



**Gigiri Development Limited v Warrawee Gigiri Property Limited & 2 others (Environment and Planning Petition E045 of 2025) [2026] KEELC 214 (KLR) (21 January 2026) (Ruling)**

Neutral citation: [2026] KEELC 214 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND PLANNING PETITION E045 OF 2025  
MN KULLOW, J  
JANUARY 21, 2026**

**BETWEEN**

**GIGIRI DEVELOPMENT LIMITED ..... PETITIONER**

**AND**

**WARRAWEE GIGIRI PROPERTY LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT**

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA) .... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The suit is in relation to LR NO 91/453 Gigiri Road registered under the 1<sup>st</sup> respondent's name. The petitioner filed a notice of motion application dated 29<sup>th</sup> October 2025 seeking for conservatory orders restraining the 1st Respondent, from carrying out any further construction, excavation, alteration or any other form of development on the suit property
2. The application was supported by an affidavit sworn by Noordin Adamali. The grounds raised in the application were as follows
  - i. The 1<sup>st</sup> Respondent is undertaking an illegal and unapproved development in a controlled, low-density residential zone.
  - ii. The 1st Respondent is acting in open and wilful defiance of lawful stop orders issued by both the Nairobi City County and NEMA.
  - iii. The 1<sup>st</sup> Respondent is perpetrating a fraud on the public and the authorities by displaying a NEMA license that is not for its project.



- iv. The actions of the Respondents violate the Petitioner's rights to a clean and healthy environment and fair administrative action under the Constitution.
- v. It is necessary for the Court to intervene to uphold the rule of law and prevent the Petition from being rendered an academic exercise.

### **Response**

3. The 1<sup>st</sup> respondent in response to the application filed a notice of preliminary objection dated 29<sup>th</sup> November 2025 raising the following issues
  - i. That this Honourable Court lacks jurisdiction to adjudicate over the Dispute between the Petitioner and the Respondents.
  - ii. That the Petition against the Respondents is sub-judice since it is pending at the Environment and Land Court case No. ELCEPPET/E040/2025 between same parties herein over the same subject matter.
  - iii. That the petition in its entirety is frivolous, vexatious and a blatant abuse of the court and legal process and should be struck with costs to the 1<sup>\*\*</sup> Respondent.

### **Reply to the preliminary objection**

4. The petitioner responded to the notice of preliminary objection in a replying affidavit sworn by one Maluki Kitili Mwendwa on the 3<sup>rd</sup> December 2025.
5. He deponed that the doctrine of sub judice could not be invoked being that the parties in ELCEP EO40 OF 2025 and the parties in this instant petition were different, the issues and cause of action different as well. That petition in E045 OF 2025 seeks to enforce a rule of law pointing to the fact that the construction was illegal and lacking the necessary statutory approvals whereas in Petition E040 OF 2025 THE 1<sup>st</sup> respondent seeks to quash the enforcement notice from the 2<sup>nd</sup> respondent and be allowed to keep on constructing.
6. He deponed that at the time of filing this instant petition, they were not aware of the filing of ELC EP E040 OF 2025 as they had not been served with the pleadings and that the filing of this petition was in good faith. He deponed were the court to find an overlap then the appropriate remedy will be to consolidate the suits and not striking out of the petition.
7. On the 4<sup>th</sup> December 2025 the court directed that status quo to be maintained and until the dispensation of the notice of preliminary objection which is the subject of this ruling. The parties were instructed to dispense the notice of preliminary objection via written submissions which orders as at the time of drafting this ruling, had not been complied with.

### **Issues for the court's determination.**

#### **Whether the notice of preliminary objection is merited.**

8. 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”.

9. 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.
10. A perusal through the petition ELCEP040 OF 2025 and in comparison, to this petition, points out to the fact that the subject matter is the same, the parties are the same, The petitioner argues that the parties are not the same being that the 3<sup>rd</sup> respondent was not a party in ELCEP040 OF 2025. If the petitioner herein wanted to join the 3<sup>rd</sup> respondent, they have the option of applying to have a joinder of party. Filing of another petition is a recipe for chaos and confusion as well as an abuse of the court process.
11. A determination on ELCEP E040 of 2025 would most definitely touch on and address the issues that have been raised in this instant petition. The sole issues are whether the petitioner herein in carrying out construction had received the statutory notices to commence and in the answering of the same, the issue of the enforcement notice comes in and whether it should be quashed or not. The information needed in this current petition is the same information that would have been needed from the 3<sup>rd</sup> respondent herein so it is inevitable at some point the 3<sup>rd</sup> respondent would have been made a party to ELCEP E040 of 2025.
12. 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.”

13. 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:

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 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,

14. 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.”
15. I note the petitioner has not denied that there is a pending suit whose fulcrum revolves around the subject property. In applying the legal provisions as cited above, to the circumstances at hand, I hold the view that since there is still a pending suit that relates to the subject matter herein, this suit is hence sub judice.

**Conclusion:**

16. The notice of preliminary objection dated 26<sup>th</sup> November 2025 is therefore merited and this instant petition should be struck out with no orders as to costs.

It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 21<sup>ST</sup> DAY OF JANUARY, 2026.**

**MOHAMMED N. KULLOW**

**JUDGE**

Ruling delivered in the presence of: -

Mr. Daniel Nzeki for the Petitioner

No appearance for 1<sup>st</sup> Respondent

Mr. Njoroge for Wanjala for 2<sup>nd</sup> Respondent

Mr. Ngararu Maina for 3<sup>rd</sup> Respondent

Philomena W. Court Assistant

