



REPUBLIC OF KENYA



KENYA LAW
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**Rassam & 4 others v Kazungu & 6 others (Environment and Land Case
31 of 2021) [2025] KEELC 6949 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6949 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE 31 OF 2021
SM KIBUNJA, J
OCTOBER 15, 2025**

BETWEEN

**OMAR ALI RASSAM 1ST PLAINTIFF
MOHAMED ALI RASSAM 2ND PLAINTIFF
RASSAM ALI TIMIMI 3RD PLAINTIFF
HARISA HASSAN RASSAM 4TH PLAINTIFF
ABDULHAKIM SALIM TWAHIR 5TH PLAINTIFF**

AND

**CHRISTOPHER KARISA KAZUNGU 1ST DEFENDANT
JOSHUA BAYA JEFWA 2ND DEFENDANT
MATANO AHMED MATANO 3RD DEFENDANT
PRIME HOLDINGS LIMITED 4TH DEFENDANT
TUVALU LIMITED 5TH DEFENDANT
REGISTRAR OF TITLES 6TH DEFENDANT
THE HONOURABLE ATTORNEY GENERAL 7TH DEFENDANT**

RULING

[Notice Of Preliminary Objection Dated 8th July 2021]

1. The 1st to 3rd defendants filed the notice of preliminary objection raising the following grounds:



- a. “That the suit herein is subjudice and there are two other matters being Mombasa High Court Constitutional Petition No. 52 of 2012 and High Court Civil Suit No. 42 of 2012 between the parties herein.
 - b. That the issues raised in the suit herein are substantially similar to pertain to the same cause of action and suit property as High Court Civil Suit No. 42 of 2012 and Mombasa High Court Constitutional Petition No. 52 of 2012.
 - c. That the filing of the suit herein offends the provisions of section 6 of the *Civil Procedure Act* Cap 21 of Laws of Kenya and the same is thus fatally defective and barred in law.
 - d. That the plaintiff’s suit is misconceived, mischievous, bad in law, frivolous and vexatious.”
2. On 4th June 2025, the court directed that parties who wished to file replies were at liberty to do so within 14 days from that date. The court also directed the parties to file and exchange submission within the given timelines. The court has noted from the case tracking system that no replies were filed, but the learned counsel for the 1st to 3rd defendants and the plaintiffs filed their submission both dated 10th July 2025, which the court has considered. During the subsequent mention of 23rd July 2025, counsel for the 4th and 5th defendants indicated that their clients would not participate in the hearing of the preliminary objection.
 3. The issues for determinations on the 1st to 3rd defendants’ preliminary objection are as follows:
 - a. Whether this suit is sub judice and if so what orders to issue.
 - b. Who bears the costs?
 4. The court has carefully considered the grounds on the notice of preliminary objection, the submissions by the learned counsel, superior courts decisions cited thereon, the pleadings and come up with the following determinations:
 - a. Sub judice is a time immemorial concept that limits the parties from filing several suits over the same subject matter. It is codified under section 6 of the *Civil Procedure Act*, chapter 21 of Laws of Kenya 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.”

In the case of Kenya National Commission on Human Rights versus Attorney General; Independent Electoral & Boundaries Commission & 16 Others (2002) e KLR, the Supreme Court of Kenya held that;

“The purpose of 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-----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 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”.

- b. The systems of courts is clearly set out under Article 162 of *the Constitution* of Kenya, and sub-article (2)(b) provides as follows:

- “(2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to –
- (a)
- (b) the environment and the use and occupation of, and title to, land.”

The above provision, read together with Article 165(5)(b) of *the Constitution* and the various superior courts’ decisions on the question of the court’s jurisdiction are clear that matters that are for determinations before this court are those raising issues of the environment and the use and occupation of, and title to, land, or as prescribed by other relevant legislation. Such matters cannot be heard and determined by the High Court.

- c. The court’s understanding of the dispute in HCCC No. 42 of 2012 is that it is over the suit property, and the 1st plaintiff herein is the only plaintiff in that suit. The plaintiff alleges to have subdivided the property and shared it among family members and relatives. That the 1st to 3rd defendants then trespassed and occupied the plots on the allegation that their great grandfathers lived on the subdivisions thereof. In a summarized form, the dispute is concerned with claims for ownership of the property by both parties, which from 30th August 2011, when the *Environment and Land Court Act* No. 19 of 2011 commenced, brings it squarely under the preserve or jurisdiction of this court. This court cannot issue any orders on matters before other courts of equal status, like the High Court, where that other matter is said to be pending. Therefore, as disputes raising issues of the environment and the use and occupation of, and title to, land, are outside the jurisdiction of the High Court, then the pendency of HCCC No. 42 of 2012 before the High Court, not being a court with jurisdiction on the said issues, cannot make this suit that is before the court with jurisdiction sub judice. However, had evidence have been availed to show that HCCC No 42 of 2012 has been transferred to this court, then this suit would automatically be sub judice.
- d. HCC Petition No. 52 of 2012 indicates that the 1st to 3rd defendants herein are the petitioners therein, and are seeking for inter alia a declaration that they are the rightful owners of the suit property, and that their right to own property among others had been violated. Going by the findings in (b) and (c) above, the issues in the petition are about issues of the environment and the use and occupation of, and title to, land, and the court with jurisdiction is this court. See section



13(2) of the *Environment and Land Court Act*. The said petition on matters on issues of the environment and the use and occupation of, and title to, land, filed before a court without jurisdiction, including the High Court, does not make this suit sub judice, as that other court is without jurisdiction. The position would have been different had the said petition have been transferred to this court. The upshot of the foregoing is that the 1st to 3rd defendants preliminary objection dated 8th July 2021 is without merit.

- e. That as the plaintiffs have successfully defended the preliminary objection, the 1st to 3rd defendants are in terms of section 27 of the *Civil Procedure Act*, chapter 21 of Laws of Kenya, which provides that costs follow the event unless where there is a good reason to order otherwise, obligated to pay their costs.

5. From the foregoing, the court finds and orders as follows on the 1st to 3rd defendants preliminary objection dated 8th July 2021:

- a. The said notice of preliminary objection is hereby rejected.
- b. The 1st to 3rd defendants to bear the plaintiffs' costs.

It is so ordered.

DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 15TH DAY OF OCTOBER 2025.

S. M. KIBUNJA, J.

ELC MOMBASA.

In The Presence Of:

Plaintiffs : Mr. Akanga

Defendants : Mr Rutto For 4th Defendant

Mr. Oloo For Busieka For 5th Defendant

Kalekye-court Assistant.

