



**Gichira t/a International Christian Assembly v Githatu (Environment and Land Appeal E038 of 2025) [2025] KEELC 7258 (KLR) (23 October 2025) (Judgment)**

Neutral citation: [2025] KEELC 7258 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E038 OF 2025**

**JG KEMEI, J**

**OCTOBER 23, 2025**

**BETWEEN**

**EMMANUEL GICHIRA T/A INTERNATIONAL CHRISTIAN  
ASSEMBLY ..... APPELLANT**

**AND**

**MATHINE GITHATU ..... RESPONDENT**

*(Being an appeal against the Ruling and order of the Hon Pamela  
Achieng, in MCELC No E199 of 2023 delivered on 30/1/2025)*

**JUDGMENT**

**The background**

1. The background of the suit, which forms the basis of this appeal, is the plaint filed by the Plaintiffs (now the respondent) on 7/6/23. The Plaintiff averred that he is the beneficial owner of plot No. 162 Njiru (suit land), a plot excised from LR No. 13166 within the larger Njiru Farm complex.
2. On 22/11/2014, it is averred that the Plaintiff entered into a lease agreement with the defendant over the suit land for the purpose of constructing and running a church called International Christian Assembly.
3. That the defendant paid a four months' rent deposit of Kshs 28,000/- and began construction of the church's semi-permanent structure. Subsequently, the defendant defaulted on rent payments, prompting the issuance of termination notices on 30/8/23 and 30/3/23, which the defendant ignored. The outstanding rent at the time of filing suit was Kshs 334,000/-.
4. The Plaintiff sought orders inter alia: payment of rent due in the sum of Kshs 334,000/-; damages for trespass; eviction orders; and the local police station to provide security in the eviction process.



5. The defendant denied the plaintiff's claim in the statement of defence dated 14/7/23. He argued that plot No. 13166 was never subdivided and that plot No. 162 does not exist at all. Contrary to this, the original plot No. 13166 was commonly owned by 21 persons, all deceased except three. He stated that the alleged subdivision was cancelled via various letters from the Ministry of Land and Physical Planning pending the resolution of multiple cases and disputes regarding L R NO 13166. As a result, there is no legal lease that could have been granted for plot No. 162 under these circumstances. He further contended that he constructed the church on LR No. 13166, not plot No. 162 as alleged by the plaintiff. Therefore, the termination notices issued by the plaintiff are of no legal effect as they do not concern plot No. 13166, and he owes no obligations to the plaintiff. Additionally, he contended that the plaintiff lacks the necessary locus standi to institute the present suit without the consent and authority of the other shareholders of L R No. 13166. He also alleged fraud against the plaintiff in creating plot No. 162 from LR No. 13166 without the land having first been subdivided.
6. On 26/7/24, the defendant filed a notice of motion against the plaintiff seeking orders that the plaintiff lacks locus standi to institute the suit herein, and that the same be struck out; there is no cause of action against the defendant, and the matter is sub judice; LR No 13166 is co-owned by 20 tenants in common who should be enjoined to the suit as interested parties; The Chief Land Registrar, Director of Survey, and the County Government of Nairobi should be enjoined as defendants in the suit.
7. The application was based on the grounds annexed thereto and the supporting affidavit of the defendant. Briefly, the grounds are;
  - a. The Plaintiff purports to be the beneficial owner of plot No 162, which was excised from LR No 13166.
  - b. LR No 13166 has never been subdivided, and as such, plot No 162 does not exist.
  - c. LR No 13166 is owned by other parties as tenants in common, and as such, the plaintiff does not have locus to bring the suit under a non-existent plot No 162.
  - d. There are other suits pending with respect to LR No 13166 before the court, including ELC 348/2009, ELC 742/2017, ELC 278/2016, and ELC 11/2019.
  - e. There is no deed plan for plot No 162
8. The Plaintiff/ respondent opposed the application vide the Replying affidavit of 7/10/24 on the grounds that;
  - a. The applicant has brought the application with unclean hands and is therefore not entitled to the orders sought.
  - b. The applicant is diverting attention from the existence of the lease that he entered on 22/11/24
  - c. On locus, the Plaintiff insists that he is the owner of plot 162, comprising LR No 13166, which was duly subdivided amongst the tenants in common.
  - d. There are no court orders or judgements cancelling the said subdivisions.
  - e. On sub judice, he states that the parties in the other suits are not similar to those in the current suit.
  - f. The dispute in this suit is purely based on breach of a lease agreement between the parties and has nothing to do with subdivision or otherwise of the suit land.



- g. The introduction of third parties in the suit is unnecessary because they are not privy to the lease agreement; the Plaintiff has no claim against the parties being sought to be enjoined from the suit; neither does the defendant state what claim he holds against the said third parties, and finally, it will delay the resolution of the instant dispute.
  - h. The defendant has defaulted in payment of the rent.
  - i. The application seeks to delay the proceedings whilst continuing to occupy the suit land without meeting his obligations regarding the payment of the agreed rent.
9. Upon considering the application, the trial court rendered itself as follows;
- a. On locus, the court held that the issues of locus were prematurely raised, as the question of whether or not the Plaintiff owned the land and if the land had been subdivided was not ripe until the court had the chance to hear the parties during the trial. The claim that the plaintiff had no locus to bring the suit was therefore unmerited.
  - b. On whether there was a cause of action against the defendant, the trial court held that the cause of action, as can be gleaned from the pleadings on record, appears to be the breach of a lease agreement between the parties, and therefore the claim that no cause of action exists is untrue.
  - c. On sub judice, the court stated that the defendant failed to demonstrate that the issues under litigation in the instant suit are similar to those in other suits.
  - d. On joinder, the court was not satisfied that the joinder of the Director of Survey and the Chief Land Registrar was justified in the present case.
  - e. In the overall, the court dismissed the application on the above grounds.

### **The appeal**

10. Aggrieved by the decision of the trial court cited in the preceding paragraph, the appellant, who was the defendant in the trial court, filed this appeal through the memorandum of appeal dated 25/2/25 on the following grounds;
- a. The application dated 26/7/24 was dismissed without the trial court addressing the salient issues in the application.
  - b. The trial court disregarded the appellants' supporting affidavit and submissions, resulting in an erroneous decision.
  - c. The trial court erred in concluding that the defendant's claim that the Plaintiff has no locus standi was unfounded. It was also incorrect to find that there was a cause of action against the defendant.
  - d. The trial court erred in holding that the matter was not res judicata.
  - e. The finding that the prayer for joinder was unjustified and that the claim is not concerning ownership of plot 162 was equally erroneous.
11. Consequently, the appellant sought the following orders;
- a. That the appeal be allowed with costs.
  - b. The Ruling of the trial court delivered on 30/6/25 and its consequential orders be set aside with costs to the appellant



- c. The application dated 26/7/25 should be allowed.

### **The written submissions**

12. Parties filed their respective submissions on 20/8/25 and 28/8/25. I have read and considered the respective submissions in this judgment.
13. The Appellant, in his submissions, identifies five issues for determination. The first issue is whether the Learned Magistrate erred in law and fact in concluding that the Defendant's claim—that the Plaintiff has no locus standi—was not justified. The Appellant asserts that the Plaintiff lacked the necessary locus standi to initiate the suit; MCELC No. E199 of 2023. He argues that the Respondent, being one of the Tenants in common concerning the parcel of land known as LR No. 13166, which was subdivided to create Plot No. 162—now non-existent—did not counter the claim that the subdivision of the suit land was cancelled. He contends that the Respondent can only sue as one of the Tenants in common regarding the entire suit property.
14. The second issue is whether the Learned Magistrate erred in law and fact in concluding that there was a cause of action against the Defendant. The Appellant argues that the Respondent does not have any cause of action against the Appellant. It is contended that there is no legally valid and/or binding lease in place, as the one relied upon is null and void ab initio. He further states that the main parcel of land, LR No.13166, which has not been subdivided, required the consent and authority of the other co-owners for any dealings with the land, including the alleged lease. He also asserts that a valid lease cannot exist without the subdivision of the main parcel. Since the Respondent has not been granted a specific portion, he cannot claim individual rights over it.
15. The third issue concerns whether the Learned Magistrate erred in concluding that the matter was not sub judice. The Respondent argues that the suit before the trial court is subject to Kiambu MISC Application No.19 of 2020. The Appellant references the order issued therein, which prohibits the Respondent from transferring, subdividing, or issuing deed plans on the original land pending the hearing and determination of that application. He contends that the Respondent should have clarified to the court what had happened to that matter and its outcome. He criticises the Magistrate for failing to mention the said order in the Kiambu case. He notes that there are other matters pending before various courts. The order in MCELC No. E199 of 2023 prevents the Respondent from subdividing the original land; therefore, how can the Respondent, claiming ownership of Plot No. 162, avoid disclosing the current status of the suit property? He maintains that the issue of subdivision is directly and substantially in dispute in the case before the Kiambu Court. The Learned Magistrate should have concluded that the suit is sub judice.
16. The fourth issue is whether the Learned Magistrate erred in determining that the prayer for joinder of parties was not justified. The Appellant contends that co-owners or tenants in common should be joined to the suit before the Lower Court as interested parties for a more effective and conclusive resolution of the matter. If these co-owners are joined, they can elucidate the issue of subdivision and confirm whether all outstanding cases concerning the original land have been resolved. They can also verify whether they consented to how the original land was subdivided and whether the portion where the church was constructed belongs to the Plaintiff. Based on this, the co-tenants ought to have been joined in the proceedings.
17. Furthermore, since the Chief Land Registrar, Director of Survey Kenya, and the County Government of Nairobi are the authors of the various letters to be relied upon by the Defendant, they ought to be joined in the proceedings in the interest of justice.



18. Finally, the Appellant criticises the Learned Magistrate for concluding that the suit does not concern land ownership after initially analysing the documentary evidence presented. He contends that the Learned Magistrate contradicted herself by first stating that the issue revolves around ownership while also determining locus standi, and then asserting that the issue is not about ownership due to the doctrine of privity of contract.
19. On his part, the Respondent identified four issues for determination. The first issue is whether the Respondent has a cause of action against the Appellant. The Respondent maintains that he has a proprietary interest in the suit property, having been issued with a Share Certificate after the subdivision of the original land. He asserts that, since his Share Certificate has not been challenged, his proprietary interest thereon is valid.
20. Furthermore, it is submitted that the Lease Agreement dated 22/11/2014 over Plot No. 162 is not disputed by the Appellant. The Appellant voluntarily entered into a tenancy arrangement with the Plaintiff, paid rent, and occupied the demised plot as a tenant for nearly 10 years. At this stage, the Appellant cannot dispute the Respondent's rights over the plot. He is estopped by the provisions of Section 121 of the *Evidence Act*. The Respondent cites the case of Kaka Mohamed –vs- Mohamed Ali (2018) KEELC 183 (KLR), where the court held that a tenancy relationship can properly exist in law even if the Landlord has no title to the property in question. Therefore, it was appropriate for the court to find that the Respondent had locus standi to institute the suit.
21. The second issue is whether the Respondent has a cause of action against the Appellant. The Respondent asserts that, in light of the Lease Agreement, the Appellant has fallen into rent arrears, and despite a Notice to vacate having been issued, the Appellant has refused to vacate. That it is evident that the Respondent has a reasonable cause of action. The issue of ownership can only be determined after a full hearing of the suit.
22. The third issue is whether, the Appellant has accused the Learned Magistrate of failing to find that the Respondent's suit was sub judice because of Kiambu Misc. Application No. 19 of 2020. The Respondent cites Section 6 of the *Civil Procedure Act* and argues that the order in the Kiambu case does not affect the Lease Agreement of 22/11/2014 between the Respondent and the Appellant. The Respondent states that the parties in that case are not the same as in this proceeding, nor are they litigating under the same title. This suit specifically seeks to recover rent arrears owed to the Respondent by the Appellant, who occupies and uses his Plot No. 162. There is no evidence that these are the same issues pending in the Kiambu case. Therefore, the suit before the Magistrate's Court is not sub judice to this one.
23. Lastly, the Respondent cites Order 10 Rule 8 (2) of the Civil Procedure Rules on the joinder of parties and states that joinder is only necessary where the presence of the party sought to be joined is essential to enable the court to effectively and fully adjudicate upon and resolve all questions involved in the suit. The Respondent reiterates that the suit relates to rent arrears arising from a breach of contract by the Appellant. The parties sought to be joined were not privy to the Lease Agreement. They assert that their addition will not raise any common question of law or fact with the existing cause of action. The parties sought to be joined are strangers to the subject Lease Agreement; hence, their joinder serves no purpose, and the Learned Magistrate was justified in her findings. The Respondent urges the Court to dismiss the Appeal with costs, as this court has no basis to interfere with the findings.

### **Analysis and determination**

24. Having considered the grounds and the entire record of appeal herein together with the written submissions of the parties, the key issue for determination is whether the appeal is merited.



25. To help the court determine the above issue, the court will break it down to four sub-issues; locus standi, cause of action, subjudice and joinder of third parties.
26. This being a first appeal, it is the duty of the Court to review the evidence adduced before the lower Court and satisfy itself that the decision was well-founded. In the case of *Selle & Another vs. Associated Motor Boat Co. Ltd & Others* [1968] EA 123, this principle was enunciated thus:
 

“...this Court is not bound necessarily to accept the findings of fact by the Court below. An appeal to this Court ... is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put they are that this Court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect...”
27. Whether or not the Court will interfere with the decision of the trial Court will be guided by the principles set out in the case of *Mbogo & Another vs Shah* [1968] EA where the Court held as follows;
 

“an appellate Court will not interfere with the exercise of the trial courts discretion unless it is satisfied that the Court in exercising its discretion misdirected itself in some matters and as a result arrived at a decision that was erroneous or unless it is manifest from the case as a whole that the Court has been clearly wrong in the exercise of judicial discretion and that as a result there has been injustice.”

**Whether the respondent had locus to bring the instant suit.**

28. The Black’s Law Dictionary, 9<sup>th</sup> Edition (page 1026) defines locus standi as;
 

“the right to bring an action or to be heard in a given forum”.
29. In the case of *Alfred Njau and Others v City Council of Nairobi* [1982] KAR 229 it was held that;-“The term Locus Standi means a right to appear in Court and conversely to say that a person has no Locus Standi means that he has no right to appear or be heard in such and such proceedings”.
30. Locus standi is essential in civil proceedings because, without it, a party does not have the right to initiate or maintain a suit even if there is a valid cause of action. It can be compared to a court acting without jurisdiction. The question of locus standi relates to the substantive importance of the suit. It concerns the sufficiency and directness of a person’s interest in the litigation, which qualifies them to be a party to the case. It also involves a person’s capacity to perform a legal act.
31. As previously stated in this ruling, the respondent has claimed to be the beneficial owner of the suit land, having acquired it through share certificate No 162 dated 24/9/2009. It has not been disputed that the original land, LR No 13166, was owned by 21 persons as tenants in common. I have seen the share certificate for plot No 162 in the respondent’s name. Likewise, the respondent has submitted an entry dated 11/12/2019 for LR No 13166/14 in their name. At a prima facie stage, the court was not shown any corresponding entry indicating that the respondent is not the owner of the land. It is necessary to state that I agree with the learned trial magistrate that questions of ownership or otherwise should be decided at the trial.
32. The appellant has not disputed that he and the respondent entered into a lease agreement dated 22/11/2014 for the said plot No 162, intended for constructing a church. The appellant’s argument



is that the respondent has no locus standi to sue him on the said lease agreement because the consent of the other tenants in common was not obtained.

33. Section 121 of the *Evidence Act* states as follows;

“No tenant of immovable property, or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had at the beginning of the tenancy a title to such immovable property; and no person who came upon any immovable property by the licence of the person in possession thereof shall be permitted to deny that such person had a right to such possession at the time when the license was given.

34. The court determines that a lease agreement exists between the parties, and the respondent is entitled to seek redress in this court. To hold otherwise would be, in my view, at best, fallacious.

### **Whether the respondent has a cause of action against the appellant**

35. Lord Pearson in *Drummond-Jackson V.B.M.A. (1970) 1 W.L.R. 688* at p. 696 defined a cause of action as follows;

“A cause of action is an act on the part of the defendant which gives the plaintiff his cause of complaint.”

36. In the present case, it has not been disputed that the parties maintained a tenant-landlord relationship until the appellant defaulted on rent payments. I have examined the plaint in this case, where the plaintiff makes his cause of action clear, which is the appellant's failure to pay rent or vacate the premises. I find that the cause of action as pleaded is clear, and therefore, the learned trial court made no error in that regard. The issue of ownership or whether the original land has been subdivided does not form part of the respondents' cause of action. In a suit, the plaintiff formulates his own cause of action in line with the grievance he has presented before the court. It is not for the defendant to impose a cause of action on the plaintiff.

### **Joinder of the third parties**

37. The Appellant also criticised the Learned Magistrate for not joining the other 20 co-tenants as interested parties, nor the Chief Land Registrar, Director of Survey Kenya, and the County Government of Nairobi as Defendants in the proceedings. The Learned Magistrate stated that these parties were not privy to the contract between the Appellant and the Respondent. Consequently, the court refused to join them as requested.

38. In the case of *William Muthee Muthomi –vs- Bank of Baroda, CA No. 91 of 2004*, all Court of Appeal cases have reiterated that “a contract affects only parties to it and that it cannot be enforced by or against a non-party.”

39. In the case of *Agricultural Finance Corporation –vs- Lengelia Ltd (1985) KLR 765 Hancox, JA* quoting with approval from *Halsbury Laws of England, 3<sup>rd</sup> Edition Volume 8, Paragraph 110*, reiterated that:-

“As a general rule a contract affects only parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it. The fact that a person who is a stranger to the consideration of a contract stands in such a near relationship to the party from whom



the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”

40. Further an Interested Party is “a party who has a recognizable stake (and therefore standing) in the matter.” Order 1 Rule 10(2) of the Civil Procedure Rules states as follows: -

“The court may at any stage of the proceedings, either upon, or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as Plaintiff or Defendant be struck out, and that the name of any person who ought to have been joined, whether as Plaintiff or Defendant or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon or settle all questions involved in the suit, be added.”

41. Further, The Supreme Court of Kenya in *Communications Commission of Kenya and 4 Others –vs- Royal Media Services Limited & 7* (2014) EKLK held as follows:

“An interested party is one who has a stake in the proceedings, though he or she was not party to the cause ab initio. He or she is one who will be affected by the decision of the Court when it is made, either way. Such a person feels that his or her interest will not be well articulated unless he himself or she herself appears in the proceedings, and champions his or her cause. Similarly, in the case of *Meme v. Republic*, [2004] 1 EA 124, the High Court observed that a party could be enjoined in a matter for the reasons that:

- i. Joinder of a person because his presence will result in the complete settlement of all the question involved in the proceedings;
- ii. Joinder to provide protection for the rights of a party who would otherwise be adversely affected in law;
- iii. Joinder to prevent a likely course of proliferated litigation.

We ask ourselves the following questions:

- a) what is the intended party’s state and relevance in the proceedings and
- b) will the intended interested party suffer any prejudice if denied joinder.?”

42. It is clear that the Proposed Interested Parties have no interest in the suit property. They are of no significance to the case. Nor will they face any prejudice if they are not included in the proceedings at the Lower Court. Since the Respondent entered into the Lease Agreement with the Appellant, the contract is solely binding on them and not on any third party.

43. Regarding the joinder of other Defendants, the Appellant argues that they issued most of the Letters on which the Appellant intends to rely at trial. The fact that the Letters were issued by the said Government does not make the recipients Defendants. No order is being sought against them. The Appellant may call the Officers from the respective Offices as Witnesses at trial.

44. Having established that there was privity of contract binding the Appellant and the Respondent to the Lease Agreement dated 22/11/2014, I am satisfied that the Learned Magistrate did not err in his evaluation and assessment of the evidence and the relevant law.

45. I agree with the trial court that the cause of action, which is based on a tenancy agreement between the parties, renders it unnecessary to enjoin the Director of Survey and the Chief Land Registrar at this stage. However, the appellant retains the freedom to, upon application, move the court at the



appropriate time when it is evident that there is a need to enjoin third parties. I find that this prayer is premature at this stage.

## Subjudice

46. Section 6 of the *Civil Procedure Act* states 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.”

47. When a suit is filed in a Court to which the Act applies, that Court shall not proceed with the trial if the matter in issue is directly and substantially in issue in a previous suit; the previous suit is pending in the same or another Court with competent jurisdiction to grant the relief claimed; the parties are the same or litigating under the same title; and the subject matter is the same.

48. The rationale of the doctrine of subjudice, which means “thing not adjudged,” is to prevent Courts of concurrent jurisdiction from trying two parallel suits concerning the same subject matter. In the case of *Abdulkadir A. Khalif v Principal Secretary, Ministry of Lands and Physical Planning & 6 others* [2018] EKLK, the Court held that;

“The basic purpose and the underlying object of Section 6 of the Code is to prevent Courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two Courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.”

49. Sub judice applies only when there is another ongoing suit or proceeding in a different court involving the same parties over the same subject matter. Upon reviewing the court order issued in Kiambu MISC Application No.19 of 2020, the Appellant references the order in which the court prohibited the Respondent from transferring, subdividing, or issuing deed plans on the original land until the hearing and determination of that application. The Court is fully satisfied that the case before that court does not concern tenancy or rent arrears. Furthermore, aside from the said order, the pleadings filed in that court were not presented, and the Court cannot determine whether the suit is still active or has been finalised.

50. The appellant argued that the court ordered the cancellation of the subdivision of the original land in Miscellaneous Application No 19 of 2020. For clarity, the orders issued in this case were interim in nature. They were issued in 2020, although the lease agreement was entered into in 2014. The burden of proving that the matter was sub judice rested on the appellant. It was expected that the appellant should have submitted the pleadings in Miscellaneous Application No 19 of 2020 before the court to allow the court to verify the application of sub judice.

51. The appellant failed to do so, to the extent that the court was unable to confirm that the current suit is indeed sub judice.

52. Final orders for disposal

a. In conclusion, after evaluating the trial court's decision, it is that the appeal is unmerited.



b. It is dismissed with costs to the respondent.

53. Orders accordingly

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 23<sup>rd</sup> DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.**

**J. G. KEMEI**

**JUDGE**

Delivered Online in the presence of:

1. Mr Onsombi for the Appellant
2. Mr Kipkoech for the Respondent
3. CA- Ms Yvette Njoroge

