



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC SUIT NO. E044 OF 2025

SAMUEL KANGETHE.....1ST
PLAINTIFF/APPLICANT

JOSEPHINE NJERI THOME.....2ND
PLAINTIFF/APPLICANT

Versus

SAMMY NJIHIA WAMAE.....1ST
DEFENDANT/RESPONDENT

MARY WANJIKU NDEGWA.....2ND
DEFENDANT/RESPONDENT

ISAIAH WAWERU NGUMI.....3RD
DEFENDANT/RESPONDENT

STARLINE AUCTIONEERS.....4TH
DEFENDANT/RESPONDENT

CHIEF REGISTRAR KIAMBU COUNTY.....5TH
DEFENDANT/RESPONDENT

RULING

1) The 1st, 2nd and 4th Defendants raised the instant Notice of Preliminary Objection dated 04/04/2025 to the Notice of Motion Application dated 14/03/2025 on grounds THAT;

**1. THAT there is a similar active suit namely Kikuyu
MCELC/E070/2023 involving the same subject**

matter between the Plaintiffs and the 3rd Defendant coming up for hearing on 23rd April 2025.

- 2. THAT there is a similar active suit involving the Plaintiffs on one hand and the 1st, 2nd, 3rd and 4th Defendants on the other hand namely Nairobi High Court HCCCOM MISC. NO. E511 of 2022 coming up for Ruling on 25th September 2023.**
- 3. THAT the Plaintiffs filed a similar application dated 2nd October 2023 involving the same parties and the same subject matter before the High Court in Nairobi in HCCCOM MISC. NO. E511 of 2022 which was dismissed on 19th October 2023.**
- 4. THAT the Plaintiffs filed other similar applications dated 13th December 2024 and 2nd January 2025 involving the same parties and the same subject matter before the High Court in Nairobi HCCCOM MISC. NO. E511 of 2022 which were dismissed on 16th January 2025.**
- 5. THAT the Plaintiffs filed other similar applications dated 16th January 2025, 10th February 2025 and 14th February 2025 involving the same parties and the same subject matter before the High Court in Nairobi in HCCCOM MISC. NO. E511 of**

2022 which came up for directions on 16th February 2025.

6. THAT on 16th February 2025, the Plaintiffs with the leave of Court withdrew applications dated 16th January 2024 and 2nd January 2025 leaving the application dated 10th February 2025 involving the same parties and the same subject matter pending before the High Court in Nairobi in HCCCOM MISC. NO. E511 of 2022.
7. THAT the application dated 10th February 2025 in HCCCOM MISC. NO. E511 of 2022 is coming up for Ruling on 25th September 2025.
8. THAT the Plaintiffs also filed Thika ELC Miscellaneous Application No. E014 of 2025 against the 1st, 2nd, 3rd and 4th Defendants which they withdrew on 26th February 2025 but went ahead to file this suit.
9. THAT the filing of eclectic suits and application before various Courts by the Plaintiffs amounts to forum shopping, the most wanton abuse of due process and wastage of judicial time.
10. THAT the property which is the subject matter of this suit, title number L.R. Sigona/1668 is situated in Kikuyu Sub-County hence outside the territorial jurisdiction of this Honorable Court.

11. THAT the property which is the subject matter of this suit, title number LR Sigona/1668 was sold to a 3rd party on 18th February 2025 through orders and warrants issued by the High Court in Nairobi in HCCCOM MISC. NO. E511 of 2022 hence this application has been overtaken by events.

12. THAT this Court lacks jurisdiction to stay proceedings before the High Court in Nairobi in HCCCOM MISC. NO. E511 of 2022.

13. THAT this suit ought to be dismissed at the earliest opportunity with costs to the 1st, 2nd, 3rd and 4th Defendants.

2) The Notice of Motion Application had been filed by the 1st and 2nd Plaintiff/Applicants seeking the following Orders:

1. Spent.

2. That pending the hearing and determination of this suit, this Honorable Court be pleased to issue an interim order restraining the 1st, 2nd and 3rd Defendants, whether by themselves, their agents, servants, employees, assigns or any other person acting on their behalf, from interfering with, alienating, trespassing, or in any way dealing with the property known as LR/SIGONA/1668.

3. That pending the hearing and determination of application, this Honorable Court be pleased to issue

an interim order restraining the 1st, 2nd and 3rd Defendants, whether by themselves, their agents, servants, employees, assigns or any other person action on their behalf, from interfering with, alienating, trespassing, or in any way dealing with the property known as LR/SIGONA/1668.

4. That pending the hearing and determination of this suit, this Honorable Court be pleased to issue an order suspending and/or nullifying the warrants of attachment and notification of sale dated 22nd January 2025 issued against LR/SIGONA/1688.
5. That pending the hearing and determination of this suit, this Honorable Court be pleased to issue a temporary injunction restraining the 5th Defendant from proceeding with registering any transaction in regards to the property LR/SIGONA/1688.
6. THAT pending the hearing and determination of this suit, this Court be pleased to issue an order of inhibition restraining the 1st, 2nd, and 3rd Defendants whether by themselves, their agents, servants, employees, assigns or any other person action on their behalf, from interfering with, alienating, trespassing, or in any way dealing with the property known as LR/SIGONA/1668.

7. THAT this Honorable Court be pleased to make any such further orders as it deems fit in the interest of justice.

8. THAT costs of this application be provided for.

3) The application is premised on the grounds on the face of it and the Supporting Affidavit sworn on 14/03/2025 by SAMUEL KANGETHE the 1st Plaintiff. The Plaintiffs depose that they entered into a valid sale and purchase agreement dated 21/03/2019 with the 3rd Defendant for purchase of LR/SIGONA/1668 situated in Zambezi area in Kiambu County at an agreed cost of Kesh 1,500,000.

4) That despite fully paying for the suit property the 3rd Defendant failed, neglected or refused to deliver the completion documents. The 1st Plaintiff has deposed that he instituted suit **MCELC E070 of 2023** before the Chief Magistrate's Court in Kikuyu seeking for an order of specific performance. Further that they filed **HCCCOMMISC E511 of 2022** in Milimani when they received auctioneer's orders on their property.

5) It is therefore not disputed that the Plaintiffs have filed multiple cases relating to the suit property which is the subject in the Plaint. In the Plaint the Plaintiffs have sought the following orders:

a) A declaration that the warrants of attachment and notification of sale were unlawfully obtained.

- b) A permanent injunction restraining the Defendants from interfering with, alienating, or auctioning LR/SIGONA/1688.
 - c) An order of removal of warrants of attachments attached on the fence of the property and any unlawful structures or placed on the suit property.
 - d) An order nullifying the warrants of attachment and notification of sale.
 - e) A declaration that the auction in regards to LR/SIGONA/1668 is void and not legally binding.
 - f) Costs of this suit.
 - g) Any other relief that this Honorable Court deems fit to grant.
- 6) On 27/05/2025, directions were taken to canvass the Preliminary Objection by way of written submissions. Except for the Counsel of the Objectors who filed their submissions dated 22/05/2025 through **Peter and Yvonne LLP Advocates**, no other party filed submissions despite being served on 22/05/2025, 18/09/2025 and 14/11/2025.

Analysis and Determination

- 7) The main issue for determination is whether the Preliminary Objection on sub judice and challenging the jurisdiction of this Court is merited in light of the foregoing.
- 8)** The parameters for consideration of a Preliminary Objection are now well settled. A Preliminary Objection must only raise issues of law. The principles that the Court is enjoined to

apply in determining the merits or otherwise of the Preliminary Objection were set out by the Court of Appeal in the case of **Mukisa Biscuit Manufacturing Co. Ltd vs. West End Distributors Ltd [1969] EA 696.**

- 9) It follows therefore that where a Court of competent and equal jurisdiction is seized of a matter touching on the same subject matter, I have no choice but to down my tools.
- 10) The instant Preliminary Objection impugns the Plaintiffs' suit for being Sub judice. The legal provisions for subjudice are anchored in Section 6 of the Civil Procedure Act as thus;

“6. Stay of suit

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.”

- 11) Elaborating on this doctrine, the Supreme Court in the Advisory Opinion in **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties [2020] eKLR** at para 67 stated;

“The term ‘sub-judice’ is defined in Black’s Law Dictionary 9th Edition as: “Before the Court or Judge for determination.” The purpose of the 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. This means that 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 res subjudice 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.”

- 12) The gist of the Preliminary Objection is that the instant suit is sub judice on account of **MCELC E070 OF 2023** between the Plaintiffs and the 3rd Defendant Isaiah Waweru

Ngumi (hereinafter referred to as the **“Kikuyu case”**) where the Plaintiffs herein sought for an order of specific performance. The Plaintiffs stated in their Supporting Affidavit that the Court issued injunctive orders as evidenced by the Ruling annexure **‘SK-4’**.

13) The Plaintiffs also averred that the High Court in Milimani confirmed an arbitration award which led to the 2nd and 3rd Defendants obtaining execution orders and warrants of attachment. Infact stay orders were denied by the High Court and the property was auctioned which auction the Plaintiffs term to be illegal.

14) Now, in the present suit, the Plaintiffs pursuant to the Plaint dated 14/03/2025 gave a history of suits pending and touching on LR No SIGONA/1668 against the Defendants.

15) It therefore follows that there are (were) 4 pending cases related to this matter as thus;

a) MCELC E070 OF 2023

b) HCCCOMMISC E511 of 2022, and

c) ELC Miscellaneous Application No. E014 of 2025 which however was withdrawn.

16) Infact the 1st, 2nd and 4th Defendants have informed the Court that the subject property has already been sold vide the order and warrants issued by the High Court in **HCCCOMMISC E511 of 2022.**

17) Are the Plaintiffs abusing the process of the Court by filing multiplicity of suits? In the case of **Republic v Paul**

Kihara Kariuki, Attorney General & 2 Others Ex parte Law Society of Kenya [2020] eKLR Justice Mativo had this to say;

“The Court has an inherent jurisdiction to protect itself from abuse or to see that its process is not abused. The Black’s law dictionary defines abuse as everything, which is contrary to good order established by usage that is a complete departure from reasonable use. An abuse is done when one makes an excessive or improper use of a thing or to employ such thing in a manner contrary to the natural legal rules for its use. [22] The situations that may give rise to an abuse of Court process are indeed in exhaustive, it involves situations where the process of Court has not been or resorted to fairly, properly, honestly to the detriment of the other party. However, abuse of Court process in addition to the above arises in the following situations: -

a. Instituting a multiplicity of actions on the same subject matter, against the same opponent, on the same issues or multiplicity of actions on the same matter between the same parties even where there exists a right to begin the action.

- b. Instituting different actions between the same parties simultaneously in different Court even though on different grounds.***
- c. Where two similar processes are used in respect of the exercise of the same right.***
- d. Where an application for adjournment is sought by a party to an action to bring another application to Court for leave to raise issue of fact already decided by Court below.***
- e. Where there no iota of law supporting a Court process or where it is premised on recklessness. The abuse in this instance lies in the inconvenience and inequalities involved in the aims and purposes of the action.[23]***
- f. Where a party has adopted the system of forum-shopping in the enforcement of a conceived right.***
- g. Where an appellant files an application at the trial Court in respect of a matter which is already subject of an earlier application by the Respondent at the Court of Appeal.***
- h. Where two actions are commenced, the second asking for a relief which may have been obtained in the first. [24]***

39. Abuse of Court process creates a factual scenario where a party is pursuing the same matter by two-Court process. In other words, a party by the two Court process is involved in some gamble; a game of chance to get the best in the judicial process. [25]A litigant has no right to pursue paripasua two processes, which will have the same effect in two Courts at the same time with a view of obtaining victory in one of the process or in both. In several decisions of this Court, I have stated that litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks. Pursuing two processes at the same time constitutes and amounts to abuse of Court/legal process. [26] It matters not that the earlier suit was filed by the Branch of the LSK while the instant suit is filed by the main body.

40. Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse.[27] The abuse lies in the multiplicity and manner of the exercise of the

right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interface with the administration of justice.”

18) There are 3 cases pending between the parties with respect to the same subject matter and the same causes of action before concurrent Courts of competent jurisdiction. The causes of actions as I can glean from the pleadings revolve around the suit property LR No. SIGONA/1668 where there is a declaration of ownership by one party and eviction by the other. In the case of **David Ndi** aforesaid the Court was clear that the doctrine of subjudice as decreed in Section 6 of the Civil Procedure Act is meant to cure such mischief. Other than subjecting a claimant to litigation in many fora's of concurrent jurisdiction, costs of litigation, time consumed in litigating across Courts, there is the more serious matter of conflicting orders/decisions emanating from two or more Courts over the same matter causing undesired results of confusion and embarrassment to the Court and thus lowering its dignity and confidence in the eyes of the public.

19) It is trite that the remedy for a matter that is *sub judice* is to stay the suit. However, in this case I am hesitant to take that action because it will not serve any purpose other than to clog the judicial system given the multiplicity of suits that

have been filed by the parties as shown in paragraph 15 above. It is clear to the Court that the parties are already before the Court of law agitating their rights and it is totally unnecessary to maintain this suit. The parties must be redirected to the existing suits to litigate to their logical conclusion other than filing more suits hence abusing the judicial system.

20) In the absence of any opposition to the Preliminary Objection and given the reasons above the Preliminary Objection is upheld. The suit be and is hereby dismissed.

21) The Plaintiffs are condemned to pay costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 10TH DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.

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**MOGENI J
JUDGE**

In the presence of:

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Mr. Melita - Court Assistant

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**MOGENI J
JUDGE**