt & co. Advocates. The defendant however raised a preliminary objection on the grounds of want of jurisdiction under section 55 of the *Advocates Act* contending that since the matter was by a client against an advocate, it ought to have been filed in the High Court.
14. The magistrate in her ruling upheld the objection and proceeded to strike out the suit on 28<sup>th</sup> June 2024.

### **Analysis and Determination.**

15. The main issue for determination is whether the preliminary objection is sustainable.
16. In the celebrated case of Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696, the court observed thus:-

“.....a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit....”
17. Sir Charles Newbold P therein stated:-

“....A preliminary objection 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. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop....”
18. From the foregoing, it is manifestly clear that a preliminary objection must be founded upon a settled and crisp point of law, to the intent that its application to undisputed facts, leads to but one conclusion: that the facts are incompatible with the point of law.
19. While citing the Doctrine of Sub Judice the Defendant further argued that the instant case calls upon this Honourable Court to hear and determine issues that are directly or correlated to matters to be determined in Nairobi CMCC 6618 OF 2016 and Nairobi HCCOMMA E131 OF 2022.
20. The Plaintiffs stated that Mr. Mohinder Singh Bamrah who instructed the Defendant in the year 2016 died on 6<sup>th</sup> April 2022.
21. The Defendant was the Deceased's counsel from May 2022 until late 2022 when the current firm was appointed by the plaintiffs following the death of their father
22. The particulars of negligence raised in the Plaint happened during the engagement of the Applicant as Counsel to the Deceased in various suits till late 2022. It follows that the Client could only raise issues



with the way his cases were handled after terminating its Advocate/Client relationship and not during the sustenance of the Advocate/Client relationship.

23. The Court notes that the Defendant relied on the Doctrine of Sub Judice in moving the Court to finding that it lacked jurisdiction but failed to tie its argument to the provisions of Section 6 of the Civil Procedure Rules, which provides that;

“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.”

24. The Applicant filed the cases listed on the face of its Preliminary Objection dated 29th January, 2025 during the subsistence of an Advocate/Client relationship which was terminated upon demise of its client. From the record it is manifest that the cases involve different parties and the subject matter in those cases concern land/property disputes while the current matter is about professional negligence and breach of contract.

25. In the instant matter, the Defendant only stopped at mentioning the case numbers, it did not provide any evidence of that other case it alleged the plaintiffs had filed for the examination by the Court. In the absence of the evidence, the Court has nothing to assess in order to determine if Section 6 of The Civil Procedure Act was contravened so as to reach a finding on whether or not the doctrine is applicable.

26. In the case of David Ndii & Others v Attorney General & Others (2021) eKLR, the court had this to say on the doctrine of Res sub judice;

“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, that question or issue should be determined in only one of those courts,.....”

27. For the foregoing, I find that the Defendant’s Preliminary Objection dated 29<sup>th</sup> January 2025 lacks merit and is hereby dismissed with costs to the Plaintiffs.

28. For progression of the case, it shall be listed for pretrial directions before the Deputy Registrar of the court on 26/08/2025

Orders accordingly.

**DELIVERED DATED AND SIGNED AT NAIROBI THIS 10<sup>ST</sup> JULY, 2025**

.....

**JANET MULWA.**

**JUDGE**

