



**Kinuthia v Montina & 4 others (Environment & Land Case
E106 of 2024) [2025] KEELC 4842 (KLR) (26 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4842 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E106 OF 2024
LC KOMINGOI, J
JUNE 26, 2025**

BETWEEN

MONICA WAMBUI KINUTHIA PLAINTIFF

AND

KONE OLE MONTINA 1ST RESPONDENT

ELIUD CHOIGI GITHUA 2ND RESPONDENT

FLORENCE SHEILA WAIRIMU CHOIGI 3RD RESPONDENT

LAND REGISTRAR, KAJIADO 4TH RESPONDENT

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. This is the Ruling in respect of is the Notice of Motion Application dated 2nd December 2024 brought under: Article 48 and 50 of the [Constitution](#) of Kenya; Section 1A, 1B, 3, 3A and 6 of the [Civil Procedure Act](#); Order 51 Rule 1 of the Civil Procedure Rules and all other enabling provisions of Law. It seeks:
 - i. That there be stay of proceedings in Kajiado MCELC No. E163 of 2024 (Eliud Chogi Githua & Florence Sheila Wairimu Chogi vs Monica Wambui Kinuthia & Cabinet Secretary Lands Ministry) pending the hearing and determination of the present suit, which is between the same parties and relates to the same subject property Kajiado/Ntashart/2107.
 - ii. Any other further orders that this Hon. Court may deem fit and just to grant.
 - iii. Cost of the application be provided for.
2. The grounds are on the face of the application and a reset out in paragraphs 1 to 21. The same is supported by the affidavit of Monica Wambui Kinuthia sworn on the 2nd December 2024. She avers that



she filed this suit on 17th October 2024 laying claim over property Kajiado/Ntashart/2107. Following the Court's orders issued on 21st October 2024, the 2nd and 3rd Respondents were served on 19th November 2024 and the 4th and 5th Respondents served on 20th November 2024. On 11th November 2024, the 2nd and 3rd Respondents filed the suit in the Lower Court MCELC No. E163 of 2024 also staking claim on the same property. On 26th November 2024, the suit came up for inter partes hearing and despite the Plaintiff/Applicant informing the Lower Court of this suit, the Learned Magistrate gave directions that submissions be filed in respect to the Lower Court's application. The Lower Court filed after this instant suit is subjudice, amounts to an abuse of the Court process and should be stayed awaiting hearing and determination of this suit. The applicant also averred that the Lower Court lacked pecuniary jurisdiction to determine the suit because the value of the suit property was over Kshs. 20,000,000.

3. The 2nd and 3rd Respondents in their grounds of objection dated 4th December 2024, contested the application on grounds that it was the Applicant's fault for not effecting service to them timeously before they filed their suit at the Lower Court. They claimed that the suit at the Lower Court had progressed and thus this application had been overtaken by events. They also claimed that the parties in the two suits were not the same and the suits were therefore different. Finally, they stated that the allegation of pecuniary jurisdiction was unfounded because no valuation report had been presented to prove the claim and that the 2nd and 3rd Respondents purchased the suit property for Kshs. 11,500,000 which was within the Lower Court's jurisdiction.
4. In the Replying Affidavit dated 27th March 2025, the 2nd and 3rd Respondents deponed that the application was an abuse of the Court process because the Applicant effected service to them on 19th November 2024 by which time, the Respondents had already filed MCELC E163 of 2024. They pointed out that Applicant filed this suit on 17th October 2024 and obtained directions on 21st October 2024 for inter-parte hearing slated for 5th December 2024. That it was only until the Respondents served her with the Lower Court pleadings for inter-parte hearing on 26th November 2024, that the Applicant then served them with this suit's notice on 19th November 2024. They went on to claim that at the inter-parte hearing on 26th November 2024, counsel for the Applicant raised no objection despite being aware of the existence of this suit. That on 23rd January 2025 they appeared before the Lower Court where the Applicant sought for time to comply and the Ruling date of 4th March 2025 was given. On 31st January 2025, the Applicant filed an application at the Lower Court seeking to challenge its jurisdiction on grounds of lack of pecuniary jurisdiction and not on the grounds of existence of this instant suit. This application was therefore meant to defeat the Lower Court's orders which was an abuse of the Court process.
5. They also added that the suits and the causes of action were not similar and noting the Lower Court's suit had progressed with an imminent ruling, it would be unfair to stay the proceedings.
6. In the Supporting Affidavit dated 31st January 2025 sworn by counsel for the Applicant Eric O. Kinaro, he acknowledged that pursuant to Court orders issued on 21st October 2024 in this instant suit, there was a delay in serving the Respondents. The delay in serving the 2nd and 3rd Respondents was occasioned by the fact that the Applicant could not trace them. But upon acquiring the 2nd Respondent's telephone number, she served them via WhatsApp. He deponed that on 26th November 2024 when the suit at the Lower Court came up for inter-parte hearing before the Chief Magistrate, he informed her of this instant suit, but the Court proceeded to issue directions due to lack of stay orders from this Court and a mention dated for compliance was issued for 23rd January 2025. This necessitated the Applicant to file a Certificate of Urgency so that the Application dated 2nd December 2024 and filed on 3rd December 2024 could be heard and determined on priority. Therefore, whether



the Respondents had been served with this suit's pleadings or not, the matters were the same involving the same parties on the same subject matter, which offended Section 6 of the Civil Procedure Act. It was therefore necessary to stay the Lower Court's MCELC E163 of 2024 proceedings.

7. Counsel also added that the Lower Court did not have the pecuniary jurisdiction to determine the suit since the suit property was valued at Kshs. 28,000,000.
8. This application was canvassed by way of written submissions.

The Defendants/Applicant's submissions

9. Counsel for the Applicant submitted that the issue for determination was whether the suit in Kajiado MCELC No. E163 of 2024 offends the doctrine of sub-judice as per Section 6 Civil Procedure Act. Counsel submitted that parties in the two suits were the same as well as the subject matter which was Kajiado/Ntashart/2107. It was argued that sub-judice was to prevent filing of multiple suits between same parties claiming under the same title to avoid abuse of the Court process and issuance of conflicting decisions as held by the Supreme Court in Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR, David Ndii & others versus Attorney General & Others [2021] eKLR and Kamoro v Bushline Properties Company Limited & another [2025] KEELC 135 (KLR). Counsel argued that the fact that the Lower Court's suit had progressed and orders had been issued as argued by the Respondents, did not negate the fact that this suit was the first in time. Counsel also argued that the Lower Court was informed of this suit but declined to stay proceedings on grounds that there were no orders from this Court. Therefore, the suit at the Lower Court should be stayed to prevent issuance of conflicting decisions over the same matter. Reference was also made to Kenya Trade and Development Company Limited v Bashari [2023] KEELC 20420 (KLR) and Republic v Ag Clerk of Nairobi City County Assembly & another Ex-parte Robert Khamala Situma & 18 others [2021] eKLR.
10. Counsel also submitted that the Lower Court did not have pecuniary jurisdiction to determine a case where the subject matter was Kshs. 28,000,000 as per the valuation report.
11. Proceedings in MCELC E163 of 2024 should therefore be stayed pending the hearing and determination of this suit.

The 1st and 2nd Defendants/Respondents submissions

12. The following were outlined as the issues for determination: Whether the two suits were the same; whether the cause of action arose from the same transaction and whether the Lower Court's suit should be stayed.
13. On whether the two suits were between the same parties litigating in the same capacity, it was submitted that the parties were not the same because the 2nd and 3rd Defendants herein were strangers to the Applicant's transactions with the other parties.
14. On whether the cause of action in the two suits arose from similar transactions between similar parties or their representatives, counsel submitted that the two suits arose from different causes of actions and between different parties.
15. On whether the suit at the lower Court should be stayed, Counsel highlighted the argument in their Affidavit submitting that staying the Lower Court's proceedings which had progressed far, would be prejudicial to the 2nd and 3rd Respondents. Therefore, it is this suit that should be stayed awaiting outcome of the Ruling at the lower Court. As such, this application should be dismissed with costs.



Analysis and determination

16. I have considered the Notice of Motion, the Affidavits in support, the response thereto, the rival submissions and authorities cited. I find that the issues for determination are:
- i. Whether the Application for stay of proceedings in MCELC E163 of 2023 on grounds that it is sub-judice is merited;
 - ii. Whether the Lower Court has pecuniary jurisdiction to determine MCELC E163 of 2023;
 - iii. Who should bear the costs of this application?
17. The Applicant seeks stay of the proceedings in MCELC E163 of 2023 on grounds that they are sub-judice arguing that the parties and the subject matter is the same and the instant suit was first in time.
18. The 2nd and 3rd Respondents have contested the application on grounds that neither the parties nor the subject matter is the same and that the proceedings at the Lower Court are at a progressed stage awaiting ruling and it would be prejudicial to issue a stay order at this point.
19. The Applicant has also contested pecuniary jurisdiction of the Lower Court on grounds that the subject matter is Kshs. 28,000,000 which is greater than the Chief Magistrate’s Court’s jurisdiction. The Court shall begin by addressing the issue of jurisdiction which I find that should not form basis of seeking stay of proceedings by this Court. If there is a question of jurisdiction, it should be raised addressed and determined by the Court whose jurisdiction is in question. Therefore, the applicant should raise that issue at the appropriate Court forum which is not this one.
20. On the issue of sub-judice, Section 6 of the *Civil Procedure Act* 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.”
21. On what constitutes sub-judice, the Supreme Court in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] KESC 54 (KLR) held:
- “... 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...
- 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...”
22. To determine whether the MCELC E163 of 2023 is sub-judice, this Court has gone through the pleadings filed at the Lower Court and in ELC LC E106 of 2024 filed in this Court.



23. Are the suits between same parties or their representatives?
24. I find that the Plaintiffs in MCELC E163 of 2024 are the 2nd and 3rd Respondents in the suit herein and the 1st and 2nd Defendants are the Applicant and the 4th Respondent's respectively in this suit. The two suits are therefore between same parties.
25. Is the subject matter in the two suits the same?
26. In the instant suit, the Applicant claims that she is the registered owner of parcel Kajiado/Ntashart/2107 measuring approximately 15.79 hectares having purchased it from the 1st Defendant sometime on 11th September 2013 for a consideration of Kshs. 19,500,000. She was subsequently issued with a title deed dated 11th December 2013. She took possession and had been in uninterrupted possession until sometime in October 2024 when she was notified by her neighbours that the suit property was being fenced. She carried out a search only to find out that the suit property had on 28th August 2021 been registered in favour of the 2nd and 3rd Respondents and a title issued. She claims that this was fraudulently undertaken and sought to be declared the bona fide owner of the suit property, among other reliefs.
27. The 2nd and 3rd Respondents' (the Plaintiffs in MCELC E163 of 2024) case is that they are the registered owners of parcel Kajiado/Ntashart/2107 measuring approximately 15.36 hectares having purchased it from one Sempeni Nchoki on or about 16th April 2021. Upon the purchase they were granted vacant possession and enjoyed peaceful possession until sometime in October 2024 when the 1st Defendant (the Applicant herein) laid claim on it on allegation that she purchased it in December 2013. They thus claimed that the Applicant's title was fraudulently acquired.
28. On whether the subject matter in the two suits is the same, this Court finds that it is a resounding yes. This is because the Plaintiff in this suit and the Plaintiffs in MCELC E163 of 2024 who are the 2nd and 3rd Respondents herein are claiming ownership of the same piece of land.
29. Therefore, the contention that neither the parties nor the subject matter is the same, is incorrect. It is clear from the pleadings that the parties claiming over the same property are the same.
30. Therefore, the question of whether the suit is sub-judice is hereby in the affirmative.
31. The next issue for determination therefore would be whether an order of stay of proceedings in MCELC E163 of 2024 should issue as sought.
32. The 2nd and 3rd Respondent have contested issuance of stay of proceedings on grounds that the Applicant did not bring to the attention of the Lower court the pendency of this suit and had continued participating in the said suit and the proceedings were at an advanced stage and it would be prejudicial to stop them. Counsel for the Applicant contested this claim stating that existence of this suit was brought to the attention of the lower Court, but the Lower court declined to halt the proceedings until an order from this Court was issued.
33. The proceedings at the Lower Court were not filed as evidence for the Court to ascertain the authenticity of these claims. However, that does not negate the fact that the two suits involve same parties claiming on the same title.



34. On whether the Lower Court's proceedings should be stayed, this Court has sought guidance from the Supreme Court in the Kenya National Commission on Human Rights *supra* which held:

“...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.”

35. It is not in contention that the suit in this Court was first in time. As such, going by the Supreme Court's holding, the subsequent suits should be stayed awaiting determination of this suit.

36. It is therefore ordered that proceedings in MCELC E163 of 2024 be and are hereby stayed, pending the hearing and determination of this suit being ELC LC E106 of 2024.

37. The Costs of this application do abide the outcome of the main suit.

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

L. KOMINGOI

JUDGE.

In the presence of:

Ms. Mwangi for Mr. Kinaro for the Plaintiff.

N/A for the 1st Defendant.

Mr. Nduati for the 2nd, 3rd Defendants.

Ms. A. Nganga for Ms. Mwaura for the 4th, 5th Defendants.

Court Assistant – Mateli.

