



REPUBLIC OF KENYA



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**Geoffrey v Manyara (Environmental and Land Originating Summons
E015 of 2025) [2025] KEELC 7036 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7036 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2025**

**JO MBOYA, J
OCTOBER 14, 2025**

BETWEEN

JULIA TIRINDI GEOFFREY PLAINTIFF

AND

ERNEST MWITI MANYARA DEFENDANT

RULING

1. What is before me for determination is the Notice of Preliminary Objection dated 26th August 2025; filed by the Defendant pursuant to the provisions of section 6 of the *Civil Procedure Act*; and sections 18 of the *Land Registration Act* 2012 [2016].
2. The Notice of Preliminary Objection highlights the following grounds;
 - i. That the suit is Res Judicata as is in violation of Section 7 of the *Civil Procedure Act* in light of Meru CMC ELC No. E057 of 2024 and Meru ELCA No. E031 of 2025.
 - ii. That the suit is Sub- judice as is in violation of section 6 of the *Civil Procedure Act* in light of Meru ELCA No. E031 of 2025 pending before this Honourable court.
 - iii. That the suit is an abuse of the court process in light of the referenced law and suits.
 - iv. That the Plaintiff does not occupy the defendant's suit land Kiirua/Naari/1169 but have had a long-standing boundary dispute before the land registrar as recent as the year 2023. See attached certificate of search and letter dated March 2023.
 - v. That the suit is incompetent and an abuse of court process.
3. The preliminary objection under reference came up for hearing today [14th October 2025], whereupon the advocate[s] for the parties covenanted to canvass and dispose of same by way of oral submissions. To this end, the court gave directions and the preliminary objection was canvassed.



4. Learned counsel for the defendants submitted that the plaintiff herein had previously filed a suit before the subordinate court at Meru and wherein the plaintiff sought a declaration pertaining to adverse possession. Nevertheless, it was submitted that the suit in the subordinate court was subsequently withdrawn. In addition, it has been submitted that the suit was marked as withdrawn with no orders as to costs.
5. Furthermore, it has been submitted that following the withdrawal of the suit, and the attendant counterclaim which had been filed by the defendant, the defendant herein felt aggrieved and proceeded to file an appeal, namely; Meru ELC Appeal No. E031 of 2025. Moreover, it was submitted that the said appeal is still pending hearing and determination before this court.
6. To the extent that the said appeal is still pending, learned counsel for the defendant has submitted that the filing of the current suit therefore offends the provisions of section 6 of the Civil Procedure Act and, in particular, the doctrine of res sub-judice. To this end, learned counsel has contended that the subject suit, therefore, ought to be stayed pending the hearing and determination of the appeal.
7. Additionally, learned counsel has submitted that proceeding with the subject suit during the pendency of the appeal is likely to culminate into conflicting orders being issued by this court.
8. Secondly, learned counsel for the defendant has submitted that there is a boundary dispute between the plaintiff and the defendant, which boundary dispute has not been determined by the land registrar. Moreover, learned counsel for the defendant has contended that same has since annexed a copy of the boundary summons dated 29th March 2023 to the notice of preliminary objection. Besides, learned counsel has also posited that same has also annexed a copy of the certificate of official search relating to the suit property.
9. To the extent that there is a pending boundary dispute, learned counsel for the defendant has submitted that this court is divested of the requisite jurisdiction to entertain and adjudicate upon the subject suit. In particular, learned counsel for the defendant has cited and referenced the provisions of section 18 (2) of the Land Registration Act 2012.
10. Finally, learned counsel for the defendant has submitted that the defendant disputes the facts contained in the body of the originating summons and that the said facts would be subject to proof during the hearing. Nevertheless, counsel reiterated that the preliminary objection is meritorious and thus ought to be allowed.
11. Learned counsel for the plaintiff opposed the preliminary objection and contended that the purported preliminary objection does not raise pure issues of law. To this end, it has been submitted that the preliminary objection is contra – the principle espoused in the case of *Mukisa Biscuits Ltd vs West End Distributors Ltd* (1969) E.A 696.
12. Secondly, it has been submitted that the doctrine of sub-judice is inapplicable to the subject matter. In particular, it has been posited that though there is an appeal, namely; Meru ELC appeal NO. E031 of 2025, the said appeal touches on and concerns the question of costs attendant to the withdrawn suit. For good measure, it has been submitted that the said appeal does not concern the question of adverse possession. In this regard, it has been contended that the invocation and reliance on the doctrine of sub judice is misconceived.
13. Thirdly, learned counsel for the plaintiff has submitted that the issue before this court touches on and concerns a claim for adverse possession. For good measure, it has been contended that the issues relating to the boundary dispute are new issues which are being raised by the defendant. Further, and at any rate, it has been posited that such issues, namely the existence of a boundary dispute [if at all], would



- require the adduction of evidence during the plenary hearing. Nevertheless, it has been submitted that the issues being raised, which are evidential in nature, cannot be canvassed vide a preliminary objection.
14. Fourthly, learned counsel for the plaintiff has submitted that where the facts contained in the pleadings of the adverse party are disputed, like in the instant case, a preliminary objection becomes untenable.
 15. Finally, learned counsel for the plaintiff has submitted that the defendant herein has since filed a statement of defence and counterclaim and wherein same has impleaded fraud as against the plaintiff; the county land registrar; and the counter surveyor. In this regard, it has been submitted that the issues before the court are contentious and thus cannot be determined on the basis of a preliminary objection, either in the manner adverted to or at all.
 16. Flowing from the foregoing submissions, learned counsel for the plaintiff has submitted that the preliminary objection by the defendant is premature, misconceived, and legally untenable. In this regard, the court has been invited to dismiss the preliminary objection and to award costs.
 17. Having reviewed the Notice of Preliminary Objection dated 26th August 2025; the originating summons beforehand and upon taking into consideration the oral submissions by/on behalf of the respective parties, I come to the conclusion that the determination of the subject matter turns on three [3] key issues, namely; whether the preliminary objection canvassed by the defendant raises pure issues of law or otherwise; whether the subject suit is prohibited by the doctrine of res – sub judice or otherwise; and whether this court is divested of jurisdiction to entertain the subject suit on the basis of Section 18 (2) of the [Land Registration Act](#) or otherwise.
 18. Regarding the first issue, it is imperative to recall and reiterate that learned counsel for the defendant has referenced the existence of Meru ELC Appeal E031 of 2025, which is said to concern the same issues/ matters that are substantially being canvassed in respect of the subject suit. Moreover, learned counsel for the defendant posited that the appeal under reference arose from a previous suit, namely; Meru ELC E057 of 2024, which had been filed by the plaintiff herein but was subsequently withdrawn.
 19. Furthermore, learned counsel for the defendant has also contended that the subject dispute touches on and concerns a boundary dispute. To this end, learned counsel for the defendant referenced the boundary summons dated 29th March 2023 and which is [sic] annexed to the notice of preliminary objection. On the basis of the said boundary summons, learned counsel has submitted that the dispute beforehand therefore falls outside the jurisdiction of this court. In particular, it has been posited that the court can only engage with the matter after the land registrar has discharged his statutory mandate.
 20. Additionally, learned counsel for the defendant has also conceded that the facts as pleaded by the adverse party [the plaintiff herein] are contested. Put differently, learned counsel for the defendant has posited that same does not admit and or concede the facts as pleaded by the plaintiff.
 21. The foregoing forms the basis/crux of the preliminary objection that has been propagated by learned counsel for the defendant. The question that does arise is whether the foregoing issues can be raised and canvassed in limine by way of a preliminary objection. To start with, it is not lost on me that the issues raised and highlighted by learned counsel for the defendant are contentious evidential/factual issues.
 22. Moreover, learned counsel is on record that the defendant does not admit; or concede the facts as pleaded by the plaintiff.
 23. In my humble view, a preliminary objection can only be raised and canvassed on the assumption that the facts as pleaded by the adverse party are admitted/deemed to be correct. The moment the proponent of the preliminary objection seeks to found the preliminary objection on contested factual matters/issues, the dispute falls outside the purview of a preliminary objection. Moreover, it is common



ground that the proponent of a preliminary objection cannot seek to underpin/ground the preliminary objection on annexures. In any event, I beg to state that the practice of annexing document[s] to a preliminary objection is unorthodox. Same is similarly illegal and unfathomable. Suffice it to state that such a practice must be brought to an end.

24. What constitutes a preliminary objection was expounded upon by the Court of Appeal for Eastern Africa [EACA] in the case of Mukhisa Biscuits vs West End Distributors Ltd (1969) E.A 696 – 701.

25. The court stated thus;

“So far as I am aware, 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. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

26. On his part, Sir Charles Nebbold- President, stated thus:-

“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 had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

27. It is instructive to observe that what the defendant was propagating before this court was not a pure point of law. No wonder learned counsel for the defendant resorted to the unorthodox tactic of annexing documents to the notice of preliminary objection. Notably, such kind of behavior must be deprecated and frowned upon.

28. Turning to the question as to whether the subject suit is prohibited by the doctrine of res sub-judice, it is imperative to highlight that the appeal which was referenced by learned counsel for the defendant touches on and concerns the question of whether the defendant [who is the appellant in the said appeal] ought to have been awarded costs following the withdrawal of the suit previously filed by the plaintiff.

29. In addition, it is not lost on me that the said appeal does not concern the issue of whether the plaintiff herein has since acquired/accrued adverse possessory rights to the suit property. Quite clearly, the issues at the foot of the appeal, which were referenced by learned counsel for the defendant, are distinct and separate from the issues before me.

30. For good measure, it is evident that learned counsel for the defendant was merely conflating the issues in dispute in a subtle, albeit dis-ingenious manner to camouflage the true nature of the matters beforehand.

31. It is important to posit that the doctrine of sub judice can only be invoked and relied upon where it is shown that there exists a previous suit between the same parties, before the same court or another court of competent jurisdiction, and touching on the same dispute. Pertinently, the doctrine in question cannot be invoked where the issues are substantially distinct. [See Section 6 of the [Civil Procedure Act](#) Cap 21 Laws of Kenya].



32. Before concluding on this issue, it is instructive to reference the decision of the Supreme Court in the case of 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) where the apex court distilled and expounded on the elements that underpin the doctrine of res sub judice.

33. For coherence, the court stated thus;

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.

34. I am afraid that the defendant did not meet and or satisfy the statutory threshold to warrant the invocation and deployment of the doctrine of res sub judice. In addition, the defendant also did not satisfy the threshold for the invocation of the doctrine of res judicata, which was also adverted to at the foot of ground 1 of the notice of preliminary objection.

35. Turning to the last issue, it is important to highlight that the dispute which has been placed before the court touches on and concerns whether the plaintiff has since acquired adverse possessory rights to and in respect of L.R No. Kiirua/Naari/1169 [the suit property]. It is common ground that a suit for adverse possession presupposes that the claimant is/has been in occupation, possession and in use of the property in question for more than 12 years without interruption by the registered owner. Suffice it to state that a suit for adverse possession is predicated on the dispossession of the registered owner; or the discontinuance of occupation by the registered owner. The elements underpinning adverse possession are referenced as nec vi; nec clam; nec precario.

36. The bottom line is that a suit for adverse possession does not envisage a boundary dispute. Furthermore, the question of the boundary dispute was being brought before the court by learned counsel from the bar. Moreover, I have posited that the issue of a boundary dispute cannot be canvassed by way of annexing a boundary summons to a notice of preliminary objection.

37. Simply put, I hold the view that the dispute before the court has nothing to do with a boundary issue. If anything, it is learned counsel for the defendant who is conflating/confusing the issues before the court. Consequently, and in view of the foregoing I am unable to discern the foundation of the arguments by learned counsel for the defendant.

38. Nevertheless, I am clear in my mind that the invocation and reliance on the provisions of section 18 (2) of the *Land Registration Act* is based on a misapprehension of the dispute before the court. To this end, I find and hold that the arguments by learned counsel for the defendant are misplaced.



Final Disposition.

39. For the reasons which have been highlighted in the body of the ruling, it must have become apparent that the preliminary objection dated the 26th August 2025; is misconceived and legally untenable. Same certainly falls within the dictum of Sir Charles Nebbold-President in the case of Mukhisa Biscuits Ltd [supra] where same stated that the frequent raising of preliminary objections, even where same do not suffice, ought to be discouraged.
40. In the premises, the final orders of the court are as hereunder;
- i. The Preliminary objection dated 26th August 2025; be and is hereby dismissed.
 - ii. Costs of the Preliminary objection be and are hereby awarded to the Plaintiff.
41. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF OCTOBER 2025

OGUTTU MBOYA, FCI Arb; CPM [MTI-EA].

JUDGE

In the presence of:

Hussein – Court Assistant

Ms. Mbumbuya for the Plaintiff

Mr. Thangicia David for the Defendant

