



REPUBLIC OF KENYA



North Rift Diaries Limited v Seahawk General Logistics Limited & another (Environment and Land Case E045 of 2023) [2025] KEELC 7266 (KLR) (22 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7266 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E045 OF 2023**

JG KEMEI, J

OCTOBER 22, 2025

BETWEEN

NORTH RIFT DIARIES LIMITED PLAINTIFF

AND

SEAHAWK GENERAL LOGISTICS LIMITED 1ST DEFENDANT

DALAI TRADERS AUCTIONEERS 2ND DEFENDANT

(In respect of the Defendants' Preliminary Objection dated 19/3/2025)

RULING

1. This Ruling is in respect to the Defendants' Preliminary Objection dated 19/03/2025.
2. To contextualize the objection, a brief background will suffice. The 1st defendant is the registered proprietor of LR No. 7583/237 Mwituu Road, Karen, Nairobi, the subject property herein. The property was charged to Stanbic Bank; however, a dispute arose between the first defendant and the bank, leading the 1st defendant to initiate proceedings in the High Court, being HCCOMM E485 of 2020. Nevertheless, the bank consented to the sale of the property through a private treaty to the plaintiff for a sum of Kshs. 80,000,000/-. It was agreed that the plaintiff would pay a deposit of Kshs. 10,000,000/- followed by a monthly payment of Kshs. 230,000/-. The plaintiff was subsequently granted possession of the property.
3. It is stated that the Plaintiff defaulted on the payment of the monthly rent and a notice of completion was issued. Consequently, the agreement was rescinded. The 1st Defendant proceeded to levy distress, which prompted the Plaintiff to institute this suit. The Defendants therefore contend that the transaction arises from the exercise of a statutory power of sale under a charge registered against the suit property, and the sale was conducted by way of private treaty. The 1st Defendant challenges the said auction. They aver that the hearing of the suit before the High Court has since commenced.



4. It is on that basis that the Defendants raise the instant objection and pray that the suit be struck out for want of jurisdiction on the grounds that;
 - a. The property LR No. 7583/237 Mwitw Road, Karen, is the subject of ongoing litigation before the Commercial and Tax Division, where the Plaintiff and the 1st Defendant are parties in HCCOMM E485 OF 2020 Seahawk General Logistics –vs- Stanbic Bank Kenya Limited and others.
 - b. The issues arising from this matter, as framed, are based on an agreement for sale and not a dispute over title or land ownership. The issues are purely contractual and fall outside this Court's jurisdiction.
5. The Court directed on 28/4/2025 that the Preliminary Objection be canvassed by way of written submissions. Both parties complied. The Defendant/Objectors' submissions are dated 14/7/2025, whereas the Plaintiff's submissions are dated 18/7/2025.

The 1st Defendant/ Objectors' Submissions

6. The Defendants submit that the first issue for determination is whether this Honourable Court can promptly entertain the present suit given that the subject matter is the same as that in a suit currently pending before the Commercial and Tax Division. The Defendant argues that the issues in dispute before this Court are directly and substantially in issue in the matter pending before the High Court. That the subject matter in this suit is the Agreement between the Plaintiff and the 1st Defendant over the suit property, which is also the subject matter in the previously instituted suit before the High Court.
7. They contend that the current suit breaches the doctrine of subjudice under Section 6 of the *Civil Procedure Act* and should not be entertained. They argue that the suit risks duplicating proceedings and exposing the Court to conflicting decisions. To support this, they cite the Supreme Court decision in Kenya National Commission on Human Rights –vs- Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties). They urged the Court to dismiss the suit for lack of jurisdiction.
8. The second issue for determination by the Defendants is whether the matters in this case are based on a contract for sale rather than a dispute over ownership or title to land, and therefore fall outside the jurisdiction of this Honourable Court. The Defendant/Objectors argue that the core issue in this suit is primarily based on the private treaty between the parties regarding the suit premises, and not on ownership or title to the land; hence, the dispute does not fall within this court's jurisdiction.
9. They contend that the dispute relates to the exercise of rights under a charge in a commercial transaction, rather than a contest over ownership or land use. The Objectors cite the Court of Appeal case of Cooperative Bank of Kenya Limited –vs- Patrick Kangethe Njuguna & 5 Others (2017) eKLR, where the Court held that, “the ELC jurisdiction is to deal with disputes connected to ‘use’ of land does not include mortgages, charges, collection of dues and rents. These are within the civil jurisdiction of the High Court. That the ELC Court has exclusive jurisdiction in line with Articles 162 (2) (b) of *the Constitution* and Section 13 of the ELC Act, which are not concerned with accounting questions, whereas the jurisdiction of the High Court in accounting matters is evidenced by Article 165 (3) of *the Constitution*...” They argue that the dispute herein, being rooted in contractual obligations arising from a charge and a private treaty sale, falls outside this Court's jurisdiction to hear and determine it. Therefore, they submit that the suit should be dismissed.



The Plaintiff's submissions

10. The Plaintiff contends that the Preliminary Objection raised herein is res judicata. It submits that similar objections had previously been raised by the 1st Defendant e-parte on 20/11/2023, which led to the Plaintiff's suit being struck out on that date by Justice Wabwoto. The 1st Defendant had raised a similar issue that there was a pending case before the High Court. Subsequently, upon an inter partes hearing of the Plaintiff's Notice of Application dated 24/11/2023, the Court, in its Ruling delivered on 20/12/2023, reinstated the suit. The learned Judge found that the two suits were different. He determined that this case arose from a failed sale agreement between the Plaintiff and the 1st Defendant concerning the suit property. Conversely, HCCOMM No. E485 of 2020 was filed by the Defendants seeking to restrain Stanbic Bank Ltd. from exercising its statutory power of sale over charged properties after the 1st Defendant defaulted on its contractual obligations to the Bank under a loan agreement. It argues that, in the absence of an appeal or review setting aside the orders, the current objection is res judicata, in accordance with Section 7 of the [*Civil Procedure Act*](#).
11. On the second ground of objection, the Plaintiff states that it primarily questions whether this court has jurisdiction over a dispute arising from an agreement for the sale of land. The Plaintiff contends that the current suit concerns ownership, as it seeks an Order of Specific Performance to compel the 1st Defendant to complete the sale of the suit property to the Plaintiff. This falls within the jurisdiction of this court.
12. The Plaintiff further accuses the 1st Defendant of abusing the court process by filing numerous objections. It urged the Court to dismiss the Preliminary Objection herein with costs just like the previous Objections.

Analysis and Determination

13. Having considered the preliminary objection and the rival submissions thereto, I am of the view that the issues for determination are;
 - a. Whether the preliminary objection raises pure points of law;
 - b. Whether the Preliminary Objection is res judicata.
 - c. Which orders should the court issue?

Whether the preliminary objection raises pure points of law;

14. The starting point is to define what a preliminary objection is. Regarding what constitutes a Preliminary Objection, in the case of Hassan Ali Joho & Another -Vs- Suleiman Said Shabal & 2 others SCK Petition No. 12013[2014] eKLR, the Supreme Court restated the definition in the case Mukisa Biscuit Manufacturers Ltd vs West End Distributors Ltd (1969) E.A, where the Court of Appeal said that:

“...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 need to be ascertained or if what is sought is the exercise of judicial discretion.”
15. Before addressing the question raised as a Preliminary point, the Court must first establish that the issue involves a pure point of law.



16. The required threshold for distinguishing between questions of law and fact for the purpose of sustaining a preliminary objection is also a well-established point. In the case of *George Oraro –vs- Eston Mbaja* [2005] eKLR, the Court held that:

“A preliminary objection is ... declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the processes of evidence. Any assertion which claims to be a preliminary objection, and yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication, is not, as a matter of legal principle, a true preliminary objection which the court should allow to proceed...”

17. The Objector argues that the property involved in this suit is the subject matter of a pending case before the Commercial and Tax Division, where the Plaintiff and the 1st Defendant are parties, namely HCCOMM E485 OF 2020 *Seahawk General Logistics versus Stanbic Bank Kenya Limited and others*. Therefore, the current suit is sub judice.

18. The doctrine of sub judice is provided under Section 6 of the *Civil Procedure Act* which 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.”

19. To determine whether the application is sub judice, the Court must analyse the pleadings and the contested facts to establish whether the issues raised in the current suit and those in the case before the Commercial Court are the same. This, effectively, ousts the objection from being a pure legal point.

20. I agree with the decision in *Henry Wanyama Khaemba –vs- Standard Chartered Bank Ltd & Another* (2014) eKLR, where the court pronounced itself as follows: -

“The issues of res judicata, duplicity of suits and suit having been spent will require probing of evidence as it is already evident from the submissions by the 1st Defendant. They are incapable of being handled as Preliminary Objections because of the limited scope of jurisdiction on Preliminary Objections.”

21. I am further persuaded by the court’s holding in the case of *Margaret Wachu Karuri –vs- John Waweru Ribiro* (2021) eKLR, where the Court was faced with a similar question whether sub-judice can be raised as a preliminary point and held as follows;

“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.

22. It is my finding that the issue of sub judice as raised by the Plaintiff would have been better ventilated through a normal Application to the court. The court needs more information than what is currently



provided to enable it make a proper determination. It is therefore my finding that the Plaintiff's Preliminary Objection is not merited.

Whether the Preliminary Objection is res judicata

23. The principle of res judicata is provided in Section 7 of the *Civil Procedure Act* as follows:

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

24. The *Civil Procedure Act* also provides explanations with respect to the application of the res judicata rule. Explanations 1-3 are in the following terms:

- i “Explanation. (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.
- ii. Explanation. (2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.
- iii. Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.”

25. In *Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others* [2017] eKLR, the Supreme Court while considering the said provision held that all the elements outlined thereunder must be satisfied conjunctively for the doctrine to be invoked. That is:

- “(a) The suit or issue was directly and substantially in issue in the former suit.
- (b) That former suit was between the same parties or parties under whom they or any of them claim.
- (c) Those parties were litigating under the same title.
- (d) The issue was heard and finally determined in the former suit.
- (e) The court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.”

26. In essence, the doctrine implies that for a matter to be res judicata, the issues involved must be similar to those previously disputed between the same parties, and these issues must have been decided on their merits by a court with proper jurisdiction.

27. The Plaintiff has argued that the Preliminary Objection is res judicata since the issues now being raised have already been determined by this Court. A review of the record shows that the Objector had on 20/11/2023 informed the court of other pending proceedings before the Commercial Court. Justice E. Wabwoto then directed the Defendant to file pleadings in the other suit for consideration by the court. On 20/11/2023, Counsel for the 1st Defendant confirmed that they had filed the pleadings regarding HCCOMM NO. E485 OF 2020. He argued that the case therein relates to the suit property in this matter. The Learned Judge then proceeded to strike out the suit, with costs awarded to the 1st Defendant.



28. Aggrieved by the said orders, the Plaintiff filed an application dated 24/11/2023 seeking a review and to set aside the orders issued on 20/11/2024. Justice E.K. Wabwoto, in his ruling of 20/12/2023, reinstated the suit along with the application dated 8/8/2023 and the interim orders issued therein. In granting the orders, the learned judge noted that the suit had been unprocedurally struck out when the matter was scheduled for a mention, not a hearing.
29. From the foregoing, the basis of the reinstatement was not that the two suits were different and distinct, but rather that the suit had been struck out when the matter was scheduled for a mention. Evidently, the Court did not decide whether or not the suit herein is sub judice to the suit pending before the Commercial Court. It is therefore my finding that the Preliminary Objection is not res judicata.

Which orders should the court issue?

30. Having held that the 1st Defendant's Preliminary Objection dated 19/3/2025 raised herein does not present a pure point of law, it is dismissed with costs to the Plaintiff. The 1st Defendant is at liberty to move the court accordingly, if so desired.
31. Final orders for disposal
 - a. In view of the foregoing, the 1st Defendant's Preliminary Objection dated 19/3/2025 is dismissed
 - b. Costs are awarded to the Plaintiff.
32. It is so ordered

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 22ND DAY OF OCTOBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered Online in the presence of:

Mr Waudo for the Plaintiff

N/A for the Defendants

CA- Ms Yvette Njoroge

