



**Universal Resources International Limited & another v Registrar
of Companies (Petition 86 of 2020) [2023] KEHC 22254 (KLR)
(Constitutional and Human Rights) (15 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22254 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS
PETITION 86 OF 2020
M THANDE, J
SEPTEMBER 15, 2023**

BETWEEN

UNIVERSAL RESOURCES INTERNATIONAL LIMITED 1ST PETITIONER

MARK LLYOD STEPHENSON 2ND PETITIONER

AND

THE REGISTRAR OF COMPANIES RESPONDENT

JUDGMENT

1. In the Petition before me dated 2.3.2020, the Petitioners seek the following reliefs:
 - a. A declaration that the respondent has violated the petitioners' legitimate expectation in its actions and misdoings against the petitioners.
 - b. A declaration that the respondent has breached its statutory duties and mandate towards the petitioners.
 - c. A declaration that the respondent has breached the petitioners' legitimate expectations.
 - d. A declaration that the respondent has breached and/or threatened the petitioners' rights under Article 40 of the *Constitution of Kenya*.
 - e. An order of Judicial Review in the form of a mandamus compelling the respondent to immediately register the respective returns for the meeting held on 29th November 2019 as filed.
 - f. An order of Judicial Review in the form of a prohibition against the respondent, prohibiting it from interfering with the running of the 1st petitioner.



- g. An order for compensation of all the costs incurred by the petitioners in the previous suits against the respondent being Judicial Review No. 438 of 2019 and Judicial Review No. 100 of 2016 which were reasonably foreseeable by the respondent in its actions or misdoings.
 - h. General damages for breach of duty.
 - i. General damages for a breach of a constitutional right.
 - j. Costs of the suit.
2. The Petitioners' case is set out in the Petition and in the supporting affidavit sworn on even sate by the 2nd Petitioner, a director and shareholder of the 1st Petitioner as well as chairman of its board of directors. It is the Petitioners' case that the Respondent has on numerous occasions interfered with the running and operations of the 1st Petitioner, by failing to accept and effect its returns. This led the 1st Petitioner to seek legal redress over the same, vide Nairobi High Court Judicial Review No 100 of 2016 *Mark Lloyd Stephenson & Universal Resources International Limited v Registrar of Companies* [2016] eKLR wherein the learned Judge faulted the actions of the Respondent and found it to have committed fraud against the 1st Petitioner and issued an order of mandamus compelling the Respondent to accept and effect the returns. Thereafter the 1st Petitioner filed returns on 2 separate occasions and the Respondent refused and declined to accept the same necessitating the filing of Nairobi Judicial Review No. 348 of 2019 *Universal Resources International Limited v Registrar of Companies* (the JR matter) which is still pending in Court.
3. The Petitioners accuse a particular officer in the Respondent's office of having told them that he would make the 1st Petitioner very messy. The 2nd Petitioner wrote a letter of protest to the Respondent which elicited no response. The Petitioners further accused the Respondent of interfering with the records relating to the establishment, running and administration of the 1st Petitioner and has manufactured fictitious documents including Form CR12 reflecting changes in membership that are not supported by any returns. In particular, the Respondent issued Form CR12 dated 24.6.11 reflecting altered membership without supporting documents. This was tendered as evidence in Makadara Criminal Case No. 1338 of 2014 against the 2nd Petitioner and one Richard Kariuki Githae, a case founded on forged documents purported to have been filed with the Respondent. Further that they filed returns dated 29.11.19 reflecting the removal of Richard Kariuki Githae as a director and the said returns were not registered nor was the reason for refusal given.
4. The Petitioners further allege that from 2017-2019, the Respondent locked the directors of the 1st Petitioner out of the company's e-citizen portal, thus denying them the chance and right to manage their company as required by law. This action by the Respondent defiled the object of the mandate and sanctity of the right to property as enshrined in Article 40 of the *Constitution*. Owing to the said actions of the Respondent, the 1st Petitioner has lost great business investments and business ventures as well as serious credibility among investors. The said actions have occasioned the Petitioners to incur unnecessary cost and expenses in a bid to compel the Respondent and its officers to perform these statutory duties. The Petitioners have raised complaints with the relevant bodies including the Attorney General, but no action has been taken.
5. The Respondent did not file any response to the Petition.
6. I have considered the Petition herein. The Petitioners complaint is that the Respondent has interfered with the running and operations of the 1st Petitioner by failing and neglecting to accept returns filed relating to the 1st Petitioner. The Petitioners stated that the actions of the Respondent have necessitated the filing of the JR matter. The Petitioners have further stated that the JR matter is still



pending in Court. This matter therefore offends the sub judice rule. The rationale behind the sub judice rule is to avoid the filing of a multiplicity of suits on the same subject between the same parties which would in turn lead to making conflicting decisions from the same or similar facts.

7. In *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] eKLR, the Supreme Court considered the subject of sub judice and aptly stated:

(67) 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 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.

8. The sub judice rule further seeks to protect the Court from abuse of its process. This necessitates that where more than one suit is filed in courts with jurisdiction between the same parties on the same subject matter, then the latter suit ought to be stayed pending the determination of the earlier suit.

9. And in *Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR, Mativo, J. (as he then was) stated that the basic purpose of the sub judice rule was to pin down parties to one litigation to avoid conflicting decisions. The learned Judge stated:

24. The sub judice rule like other maxims of law has a salutary purpose. The basic purpose and the underlying object of sub judice is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.

10. The Petitioners herein have themselves stated that the actions of the Respondent complained about herein necessitated the filing of the JR matter. This Petition was thus filed during the pendency of the JR matter. This is clearly an abuse of the Court process.

11. In the case of *Republic v Commissioner of Domestic Taxes; Panalpina Airflo Limited (Ex-parte)* [2019] eKLR, Mativo, J. addressed his mind to the subject of abuse of the court process and stated:

50. The situations that may give rise to an abuse of court process are indeed in exhaustive, it involves situations where the process of court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of court process in addition to the above arises in the following situations:-

- (a) Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.



- (b) Instituting different actions between the same parties simultaneously in different court even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right.
- (d) Where an application for adjournment is sought by a party to an action to bring another application to court for leave to raise issue of fact already decided by court below.
- (e) Where there no iota of law supporting a court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.^[34]
- (f) Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.
- (g) Where an appellant files an application at the trial court in respect of a matter which is already subject of an earlier application by the respondent at the Court of Appeal.
- (h) Where two actions are commenced, the second asking for a relief which may have been obtained in the first.^[35]

51. Abuse of court process creates a factual scenario where a party is pursuing the same matter by two-court process. In other words, a party by the two court process is involved in some gamble; a game of chance to get the best in the judicial process.^[36] A litigant has no right to pursue paripasu two processes, which will have the same effect in two courts at the same time with a view of obtaining victory in one of the process or in both. In several decisions of this court, I have stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of court/legal process.^[37]
12. Flowing from the cited cases, it is evident that the filing of multiplicity of suits on the same subject matter, against the same opponent, in the same or different courts constitutes abuse of the Court process. A party pursuing the same matter in different court processes is in effect engaging in a gamble, a game of chance seeking to get the best in the judicial process. The Court has inherent jurisdiction to protect itself from this kind of abuse and to see that its process is not abused by the parties that come before it.
13. The circumstances herein are that the Petitioners have presented before this Court the same issues which are pending in the JR matter before the Judicial Review Court. Notably the Petitioners have even asked for an order for compensation of all the costs they incurred in the JR matter and in Judicial Review No. 100 of 2016 previously filed. The Court cannot countenance the abuse of its process by the filing of parallel proceedings on the same issues involving the same parties, which pose the risk of coordinate courts granting conflicting orders.
14. In view of the foregoing, the Court finds that the filing of the present Petition when the JR matter is pending before the Judicial Review Court is an abuse of the Court process. Accordingly, in order to protect itself from abuse and abuse of its process, this Court declines jurisdiction, over this matter. The Petition dated 2.3.2020 lacks merit and is hereby dismissed. There shall be no order as to costs.

DATED AND DELIVERED IN NAIROBI THIS 15TH DAY OF SEPTEMBER 2023



M. THANDE

JUDGE

..... for the Petitioners

..... for the Respondent

..... Court Assistant

