



**Mi-Tech Limited v Felistus (Environment and Land Case
87 of 2020) [2025] KEELC 7162 (KLR) (21 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7162 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND CASE 87 OF 2020
JM ONYANGO, J
OCTOBER 21, 2025**

BETWEEN

MI-TECH LIMITED PLAINTIFF

AND

CATHERINE WAMBUI FELISTUS DEFENDANT

RULING

1. This ruling determines the Defendant's Preliminary Objection dated 5th May 2025 in which he raises two main grounds namely; that this Honourable court lacks jurisdiction to entertain this suit since the dispute is purely contractual in nature; Secondly, that the suit offends the provisions of section 6 of the *Civil Procedure Act* Cap 21 of the Laws of Kenya for the reason that there is a pending suit between the same parties and the same subject matter before a court of competent jurisdiction.
2. The court directed that the Preliminary Objection be disposed of by way of written submissions and both parties duly complied by filing their written submissions.

Defendants Submissions

3. The Defendant's submissions were filed through the firm of Gatama & Associates Advocates. On the issue of the court's jurisdiction, learned counsel for the Defendant submitted that the court's jurisdiction is limited to matters dealing with the environment, use of, occupation and title to land. He submitted that the present suit was not grounded in any of the above-mentioned issues. He clarified that at the time of filing this suit the Plaintiff was no longer in occupation of the demised premises and any claim arising from occupation or use of the demised premises was no longer valid.
4. He placed reliance on the case of Cooperative Bank of Kenya Limited v Patrick Kang'ethe Njuguna & 5 Others (2017) eKLR in which the court held that matters involving mortgages, charges, collection of dues and rent fall within the jurisdiction of the High court and not the Environment and Land Court. He submitted that the appropriate forum for the Plaintiff to ventilate its claim is the Magistrate's court



which has the requisite pecuniary jurisdiction to hear and determine commercial disputes with a value of Kshs.14,269,097.

5. Counsel also relied on the case of *The Owners of Motor Vessel Lillian S v Caltex oil (K) Limited* where the court held that where the court exercises jurisdiction which it does not have, the decision amounts to nothing. The court further observed that the moment a court holds the opinion that it has no jurisdiction, it should down its tools.
6. While submitting that the suit is sub-judice, counsel cited the provisions of section 6 of the *Civil Procedure Act* and relied on the case of *Republic v Paul Kihara Kariuki, the Attorney General & 2 Others ex-parte Law Society of Kenya (2020) eKLR* where the court held that the concept of sub-judice bars any court from trying an issue so long as the same is pending between the same parties before another court of law.
7. In conclusion, counsel urged the court to dismiss this suit for the reasons that the court lacks jurisdiction and that the suit is sub-judice.

Plaintiff's Submissions

8. Conversely, learned counsel for the Plaintiff submitted that the Defendant's Preliminary Objection does not meet the criteria of a preliminary objection as set out in the case of *Mukisa Biscuit Manufacturing Company Limited v West End Distributors (1969) 696* as it does not raise a pure point of law but instead raises points of fact which have to be ascertained by reading the lease at the centre of the dispute as well as the pleadings in the case filed in the Magistrate's court.
9. Counsel added that the points raised by the Defendant were not pleaded nor can they be implied from the pleadings as the defendant admitted the court's jurisdiction in her Defence.
10. On the question of the court's jurisdiction, counsel submitted that at the time the suit was instituted the Plaintiff was the Defendant's tenant on L.R No 28428/2, 28428/3 and 28428/4 pursuant to a lease agreement dated 25th January 2018 and therefore the suit related to the use and occupation of the suit properties thus falling within the jurisdiction of the court as stipulated in Article 162(2) (b) and Section 13 of the *Environment and Land Court Act*.
11. He added that the Magistrate's court did not have jurisdiction to hear and determine the suit as the amount claimed by the Plaintiff was way beyond the pecuniary jurisdiction of the Magistrate's court.
12. As to whether the suit is sub-judice, counsel submitted that the instant suit was filed on 1.10.20 while the suit in the Magistrate's court was filed by the defendant on 26.10.20. It was therefore his submission that the instant suit is not sub-judice as it was filed before the one in the lower court.

DIVISION - Analysis And Determination

13. I have considered the Preliminary Objection and the submissions filed by both parties and the following issues arise for determination.
 - i. Whether the issues raised constitute a proper Preliminary Objection.
 - ii. Whether the Court has jurisdiction to hear and determine this suit.
 - iii. Whether this suit is res sub-judice.



14. I will start by defining a Preliminary Objection. The case of Mukisa Biscuits Manufacturing Ltd v West End Distributors (1969) EA 696 is clear on the Court of Appeal observed that:

“... 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 a contract giving rise to the suit to refer the dispute to arbitration”.

In the same case Sir Charles Newbold, P. stated:

“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 has to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of preliminary objections does nothing but unnecessarily increase costs and on occasion, confuse the issue, and this improper practice should stop”.

15. Guided by the above principles, I will first consider whether the issues raised by the Defendants amount to pure points of law capable of disposing of the suit at this stage.

16. The question of the court’s jurisdiction is a pure point of law.

17. The jurisdiction of the Environment and Land Court is set out in Article 162(2) of *the Constitution* of Kenya, 2010 and Section 13 of the *Environment and Land Court Act*.

18. Article 162(2) of *the Constitution* of Kenya 2010 provides that:

Article 162(2)

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to:

- a. Employment and Labour relations
- b. The environment and the use and occupation of, and title to, land.”

19. Section 13 confers the Environment and Land Court, with jurisdiction as follows under Section 13(2) of the Act.

“In exercise of its jurisdiction under Article 162(2)(b) of *the Constitution*, the Court shall have power to hear and determine disputes-

- a. Relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- b. Relating to compulsory acquisition of land;
- c. Relating to land administration and management;
- d. Relating to public, private and community land and contracts, chooses in action or other instruments granting any enforceable interests in land; and
- e. Any other dispute relating to environment and land.”



20. In its Amended Plaintiff, the Plaintiff dated 20th June 2022, the Plaintiff seeks a waiver of rent for the months April 2020 to September 2020 owing the Covid-19 pandemic and the subsequent total closure of the Plaintiff's business. Her second prayer is for the sum of KShs. 63, 862, 903.80 being the value of the improvements erected by the Plaintiff on the suit premises which are now under the use and control of the Defendant. Her third prayers for the sum of KShs, 2, 640,000 on account of refundable security deposit.
21. It is not in dispute that the Plaintiff's claim arose out of lease agreement between the Plaintiff and the Defendant in respect of the premises on L.R No. 28428/2, 28428/3 and 28428/4. Although the Plaintiff has since been evicted from the demised premises, its claim is that the Defendant has taken possession of the structures the Plaintiff constructed on the suit premises and leased them to a third party. The question of whether the lease permitted the Plaintiff to construct structures on the Defendant's land and whether she was entitled to a refund for the said structures upon termination of the lease raises the issue of use and occupation of the suit premises which falls squarely within the jurisdiction of the Environment and Land Court.
22. I will now move to the question of sub-judice. 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.”
23. The principle, as emphasized in Kenya National Commission on Human Rights v Attorney General; IEBC & 16 Others [2020] eKLR, is intended to avoid multiplicity of suits, prevent abuse of process, and avert the risk of conflicting decisions.
24. It is not in doubt that the instant suit was filed on 1.10.20 while the suit in the Magistrate's court was filed by the defendant on 26.10.20. While the two suits are between the same parties and the same subject matter, this suit having been filed before the suit in the lower is not sub-judice. The sub-judice doctrine bars the court from proceeding with the suit that was filed later and not the one that was filed earlier.
25. Having arrived at the finding that this court has jurisdiction and that this suit is not sub-judice, the inevitable conclusion is that the Preliminary Objection lacks merit and it is hereby dismissed with costs to the Plaintiff.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 21ST DAY OF OCTOBER 2025.

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J. M ONYANGO

JUDGE.

In the presence of:

Mr Wachira for the Plaintiff

No Appearance for the Defendant

Court Assistant: Hinga.

