



Sache Farm Ltd & 2 others v Waititu & another (Environment and Land Case 770 of 2017 & 53 of 2018 (Consolidated)) [2025] KEELC 6530 (KLR) (30 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6530 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 770 OF 2017 & 53 OF 2018 (CONSOLIDATED)
JM ONYANGO, J
SEPTEMBER 30, 2025

BETWEEN

SACHE FARM LTD 1ST PLAINTIFF
SAMSON WACHIRA NJOROGE 2ND PLAINTIFF
BETT CHEBET WACHIRA 3RD PLAINTIFF

AND

HON FERDINAND WAITITU 1ST DEFENDANT
COUNTY GOVERNMENT OF KIAMBU 2ND DEFENDANT

RULING

1. The subject of this Ruling is the Notice of Motion dated 13th February 2025 brought by the Plaintiffs/Applicants under the provisions of Sections 1A, 1B, 3A and 6 of the *Civil Procedure Act*, and Order 51 Rule 1 of the Civil Procedure Rules, 2010 and Article 159 of *the Constitution* of Kenya seeking the following orders:
 1. That ELC Suit 53 of 2018 offends the doctrine of sub judice on account of ELC Cause No. 144 of 2018-Godfrey Gichuhi (Suing as the administrator of the estate of Michael Gichuhi) vs Sache Farms Ltd & 4 Others.
 2. That the ELC suit 53 of 2018-Samuel Kangethe & 203 Others vs Samson Wachira Njoroje & 5 Others be deconsolidated from ELC 770 of 2017 and dismissed for being sub-judice and an abuse of court process.
 3. That the costs of this application be provided for.
2. The application is premised on the grounds on the face of it and supported by the Affidavit of Samson Wachira Njoroje (the 2nd Plaintiff/Applicant) sworn on 13th February 2025.



3. He avers that three suits were filed in relation to the ownership of parcels LR Nos. Ndeiya/Ndiuni/T.481, 482, 483, 484, and 485, namely ELC 770 of 2017, ELC 53 of 2018, and ELC 144 of 2018. He further deposes that ELC 53 of 2018 (Samuel Kangethe & 203 others vs Samson Wachira Njoroge & 5 others) was consolidated with ELC 770 of 2017 (Sache Farms Ltd & 2 others vs Hon. Ferdinand Waititu & Another), with the latter designated as the lead file. However, he explains that ELC 144 of 2018 (Godfrey Gichuhi (Suing as the administrator of the estate of Michael Gichuhi vs Sache Farms Ltd vs 4 Others) was not consolidated at the time, as the court found the issues therein not to be directly intertwined with the other two suits.
4. He asserts that sometime in 2022, the Plaintiff in ELC 144 of 2018 amended the claim to include, among other reliefs, cancellation of the titles Ndeiya/Ndiuni/T.482, 483, 484, and 485. It is his position that these amendments substantially aligned ELC 144 of 2018 with ELC 53 of 2018, rendering the two suits materially similar. He avers that the amended reliefs mirror those sought in ELC 53 of 2018, and the causes of action are patently analogous, raising identical questions of law and fact.
5. He further deposes that ELC 144 of 2018 has already proceeded to full hearing before Hon. Lady Justice Kemei. He notes that in the course of those proceedings, the court on its own motion summoned the Chief Land Registrar and the County Surveyor to clarify issues concerning the suit properties. He confirms that the case is currently at the submissions stage, awaiting judgment once the parties comply with filing directions.
6. He asserts that as a result, ELC 53 of 2018 is now sub judice, since the core issue of ownership and validity of titles over LR Nos. Ndeiya/Ndiuni/T.481 to 485 is pending determination in ELC 144 of 2018. It is his position that continued prosecution of ELC 53 of 2018 would be prejudicial, unnecessary, and contrary to the principle that a party should not litigate the same issues in parallel proceedings.
7. He deposes that allowing ELC 53 of 2018 to proceed would expose the court to the risk of issuing contradictory orders, bearing in mind that both matters are before courts of concurrent jurisdiction. He therefore avers that ELC 53 of 2018 is sub judice, amounts to an abuse of the court process, and ought to be dismissed forthwith. Finally, he deposes that the present application is brought in good faith and in the interests of justice. He asserts that it is only fair and just that the application be allowed as prayed. He annexes a copy of the amended Plaintiff in ELC 144 of 2018,
8. Despite service of the Application by way of email to the last known email address of the Defendant/ Respondents' advocates, the Defendants/ Respondents did not respond to the Application. The court will consider the Application unopposed.

Plaintiffs'/Applicants' Submissions

9. The application was canvassed by way of written submissions. The Plaintiffs/Applicants filed submissions dated 24th April 2025 through M/s Wambugu & Muriuki Advocates.
10. Counsel for the Plaintiffs/Applicants submitted that the suit arose from a long-standing dispute over ownership of the parcels of land known as L.R. Nos. Ndeiya/Ndiuni/T.481, 482, 483, 484 and 485. He explained that three suits had been filed touching on the same parcels, namely ELC 770 of 2017, ELC 53 of 2018 and ELC 144 of 2018. He added that ELC 53 of 2018 had been consolidated with ELC 770 of 2017, while ELC 144 of 2018 had not been consolidated at the time, as the Court found the issues therein to be unrelated.
11. Counsel observed that in 2022, the Plaintiff in ELC 144 of 2018 amended his pleadings, and by so doing, the reliefs sought became strikingly similar to those in ELC 53 of 2018. It was his submission



that both suits now revolved around ownership and title to the subject properties, while ELC 770 of 2017 remained distinguishable, as it primarily dealt with trespass by the 1st and 2nd Defendants and the enforcement of the Plaintiffs' proprietary rights.

12. Counsel contended that ELC 53 of 2018 and ELC 144 of 2018 were materially identical, such that continuation of both offended the doctrine of sub judice and exposed the court to the danger of issuing inconsistent orders. Counsel submitted that ELC 144 of 2018 had already proceeded to full hearing and was at the submissions stage, thus persistence of ELC 53 of 2018 was both unnecessary and prejudicial.
13. In support, counsel cited the case of Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR, where the Court defined the doctrine of sub judice and outlined its requirements. He further referred to Wainaina vs Waibara & Another [2024]eKLR, where the Court held that the proper test for sub judice was whether a final decision in the earlier suit would render the later one res judicata.
14. It was counsel's submission that a determination in ELC 144 of 2018 would undoubtedly render ELC 53 of 2018 res judicata, whereas the issues in ELC 770 of 2017 would remain live and distinct. On this basis, counsel urged the Court to deconsolidate ELC 770 of 2017 from ELC 53 of 2018, and to dismiss ELC 53 of 2018 as sub judice. Counsel emphasized that the application had been made in good faith and in the interests of justice.

Analysis and Determination

15. Having considered the issues raised in the application, the response to the application and the rival submissions, the single issue that arises for determination is whether ELC 53 of 2018 is sub judice in light of ELC 144 of 2018, and if so, what orders this Court should make.
16. Section 6 of the [Civil Procedure Act](#) codifies the sub judice doctrine, providing 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.”
17. The principle, as emphasized in Kenya National Commission on Human Rights vs Attorney General; IEBC & 16 Others [2020] eKLR, is to avoid multiplicity of suits, prevent abuse of process, and avert the risk of conflicting decisions.
18. It is not disputed that both ELC 53 of 2018 and ELC 144 of 2018 relate to the ownership and validity of titles to the parcels LR Nos. Ndeiya/Ndiuni/T.481 to 485. The amendment of pleadings in ELC 144 of 2018 in 2022 aligned the reliefs sought with those in ELC 53 of 2018, including cancellation of the impugned titles. ELC 144 of 2018 has since proceeded to full hearing before Lady Justice Kemei and is presently at the submissions stage, awaiting judgment.
19. The test for sub judice, as restated in Wainaina vs Waibara & Another [2024]eKLR, is whether a decision in the earlier suit would operate as res judicata in the subsequent one. A determination in ELC 144 of 2018 on the validity of the titles would undoubtedly affect, if not entirely dispose of, the questions raised in ELC 53 of 2018.
20. However, an important distinction must be drawn. The Plaintiffs in ELC 53 of 2018 (Samuel Kangethe & 203 others) were not parties to ELC 144 of 2018. To dismiss their suit outright would



deny them an opportunity to ventilate their grievances, contrary to the right to be heard under Article 50 of *the Constitution*. In *Thiba Min Hydro Co. Ltd v Josphat Karu Ndwiga* [2013] eKLR, the court cautioned that sub judice must be applied with care, and that dismissal should not be ordered where it would unfairly lock out parties who have not had their day in court.

21. Balancing the need to prevent multiplicity of proceedings with the imperative of ensuring access to justice, I am persuaded that the appropriate course is not to dismiss ELC 53 of 2018, but rather to stay it pending the determination of ELC 144 of 2018. This approach ensures that the court avoids issuing conflicting decisions while preserving the Plaintiffs' right to prosecute their claim should any issues remain unresolved after judgment in ELC 144 of 2018.
22. On the other hand, ELC 770 of 2017 is distinguishable. The cause of action therein primarily relates to alleged trespass and infringement of the Plaintiffs' proprietary rights by the 1st and 2nd Defendants, not cancellation of titles. It would therefore be unjust to tie its fate to the other two matters. I am therefore satisfied that ELC 770 of 2017 ought to be deconsolidated from ELC 53 of 2018 so that it may proceed independently.
23. Consequently, I find that the application has merit to the extent that ELC 53 of 2018 offends the doctrine of sub judice vis-à-vis ELC 144 of 2018. I hereby order that ELC 53 of 2018: Samuel Kangethe & 203 Others vs Samson Wachira Njoroge & 5 Others be deconsolidated from this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF SEPTEMBER 2025.

.....

J. M ONYANGO

JUDGE

In the presence of:

Mr Rotich for the Applicant

No appearance for the Respondents

Court Assistant: Hinga

