



Drumvale Farmers Cooperative Society Limited v Kimani & 3 others (Environment and Land Case E504 of 2024) [2026] KEELC 179 (KLR) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 179 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE E504 OF 2024
MN KULLOW, J
JANUARY 22, 2026**

BETWEEN

DRUMVALE FARMERS COOPERATIVE SOCIETY LIMITED PLAINTIFF

AND

GRACE WANJIKU KIMANI 1ST DEFENDANT

PETER NGULU KIMULI 2ND DEFENDANT

FRANCIS GACHANJA MWANGI 3RD DEFENDANT

CHIEF LAND REGISTRAR 4TH DEFENDANT

RULING

1. The matter relates to land titles No 8529/1, LR No 7283/1 and LR NO 3673. The applicant has filed a notice of motion application dated 26th May 2025 seeking to strike out the plaintiff's suit indicating that it is sub judice as there exists multiple suits in relation to the subject matter. That further the issue of territorial jurisdiction also arises as the suit has been filed in Nairobi whereas the suit property is located in Athi river within the jurisdiction of the Machakos court.
2. The application was supported by an affidavit sworn the 1st applicant on grounds that the application was an abuse of the court process being that the plaintiff had filed multiple suits in relation to the suit properties being ELC 42 OF 2014, ELC 42 OF 2017, and ELC NO E033 OF 2023 of which the plaintiff is a party to. That the issue of amalgamation of the suit properties has been addressed in one of the suits being ELC 42 OF 2017.

Reply

3. The plaintiff/respondent in opposing the application filed a replying affidavit sworn by one Felix Maingi Ngui on the 16th June 2025 where he deponed that the doctrine of sub judice cannot be invoked



as the plaintiff has not been a party to the suits listed by the applicants and neither has the issue of amalgamation of the properties into what is Mavoko Town Block 12 been adjudicated and decided on.

4. The applicant further filed a supplementary affidavit dated 30th July 2025 where the deponent deponed that the issues in ELC 42 of 2017 were still pending determination hence invocation of doctrine of sub judice and that the issues raised by the plaintiff in the suit could be adjudicated fully by having the matter consolidated at Machakos
5. The parties were instructed to canvass the application by written submissions. The applicant filed submissions dated 3rd July 2025 whereas the respondent filed its submissions dated 31st July 2025

Issues raised in the applicant's submissions

1. Whether the matter is sub judice
2. Whether the matter is an abuse of the court process
3. Whether the court has territorial jurisdiction
4. Whether the suit contravenes section 28 of the Cooperatives society Act
6. The applicant submitted that as highlighted there were pending matters touching on the subject properties where the plaintiff was a party to and the issue raised was on the amalgamation of the suit properties hence the doctrine of sub judice should be invoked relying on section 6 of the civil procedures Act and case law that is the case of Republic v. Paul Kihara Kariuki, AG & 2 others, Ex parte Law Society of Kenya [2020] eKLR, Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR.
7. That the filing of the matter was an abuse of the court process having established there are similar matters in court with competent jurisdiction yet to be determined upon and the plaintiff/ respondent is gambling on where he can get the most favourable outcome. He relied on what was stated in Satya Bhamu Gandhi Vs Director of Public prosecutions & 3 others (2018) eKLR.
8. On the issue of territorial jurisdiction, counsel submitted that the properties were situated in Machakos county and the right court to adjudicate would be the Machakos court in alignment with the provision of section 15 of the *civil procedure Act* that required suits to be instituted in a court within the local limits of whose jurisdiction the defendants as at the time of filing reside. Finally, counsel submitted that the deponent had no authority to swear the affidavit being that he had no authority in writing from the respondent to depone on the mater contravening section 28 of the cooperative *societies Act*.

Respondent's submissions

9. Respondent submitted that they had been in liquidation and came out of it on the 6th July 2022 and hence could not have been sued in any matter prior to then discrediting the ruling relied on by the applicant in ELC 42 OF 2017 which it was further submitted was on an interim application. Counsel submitted that the issue of amalgamation would need to be interrogated on a full trial.
10. That further sub judice would not suffice as already submitted they were in liquidation hence had not been party to any of the cases relied on by the applicant including ELC E033 OF 2023.
11. On the issue of territorial jurisdiction, the respondents submitted that the properties sit partially within Kajiado, Nairobi, and Machakos county and hence the respondents had the liberty to choose where to file the suit and being that they were resident in Nairobi, they filed it within the Nairobi ELC court.



The respondent further addressed the issue of the deponent lacking capacity to swear the replying affidavit and indicated that elected officials are mandated to act on behalf of the company, and the deponent being the chairman of the respondent was well within statutory authority to act on behalf of the company

Issues for the court's determination.

Whether the suit is sub judice

12. 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”.

13. Therefore, to prove sub judice, the following elements must be demonstrated;

- a. That there is a pending suit or proceeding in a court with competent jurisdiction to grant the relief sought in the current suit.
- b. That the issue in the pending suit or proceeding is also directly and substantially in issue in the current suit;
- c. That the parties in the pending suit or proceeding are the same parties or are privies of parties in the current suit.

14. On the issue of sub judice, the aim of the doctrine of sub judice is to prevent conflicting decisions by different courts, to save judicial time by avoiding multiplicity of law suits, and to protect the integrity of the court.

15. The issue of sub judice was considered in the case of Republic v. Paul Kihara Kariuki, AG & 2 others, Ex parte Law Society of Kenya [2020] eKLR where the court applied the principles of sub judice in a case involving the Law Society of Kenya (LSK) and stated that it mattered not that the earlier suit was filed by the Branch of LSK while the current suit was filed by the main body. The court stated as follows: -

26. Paraphrasing what I said in the above case, the key words in applying sub judice rule is that "the matter in issue is directly and substantially in issue in the previously instituted suit." The test for applicability of the sub judice rule is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. As concluded earlier, the answer to this question is a resounding yes. However, when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit or suits.

27. As the High Court of Uganda held in Nyanza Garage v Attorney General:-“In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of the parties because the parties are kept at a minimum both in terms of time and money spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases courts have to deal with. Parties would be well advised to avoid a multiplicity of suits.



- ”28. At the risk of repeating myself, for the doctrine of sub judice to apply the following principles ought to be present:- (a) There must exist two or more suits filed consecutively; (b) The matter in issue in the suits or proceedings must be directly and substantially the same, the parties in the suits or proceedings must be the same or must be parties under whom they or any of them claim and they must be litigating under the same title, the suits must be pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed. The mere fact that the applicant in the earlier suit is a Branch of the Law Society of Kenya, while the applicant in the instant suit is the main body does not change the situation. The Branch is suing on behalf of its members. As stated earlier, should the court determine the earlier suit either way, it will render the issues in the instant suit res judicata. Put differently, the outcome of the earlier suit will apply to the entire membership of the Law Society.”
16. Further in the Supreme Court case of Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] eKLR it was stated that:
17. The term sub judice is defined in Black’s Law Dictionary 9th Edition as: “Before the Court nor Judge for determination.” The purpose of the sub judice rule is to stop the filing of 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,
18. 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 sub judice 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.”
19. I have perused through the applicant’s supporting affidavit and one of the documents they rely on, in support of the argument that this matter is sub judice is the ruling dated 9th November 2022 in ELC 42 OF 2014. However looking at the issues raised and the determination does not in any way touch on the issues raised in the plaint dated 3rd December 2023 hence the requirements as in section 6 of the [civil procedure Act](#) have not been met
20. In ELC 42 of 2017 Daniel Kyuli & 6999 owners of a subdivision in Mavoko Town Block 12, the applicants have relied on the ruling which indicated that the applicants in the said matter had not proved how the suit properties had been amalgamated, this does not imply that the court had made a determination on the issue of amalgamation, rather that the applicants needed to prove how the suit properties had been amalgamated, if at all they had. This means that the issue is still one that needs interrogation and production of evidence in a full trial which was clearly stated in paragraph 11 of the said ruling which paragraph reads
- “Considering the defendants claim is that they have been on the suit land for the past 20 years, it is only proper and just for this court to grant both parties an opportunity to state how they acquired the suit properties “
21. This therefore implies that this court cannot move to issue the orders in the plaint before the issues as in ELC 42 OF 2017 touching on amalgamation have been heard and decided upon making this instant suit sub judice to ELC 42 of 2017 Daniel Kyuli & 6999 owners of a subdivision in Mavoko Town Block 12



22. The plaintiffs in the said matter are members of the plaintiff herein and hence fall under what section 6 of the *civil procedure Act* captures as same parties or between parties under whom they or any of them claim, litigating under the same title
23. A determination on ELC 42 OF 2017 would most definitely touch on some of the issues that have been raised in the instant suit as the matter will determine the ownership of the suit properties and as such get to the root of the 1st and 2nd defendant's titles.
24. Relying on the facts provided, the provisions of section 6 of the *civil procedure Act* and the case law as submitted above, I submit that this instant matter is sub judice however even where all the elements of the sub judice rule are proved, the only decision the court can make is to stay the proceedings as what section 6 of the *Civil Procedure Act* requires is that the court is barred from proceeding with the trial of a second similar suit. The court has no jurisdiction under section 6 of the *Civil Procedure Act* to strike out a suit on the basis of the sub judice rule.

Determination:

25. In view of the foregoing, I hold the view that the Notice of Motion Application dated 26th May, 2025 by the 1st and 2nd Defendants/ Applicants is partially merited and should be allowed allowed terms:
 - a. The present suit be and is hereby stayed pending the outcome and/or directions in ELC 42 OF 2017 on account of being sub judice.
 - b. There shall be no orders as to costs.

It is so ordered!

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 22ND DAY OF JANUARY, 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Mr. Njonjo for the Plaintiff/Respondent

Mr. Gituma for 1st & 2nd Defendants/Applicants

Philomena W. Court Assistant

