



Chumo (Suing as Legal Representative of the Estate of the Late Kipsigei Arap Cheplel alias Elijah Kipsigei Cheplel) v Chumo (Environment & Land Case E005 of 2023) [2025] KEELC 4741 (KLR) (26 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4741 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ENVIRONMENT & LAND CASE E005 OF 2023**

LA OMOLLO, J

JUNE 26, 2025

BETWEEN

REBECCA CHEPNGENO CHUMO (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE KIPSIGEI ARAP CHEPLEL ALIAS ELIJAH KIPSIGEI CHEPLEL) PLAINTIFF

AND

CHRISTINA CHEPTOO CHUMO DEFENDANT

RULING

1. This ruling is in respect of the Defendant/Applicant's Notice of Motion application dated 13th June, 2024. It is expressed to be brought under Sections 1A, 1B & 3A of the *Civil Procedure Act*, Order 2 Rule 15 (1), (a), (b), (c) & (d) and Order 51 of the Civil Procedure Rules.
2. The application seeks the following orders;
 - a. The Plaintiff's suit against the Defendant/Applicant be struck out for want of jurisdiction, and for being an abuse of the process of the Court.
 - b. The costs of this application be borne by the Plaintiff/Respondent; and
 - c. The Honourable Court grant any other or further orders as may be deemed fit in the circumstances.
3. The application is based on the grounds on its face and the supporting affidavit of Christina Cheptoo Chumo sworn on 13th June, 2024.



Factual Background.

4. The Plaintiff/Respondent commenced the present proceedings vide the Complaint dated 2nd March, 2023 where she seeks the following prayers;
 - a. A declaration that the transfer of land reference No. Kericho/Kipchimchim/1589 from the name of Elijah Kipsigei Cheplel to the Defendant was fraudulent, illegal and void.
 - b. That the title deed to land parcel No. Kericho/Kipchimchim/1589 as currently held by the Defendant be revoked and the title to the said property does revert to Elijah Kipsigei Cheplel (deceased) and that the Land Registrar does rectify the same accordingly.
 - c. Cancellation of transfer and registration of land parcel No. Kericho/Kipchimchim/1589 in the name of the Defendant.
 - d. Costs of this suit.
 - e. Interests on (d) above.
 - f. Any other relief that this Honourable Court deems fit to grant.

5. The Defendant/Applicant filed her Statement of Defence and Counterclaim dated 28th April, 2023. In the Counterclaim she seeks the following orders;

SUBPARA a.

This suit be dismissed as it is res-judicata, has been brought with intention to waste judicial time and to deprive the owner her legal and lawful right to the parcel of land known as LR No. Kericho/Kipchimchim/1589.

SUBPARA b.

A declaration that the Defendant (now Plaintiff) is the absolute sole and legal proprietor of the parcel of land known as LR No. Kericho/Kipchimchim/1589.

SUBPARA c.

An eviction order against the Plaintiff (now Defendant) from the parcel of land known as LR No. Kericho/Kipchimchim/1589.

SUBPARA d.

A permanent order of injunction restraining the Plaintiff (now Defendant), her servants, agents, representatives, assigns and heirs from putting up any structures, both temporary and permanent, trespassing, planting, grazing or doing any activities on land parcel No. LR No. Kericho/Kipchimchim/1589 to the detriment of the Defendant (now Plaintiff).

SUBPARA e.

Mesne profits.

SUBPARA f.

Costs of the suit.

6. The application under consideration first came up for hearing on 16th October, 2024 when the Plaintiff/Respondent was granted more time to file a response. The Defendant/Applicant was also granted corresponding leave to file a Supplementary Affidavit if need be.



7. On 11th November, 2024 the Court issued directions that the application be canvassed by way of written submissions.
8. On 10th December, 2024, it was mentioned for submissions and then reserved for ruling.

Defendant/Applicant's Contention.

9. The Defendant/Applicant contends that on 22nd February, 2018 the Plaintiff/Respondent filed Kericho CM ELC Case No. 003 of 2018 – Rebecca Chepngeno Chumo versus Christina Cheptoo Chumo.
10. The Defendant/Applicant also contends that in the said suit the Plaintiff/Respondent seeks orders of cancellation of transfer and registration of land parcel No. Kericho/Kipchimchim/1589 in her (Defendant/Applicant) name, that the title be reversed to the name of the late Kipsigei Arap Cheplel alias Elijah Kipsigei Cheplel pending filing of a succession cause, costs of the suit, interests and any other relief the Court will deem fit to grant.
11. The Defendant/Applicant further contends that she filed a Notice of preliminary objection dated 22nd June, 2018 contending that the issues raised in the said suit were res judicata and adds that the said issues were directly and substantially in issue in Kericho RMCC No. 27 of 1985 where the issues were adjudicated and determined by the Court.
12. She contends that on 19th September, 2018 Hon. B.R Kipyegon delivered a ruling and upheld the preliminary objection and found that the matter was res judicata and that the suit was struck out with costs.
13. She also contends that the Plaintiff/Respondent was dissatisfied with the said ruling and she filed an appeal on the ground that the Learned Trial Magistrate erred in law and in fact in finding that the matter was res judicata.
14. She further contends that on 29th May, 2019 this Court allowed the appeal and set aside the ruling that was delivered on 19th September, 2018 and substituted it with an order dismissing the preliminary objection. She goes on to state that the Court also issued an order that Kericho CM ELC No. 003 of 2018 Rebecca Chepngeno Chumo versus Christina Cheptoo Chumo be set down for hearing.
15. It is her contention that to date the said matter is yet to be heard and determined. Despite the said matter pending before the lower Court, the Plaintiff/Respondent filed the present proceedings seeking similar reliefs.
16. It is also her contention that she is advised by her advocates on record that that the present matter is sub judice Kericho CM ELC No. 003 of 2018.
17. It is further her contention that she is advised by her advocates on record that there is a possibility that the matter pending before the Magistrate's Court will end up in this Court in exercise of its appellate jurisdiction. She goes on to state that in entertaining this matter, there is a real risk of the same Court issuing contradictory decisions in a matter involving the same parties and subject matter.
18. It is her contention that she was granted letters of administration intestate on 2nd May, 1986 which was the basis upon which the suit parcel devolved to her. She adds that the said grant of letters of administration has never been revoked.
19. It is also her contention that this Court has jurisdiction at any stage of the proceedings to order the striking out of a suit.



20. It is further her contention that unless this Court intervenes and strikes out the Plaintiff/Respondent's suit, she stands to suffer gravely.
21. She contends that she has brought the application under consideration in good faith and in the interest of justice.
22. She ends her deposition by seeking that the Plaintiff/Respondent's suit be struck out for want of jurisdiction and for being an abuse of the Court process.

The Plaintiff/Respondent's Response.

23. In response to the Defendant/Applicant's application, the Plaintiff/Respondent filed a Replying Affidavit sworn on 5th November, 2024.
24. She admits that this Court directed that Kericho CM ELC Case No. E003 of 2017 – Rebecca Chepngeno Chumo v Christina Cheptoo Chumo be set down for hearing.
25. She deposes that her advocates on record considered the ruling of this Court delivered on 29th May, 2019 and advised her to file the matter in the Environment and Land Court considering that the parcel was valued at Kshs. 46,000,000/=.
26. She also deposes that in the year 2022 the matter before the Magistrate's Court was set down for hearing.
27. She further deposes that on 3rd March, 2023 they filed the present matter before this Court upon advice of Counsel. She goes on to state that she was advised that it was this Court that has the pecuniary jurisdiction to hear and determine the matter.
28. It is her deposition that on 28th April, 2023 the Defendant/Applicant filed a Notice of Preliminary Objection alleging that the present matter was res judicata.
29. It is also her deposition that when Counsel for the Defendant/Applicant was taking directions on the preliminary objection, he noted that at paragraph 3 of the Notice of Preliminary Objection that they had misrepresented the finding of the Court in ELC Appeal No. 7 of 2018.
30. It is further her deposition that whereas the preliminary objection stated that the appeal was dismissed, the correct position was that the appeal had been allowed and an order issued that Kericho CM ELC Case No. 003 of 2017 – Rebecca Chepngeno Chumo v Christina Cheptoo Chumo be set down for hearing.
31. She deposes that upon the said realization, Counsel for the Defendant/Applicant sought to withdraw the Notice of Preliminary Objection.
32. She also deposes that parties agreed to have the preliminary objection withdrawn with no order as to costs. She adds that they also agreed to have the present matter proceed and the lower Court matter be abandoned.
33. She further deposes that it is in the Court record that when the Defendant/Applicant was withdrawing the preliminary objection, there was an intention to enter into a consent so that they could proceed and take directions on compliance with Order 11.
34. It is her deposition that the Defendant/Applicant filed her Statement of Defence and Counterclaim and the Court gave directions for compliance and set a hearing date for 18th June, 2024.



35. It is also her deposition that if the Court was to grant the orders sought herein, the parties would suffer injustice. She goes on to state that what remained was a formal withdrawal of the lower Court matter which they had agreed to abandon since the lower Court did not have the jurisdiction to determine the dispute.
36. It is further her deposition that in the event the present application is allowed, it will have the effect of striking out this suit, a withdrawal of the lower Court matter and a possible re-filing of this suit before this Honourable Court.
37. She deposes that the present suit substantially deals with issues that affect her property rights. She urges the Court to consider the provisions of Article 22(3)(d) of *the Constitution* which mandates the Court to observe the rules of natural justice and not to be unreasonably restricted by procedural technicalities.
38. She also deposes that the Court will serve substantive justice if it were to allow the parties time and direct them to withdraw the lower Court matter so that this matter is conclusively dealt by the Court.
39. She ends her deposition by urging the Court in the interest of justice to disallow the application to strike out the suit.

Issues for Determination.

40. The Defendant/Applicant filed her submissions on 20th November, 2024 while the Plaintiff/Respondent filed submissions on 10th December, 2024.
41. The Defendant/Applicant submits on the following issues;
 - a. Whether the suit herein offends Section 6 of the *Civil Procedure Act* and amounts to an abuse of the Court process,
 - b. Who bears the costs of the application?
42. On the first issue, the Defendant/Applicant submits that the Plaintiff/Respondent admits to commencing parallel proceedings in different forums over the same subject matter and seeking similar reliefs.
43. The Defendant/Applicant relies on Section 6 of the Civil Procedure Rules, the judicial decisions of Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR, Thiba Min. Hydro Co. Ltd v Josphat Karu Ndwiga [2013] eKLR, Chunky Limited v Director of Criminal Investigations (Petition E004 of 2022) [2022] KEHC 297 (KLR) (27 April 2022) (Judgment) and submits that multiplicity of actions between the same parties seeking similar reliefs is an abuse of the Court process.
44. The Defendant/Applicant relies on Order 2 Rule 15 of the Civil Procedure Rules and submits that the Plaintiff/Respondent's argument that the parties allegedly agreed to have the matter proceed notwithstanding the pendency of the lower Court matter is disingenuous and faulty as the jurisdiction of this Court is conferred by *the Constitution* and the Statute and not on agreement of the parties.
45. The Defendant/Applicant also submits that there is no evidence of such an agreement and even if there were, it would not be capable of overriding the express provisions of *the Constitution*.
46. The Defendant/Applicant relies on the judicial decisions of Equity Bank Limited v Bruce Mutie Mutuku t/a Diani Tour & Travel [2016] eKLR, George C. Gichuru v Senior Private Kioko & another [2013] eKLR and submits that jurisdiction does not operate retrospectively and must exist at the time of filing the suit.



47. The Defendant/Applicant also submits that duplication of proceedings is a waste of precious judicial time and it is oppressive to the opposite parties in terms of time and costs. The Defendant/Applicant relies on the judicial decision of *Bore v Spire Bank Limited & another* (Civil Case 8 of 2020) [2024] KEHC 1034 (KLR) (8 February 2024) (Ruling) in support of her submissions.
48. The Defendant/Applicant concludes her submissions by urging the Court to strike out the suit with costs.
49. The Plaintiff/Respondent submits on the following issues;
 - a. Whether the Court should allow the application by the Defendant and strike out the suit.
 - b. What reliefs the Court should grant.
50. On the first issue the Plaintiff/Respondent relies on Articles 22(3) (d) & 159 (2)(d) of *the Constitution* of Kenya, Section 6 of the *Civil Procedure Act*, the judicial decision of *Lawrence v Lord Norreys* [1890] 15 App Cas 210 at 219 as was cited in *Yaya Towers Limited v Trade Bank Limited (In liquidation)* [2000] eKLR and submits that whereas the Defendant/Applicant is inviting this Court to strike out the suit, the Court should consider whether such an action will do justice to the parties.
51. The Plaintiff/Respondent submits that Section 6 of the *Civil Procedure Act* prohibits the continuation of a suit during the pendency of another suit between the same parties, litigating under the same title in the same or other Court having jurisdiction.
52. The Plaintiff/Respondent also submits that she intends to withdraw the lower Court matter as the Magistrate's Court does not have jurisdiction to hear it.
53. The Plaintiff/Respondent further submits that she has attached to her Replying Affidavit a valuation report which shows the value of the suit parcel to be Kshs. 46,000,000/=.
54. On the second issue, the Plaintiff/Respondent relies on Section 3A of the *Civil Procedure Act*, the judicial decision of *Peter Njuguna Gitau v Daniel Kiprono Kiptum & 3 Others* [2022] eKLR and urges the Court to disallow the Defendant/Applicant's application and instead allow the present matter to proceed on condition that the lower Court matter be withdrawn and costs be in the cause.
55. The Plaintiff/Respondent also submits that even though the Defendant/Applicant seeks that the suit be struck out for want of jurisdiction, she did not submit on jurisdiction but instead she submitted on a different matter which is sub judice.
56. The Plaintiff/Respondent concludes her submissions by urging the Court to dismiss the Defendant/Applicant's application.

Analysis and Determination.

57. I have considered the application, the response thereto and the submissions. The only issue that arises for determination is whether the Defendant/Applicant's application dated 13th June, 2024 has merit.
58. The Defendant/Applicant is seeking orders that this Court strikes out the present suit for want of jurisdiction and for being an abuse of the Court process.
59. The application is on the ground that this suit is sub judice. The Defendant/Applicant's submissions are hinged on the question of sub judice and not want of jurisdiction.
60. The question that follows is whether there is a disparity in the orders sought and submissions made and whether this can be reconciled.



61. A perusal of the application shows that the Defendant/Applicant takes issue with the jurisdiction of the court and this is premised on the fact that the present suit is sub judice. The question of sub judice is a ground on the face of the application.
62. The decision in Republic v Director of Criminal Investigations & another; Nairobi House Limited (Exparte); Koinange & another (Interested Parties) (Environment and Land Judicial Review Case E013 of 2020) [2022] KEELC 15138 (KLR) (24 November 2022) (Judgment) offers useful guidance. It is as follows;
- “29. The 1st Interested Party submitted that this Court has no jurisdiction to entertain the present proceedings. It is her assertion that the present matter offends the principles of sub-judice and res judicata and is an attempt by the Applicant to review the decision of a court of concurrent jurisdiction which remedy does not lie and that the application is akin to forum shopping and constitutes an abuse of Court process.
30. It is trite that jurisdiction is everything and where the Court is faced with a question as to its jurisdiction, it is obligated to determine it first. This was expressed by the Court of Appeal in *Kakuta Maimai Hamisi v Peris Pesi Tobiko & 2 others* [2013] eKLR which stated thus;
- “So central and determinative is the jurisdiction that it is at once fundamental and over-arching as far as any judicial proceedings in concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it once it appears to be in issue in a consideration imposed on courts out of decent respect for economy and efficiency and necessary eschewing of a polite but ultimate futile undertaking of proceedings that will end in barren cui-de-sac. Courts, like nature, must not sit in vain.”
31. The principle of sub judice is provided for in Section 6 of the *Civil Procedure Act* in the following terms:
- “(6)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.”...
35. It is apparent from the foregoing that the underlying objective of Section 6 of the Civil Procedure Rules is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of the same cause of action, the same subject matter and the same relief...” (Emphasis mine)
63. This decision is important in showing that a violation of the principle of sub judice may be a ground for questioning the jurisdiction of a Court. It is upon this background that I proceed to make my determination on the question of sub judice and its bearing on the jurisdiction of this Court.
64. The Defendant/Applicant contends that the Plaintiff/Respondent sued her in Kericho CM ELC Case No. 003 of 2018 which matter is still pending in Court.



65. The Defendant/Applicant also contends that despite the pending suit before the Magistrates Court, the Plaintiff/Respondent filed the present suit seeking similar reliefs.
66. The Defendant/Applicant further contends that the present suit is sub judice Kericho CM ELC Case No. 003 of 2018.
67. In response, the Plaintiff/Respondent admits that she instituted Kericho CM ELC Case No. 003 of 2018 against the Defendant/Applicant.
68. She also admits that the said suit is pending before the Magistrate's Court.
69. The Plaintiff/Respondent contends that a valuation was conducted which showed that the value of the suit parcel is Kshs. 46,000,000/=.
70. The Plaintiff/Respondent also contends that she was advised by counsel to file the present suit and states that she intends to withdraw the matter pending before the Magistrate's Court.
71. In Kenya, the doctrine of sub judice has its foundations in Section 6 of the *Civil Procedure Act*. It is as follows;

“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.”

72. The Supreme Court in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017)* [2020] KESC 54 (KLR) (Constitutional and Human Rights) (7 February 2020) (Ruling) held as follows;

“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.” [Emphasis mine]

73. In the above cited judicial decision, the Supreme Court held that a party seeking to invoke the doctrine of sub judice must establish that there is more than one suit filed over the same subject matter, that the said suits are between the same parties and that both suits are pending before Courts of competent jurisdiction.



74. It is not disputed that there are two suits pending over the same subject matter i.e the present suit and Kericho CM ELC Case No. 003 of 2018.
75. It is also not disputed that the said suits are between the same parties and that Kericho CM ELC Case No. 3 of 2018 was filed before the present suit was filed.
76. The Plaintiff/Respondent contends that she filed the present suit because the value of the suit property is Kshs. 46,000,000/= which exceeds the pecuniary jurisdiction of the Magistrates Courts.
77. The Plaintiff/Respondent also contends that she intends to withdraw Kericho CM ELC Case No. 003 of 2018 as it was filed before a Court that lacks jurisdiction.
78. The Plaintiff/Respondent has attached to her Replying Affidavit a copy of a valuation report done by Adomag Valuers & Associates which values land parcel No. Kericho/Kipchimchim/1589 at Kshs. 46,000,000/=. The valuation report is dated 17th September, 2020.
79. It is evident that as at the year 2020, the Plaintiff/Respondent was aware of the value of the suit parcel. It is also evident that the present suit was filed in the year 2023. It is further evident that to date the Plaintiff/Respondent has not withdrawn the matter pending before the Magistrates Court.
80. Even though the Plaintiff/Respondent contends that Kericho CM ELC Case No. 003 of 2018 was filed in a Court that lacks jurisdiction, no explanation has been given for the failure to withdraw it.
81. In the judicial decision of *Opande v Liverpool Voluntary Counseling & Testing (Cause E037 of 2022) [2023] KEELRC 1626 (KLR) (6 July 2023) (Ruling)* the Court held as follows;
- “ 13. The Respondent has not disputed that the suit before the lower Court, whether it has been determined or not, is beyond that Court’s pecuniary jurisdiction premised on the Claimant’s gross salary, and the delegation given to the Magistrates Court on employment matters.
14. In my view, and going by the provisions of Section 6 of the *Civil Procedure Act*, a suit only violates the re-sub-judice rule, when two or more cases are filed over the same subject matter, between the same parties and before courts with competent jurisdiction.
15. This goes to say, that the fact that the lower Court did not have jurisdiction over CMELRC Cause No 427 of 2019, is in itself confirmation that the suit herein does not violate the sub-judice rule and the existence of that suit is not sufficient ground to strike out or dismiss the instant suit.
16. Consequently, I hold that the suit herein does not offend the sub-judice rule.”
82. In the present case it is evident that Kericho CM ELC Case No. 003 of 2018 that is pending before the Magistrates Court was filed before a Court that lacks pecuniary jurisdiction. This fact has not been disputed by the Defendant/Applicant. A suit in a Court lacking jurisdiction, whether subject matter, pecuniary or geographical cannot cause a suit properly filed in a Court of competent jurisdiction to be found to be in violation of the sub judice rule. The Defendant/Applicant needs to find ways of dealing with the suit filed before the Court lacking jurisdiction.



Disposition.

83. The present suit does not violate the sub judice rule. Consequently, I find that the Defendant/Applicant's application dated 13th June, 2024 lacks merit and it is hereby dismissed with costs.

84. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO THIS 26TH DAY OF JUNE, 2025.

L. A. OMOLLO

JUDGE.

In the presence of: -

Mr. Kipkorir for the Defendant/Applicant.

The firm of Mitel Tonui for the Plaintiff/Respondent - Absent

Court Assistant; Mr. Joseph Makori.

