



Ethics and Anti-Corruption Commission v Ahmed & 7 others; Mombasa County Government (Interested Party) (Environment and Land Case E005 of 2025) [2025] KEELC 5788 (KLR) (31 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5788 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND CASE E005 OF 2025**

**YM ANGIMA, J
JULY 31, 2025**

BETWEEN

ETHICS AND ANTI-CORRUPTION COMMISSION PLAINTIFF

AND

**ABDALLA ABDULKHALAK AHMED 1ST DEFENDANT
GHALIB ABDULKHALAK AHMED 2ND DEFENDANT
HUSSEIN ADNAN HUSSIEN 3RD DEFENDANT
MOHAMED AHMED OMAR 4TH DEFENDANT
MOHAMED MOHMOOD AWADH 5TH DEFENDANT
THUREYA MOHAMED ALI DIN 6TH DEFENDANT
ALI AWADH ALIYAAN 7TH DEFENDANT
AL KAMAR TRADING COMPANY LIMITED 8TH DEFENDANT**

AND

MOMBASA COUNTY GOVERNMENT INTERESTED PARTY

RULING

A. Defendants' Preliminary Objection

1. The 4th, 5th, 6th and 8th defendants (the defendants) filed a notice of preliminary objection dated 21.02.2025 on the ground that the suit offends Section 6 of the *Civil Procedure Act*.



B. Directions on Submissions

2. The court directed that the preliminary objection shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The defendants filed their submissions on 16.07.2025 while the plaintiff had not filed any submissions by the time of preparation of the ruling.

C. Issues for Determination

3. The court has perused the notice of preliminary objection dated 21.02.2025 and submissions made in support of it and is of the view that the following key issues arise for determination herein:
 - a. Whether the notice of preliminary objection is merited.
 - b. Who shall bear the costs of the objection.

D. Analysis and Determination

a. Whether the notice of preliminary objection is merited

4. What constitutes a preliminary objection was well established in *Mukisa Biscuits Manufacturing Co. Ltd v West End Distributors Limited* [1969] EA. 696 that;

“A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implications 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 submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”

5. The defendants submitted that the trial court had no jurisdiction to hear and determine the suit which is similar to ELC No. E107 of 2024 *Al Kamar Trading Company Limited v EACC and 3 others*, which is ongoing before ELC Court No. 3 of Mombasa and is slotted for mention on 22.07.2025.
6. Section 6 of the [Civil Procedure Act](#) on *sub judice* 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 are 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.”

7. For the court to determine whether the rule of sub-judice has been offended, the court has to delve into the pleadings of the case pending to examine them to determine if the facts and issues are similar. Once the court steps into the realm of facts and evidence, it places the matter outside the ambit of a preliminary objection. Just like *res judicata*, *sub judice* is incapable of being handled as a preliminary objection since they both require probing of evidence to determine the alleged duplicity of suits.



8. A properly raised notice of preliminary objection on jurisdiction is very limited and cannot include *sub judice* as was discussed in the case of [Margaret Wachu Karuri v John Waweru Ribiro](#) (2021) eKLR, where the Court held;

“For the Court to determine whether the issues herein were directly and substantially in issue with the other suit, it is this court’s considered view that it will have to ascertain facts and probe evidence by ascertaining whether the issues raised in the instant suit are the same as the ones in the Appeal aforesaid and further interrogate the prayers sought whether they are the same and relate to the same issues. On whether or not the same is sub-judice, facts have to be ascertained and a preliminary objection cannot be raised on disputed facts. Therefore, this court holds and finds what has been raised by defendant/objector does not amount to a preliminary objection, and thus the preliminary objection is not merited.”

9. The court finds that *sub judice* is not a pure point of law capable of being determined by way of preliminary objection.

b. Who shall bear the costs of the objection

10. Although the costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the [Civil Procedure Act](#) (Cap 21). A successful party should ordinarily be awarded the costs of an action unless the court, for good reason, directs otherwise. See [Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd](#) [1967] EA 287. However, since the plaintiff did not participate in the notice of preliminary objection, the court is inclined to make no orders as to costs.

E. Conclusion and Disposal Order

11. The upshot of the foregoing is that the court finds and holds that the notice of preliminary objection dated 21.02.2025 is not merited. As a consequence, the court makes the following orders;
- a. That the 4th, 5th, 6th and 8th defendant’s notice of preliminary objection dated 21.02.2025 is hereby overruled with no order as to costs.

Orders accordingly

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 31ST DAY OF JULY, 2025.

Y. M. ANGIMA

JUDGE

In the presence of:-

Gillian - Court assistant

Mr. Wambugu for plaintiff

N/A for the 1st, 2nd, 3rd and 7th defendants

Ms. Choni for the 4th, 5th, 6th and 8th defendants.

