



**Kenya Union of Special and Professional Guards v Bob Morgan Services Limited
(Cause E961 of 2025) [2026] KEELRC 117 (KLR) (23 January 2026) (Ruling)**

Neutral citation: [2026] KEELRC 117 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT NAIROBI
CAUSE E961 OF 2025
SC RUTTO, J
JANUARY 23, 2026**

**BETWEEN
KENYA UNION OF SPECIAL AND PROFESSIONAL GUARDS CLAIMANT
AND
BOB MORGAN SERVICES LIMITED RESPONDENT**

RULING

1. The Claimant filed a Statement of Claim dated 30th September 2025 seeking the following reliefs:
 - a. A declaration that the Respondent's failure to deduct and remit union dues is unlawful and contrary to Section 48(3) of the *Labour Relations Act* and Articles 36 and 41 of *the Constitution* of Kenya. ii) An order compelling the Respondent iii) to immediately commence deduction and remittance of union dues from the Claimant's members as per the notices in Form S (check-offs) and the written request issued under Section 48(3) of LRA, 2007.
 - b. An order be issued directing the Respondent to implement notices in Form S (checkoffs) duly signed once they are submitted by the Claimant union and are due in line with the provisions of section 48(3) of LRA, 2007.
 - c. An order directing the Respondent to account for and remit all union dues supposedly withheld from the date the written requests were submitted to the date of compliance, and/or when they became due, from her own pocket.
 - d. An order for general damages for violation of the Claimant's constitutional and statutory rights.
 - e. Any other relief this Honourable Court may deem just and expedient to grant in the circumstances.
 - f. Costs of this Claim



2. Filed contemporaneously with the Statement of Claim was a Notice of Motion brought under a Certificate of Urgency, seeking interim orders pending the hearing and determination of the suit.
3. Upon service of the Statement of Claim and the Motion, the Respondent filed a Notice of Preliminary Objection dated 16th October 2025, premised on the following grounds:
 - a. There is a suit pending before this Court with the same subject matter on Union deductions in ELRCC/E855/2025, filed on 8th September, 2025 where the Claimant/Applicant is the 1st Respondent and the 2nd Respondent herein is the 3rd Respondent.
 - b. The instant suit was filed on 2nd October 2025 with full knowledge of the said pending suit before this Court.
 - c. The pending suit came for hearing of the application on 13th October, 2025, where the Claimant/Applicant and the 2nd Respondent were present in Court.
 - d. The instant suit is a blatant abuse of court process.

Submissions

4. The Preliminary Objection was canvassed by way of written submissions. On its part, the Respondent submitted that the instant suit and ELRCC No. E855 of 2025 involves the same parties and relates to the same subject matter.
5. Conversely, the Claimant submitted that the Preliminary Objection does not meet the legal threshold of a valid objection as set out in *Mukisa Biscuit Manufacturing Co. Ltd v West End Distributors Ltd* (1969) EA 696.
6. The Claimant further contended that the Respondent failed to demonstrate that ELRCC No. E855 of 2025 is a referral under Section 69 of the *Labour Relations Act*, involves the same parties, or seeks similar reliefs, and is therefore sub judice.
7. In support of its submissions, the Claimant relied on several authorities, including *Republic v Registrar of Societies – Kenya & 2 Others Ex Parte Moses Kirima & 2 Others* [2017] eKLR, *Kiki Investments Ltd & 2 others v Insurance Regulatory Authority (Civil Appeal 381 of 2017)* [2024] KECA 1316 (KLR) (27 September 2024) (Judgment), *Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) v North Coast Beach Hotel Ltd* [2016] eKLR and *Republic v Paul Kihara Kariuki* (2020) eKLR.

Analysis and Determination

8. I have considered the Preliminary Objection and the rival submissions, and the sole issue for determination is whether the instant suit is sub judice.
9. The doctrine of sub judice is codified under Section 6 of the *Civil Procedure Act* as follows:

“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.



Explanation - The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court”.

10. In essence, the doctrine of sub judice precludes a court from proceeding with the trial of a suit where the matter in issue is directly and substantially the same as that in a previously instituted suit between the same parties, pending before the same or another court of competent jurisdiction. The doctrine is intended to prevent courts of concurrent jurisdiction from simultaneously entertaining proceedings involving substantially identical issues and seeking similar reliefs.
11. The Supreme Court expressed itself with respect to the doctrine of sub judice in *Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties [2020] eKLR)* thus:

“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 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.”
12. And in *Kenya Bankers Association v Kenya Revenue Authority [2019] eKLR*, Mativo J (as he then was) restated the principles applicable in sub judice in the following manner:

“34. 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.”
13. I have considered the Memorandum of Claim and the pleadings in ELRC Cause No. E855 of 2025 and observe that the matter, which involves the Claimant, the Respondent, and other parties not before this Court, pertains to the implementation of Legal Notice No. 1 of 2025, published on 17th January 2025.
14. Pursuant to the said Legal Notice, the Cabinet Secretary for Labour and Social Protection directs every employer with more than five members of the Claimant’s Union to deduct trade union contributions on a monthly basis and remit the same to the Claimant Union.
15. In the present suit, the Claimant Union seeks to enforce the same Legal Notice No. 1 of 2025, contending that the Respondent has failed to comply with its provisions as required under Section 48(3) of the *Labour Relations Act*.
16. In light of the foregoing, it is evident that the subject matter of the present suit is substantially similar to that in ELRC Cause No. E855 of 2025, the only difference being that the Claimant in that matter,



the Kenya National Private Security Workers Union, seeks, inter alia, orders declaring Legal Notice No. 1 of 2025 invalid and of no legal effect.

17. It therefore follows that a determination in ELRC Cause No. E855 of 2025 will have a significant bearing on the present matter and will largely determine the outcome of this suit.
18. In light of the foregoing, the present suit falls squarely within the doctrine of sub judice, as the parties are the same as those in ELRC Cause No. E855 of 2025, and the subject matter, being Legal Notice No. 1 of 2025, is directly and substantially similar. What's more, the matter is pending before another Judge of the Employment and Labour Relations Court, which is properly seized of jurisdiction to determine the issue.
19. In the circumstances, I find and hold that the present suit is sub judice.
20. Accordingly, the Respondent's Preliminary Objection dated 16th October 2025 is upheld.
21. Be that as it may, the Court will not strike out the present suit but will stay further proceedings pending the hearing and determination of ELRC Cause No. E855 of 2025.
22. There will be no orders as to costs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF JANUARY 2026.

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STELLA RUTTO

JUDGE

In the presence of:

Mr. Ongera for the Claimant (Union representative)

Mr. Biyogo for the Respondent

Catherine Court Assistant

ORDER

In view of the declaration of measures restricting court operations due to the COVID-19 pandemic and in light of the directions issued by His Lordship, the Chief Justice on 15th March 2020 and subsequent directions of 21st April 2020 that judgments and rulings shall be delivered through video conferencing or via email. They have waived compliance with Order 21 Rule 1 of the Civil Procedure Rules, which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court had been guided by Article 159(2)(d) of *the Constitution* which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under Article 48 of *the Constitution* and the provisions of Section 1B of the *Civil Procedure Act* (Chapter 21 of the Laws of Kenya) which impose on this court the duty of the court, inter alia, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

STELLA RUTTO

JUDGE

