

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERICHO
ELC CASE NO. E002 OF 2023

EDNA CHEPKEMOI RONO.....
PLAINTIFF

VERSUS

**ALICE CHEPTOO NGETICH (Suing as the Administratrix and/or
personal representative of the estate of GEORGE FREDRICK
NGETICH(Deceased).....1st**
DEFENDANT

THE LAND REGISTRAR, KERICHO COUNTY..... 2ND
DEFENDANT

DIRECTOR OF CRIMINAL INVESTIGATION BELGUT..... 3RD
DEFENDANT

THE ATTORNEY GENERAL.....4TH DEFENDANT

RULING

Introduction.

- 1.** This ruling is in respect of the 1st Defendant's Preliminary Objection dated 30th October, 2023. It is on the following ground;

***a. That in light of the pending suit in
Kericho Chief Magistrate E041 of
2022 i.e George Fredrick Ngetich v
Bernard Kiprono Kirui, Kevin***

Kipngetich Kirui Sheila Chepngetich & Ednah Chepkemoi , Rono, those proceedings are subjudice pursuant to the provisions of Section 6 of the Civil Procedure Act.

Factual Background.

2. It has taken longer than usual to determine the Preliminary objection herein. The subsequent paragraphs will shed light on the reasons for delay.
3. The Plaintiff commenced the present proceedings vide the Plaint dated 24th January, 2023 which plaint was amended on 18th March, 2025. The Plaintiff seeks the following prayers;

a. An order be hereby granted that the action of the 2nd Respondent Defendants (sic) of subdividing and transferring all that parcel of land LR No. Kericho/Kapsuser/3097 into LR No. Kericho/Kapsuser/6245 and LR No. Kericho/Kapsuser/6246 is

unconstitutional, invalid, null and void and is of no legal effect whatsoever.

b. A declaration that the sub-division of all that property known as LR No. Kericho/Kapsuser/3097 into LR No. Kericho/Kapsuser/6345 and LR No. Kericho/Kapsuser/6346 was a consequence of illegality, irregularity and/or fraud.

c. An order directing the Land Registrar in custody of the registers in respect of the titles to the properties known as Kericho/Kapsuser/3097 into LR No. Kericho/Kapsuser/6245 and LR No. Kericho/Kapsuser/6246 (sic) to forthwith cancel them and restore the register in respect of the parcel of land known as LR No. Kericho/Kapsuser/3097; in the manner it was, before its purported sub-division.

d. That the 1st Defendant is an illegal occupant and/or trespasser on the Plaintiff's property known by reference as LR No. Kericho/Kapsuser/3097.

e. A permanent injunction does issue restraining the Defendants, their agents

and/or servants from any further trespass and/or interference with the Plaintiff quiet possession, use and enjoyment of the parcel of land comprised in LR No. Kericho/Kapsuser/3097.

- f. General damages for loss of use of the suit property.***
- g. Costs and interest of this suit.***
- h. Such further relief as this Court will deem fit or just to grant.***

- 4.** The 1st Defendant filed a Statement of Defence and Counterclaim dated 3rd July, 2023 wherein she seeks orders that the Plaintiff's suit be dismissed with costs.
- 5.** The 2nd, 3rd and 4th Defendants filed their Statement of Defence dated 30th October, 2023 which statement of Defence was amended on 14th July, 2025. The 2nd, 3rd and 4th Defendants deny the averments in the Amended Plaint and seek that the Plaintiff's suit be dismissed with costs.

- 6.** The Preliminary Objection dated 30th October, 2023 first came up for directions on 1st November, 2023 and the Court directed that it be canvassed by way of written submissions.
- 7.** The matter was mentioned on 29th November, 2023 when Counsel for the Plaintiff sought leave to file an application to cease acting.
- 8.** The Court granted Counsel for the Plaintiff leave to file the said application and directed that the hearing of the Preliminary Objection dated 30th October, 2023 be held in abeyance.
- 9.** On 17th January, 2024, Counsel for the Plaintiff informed the Court that he now had instructions to proceed with the suit and parties were granted more time to file their submissions on the Preliminary Objection.

10. When the matter came up for mention on 19th February, 2024, Counsel for the 2nd, 3rd and 4th Defendants informed the Court that she would not be participating in the hearing of the preliminary objection.
11. As the preliminary objection was pending hearing, the 1st Defendant died.
12. The matter was mentioned severally to confirm substitution and on 3rd February, 2025, the deceased 1st Defendant was substituted by **Alice Cheptoo Ngetich**.
13. Thereafter, the matter was mentioned severally to confirm whether the Plaintiff had filed an application to amend the Plaintiff.
14. The Plaintiff filed the application dated 30th April, 2025 seeking leave to amend the Plaintiff. The application was allowed on 7th May, 2025.

- 15.** On 17th July, 2025 the matter was mentioned and the Plaintiff was granted more time to file submissions on the preliminary objection.
- 16.** On 6th October, 2025, the matter was mentioned to confirm filing of submissions and reserved for ruling.

The Plaintiff's Response to the Preliminary Objection.

- 17.** The Plaintiff filed Grounds of Opposition dated 2nd October, 2025 in response to the 1st Defendant's preliminary objection. They are as follows;

a. The that the (sic) Preliminary objection is premised on a glaring misapprehension of the provisions of Section 6 of Civil Procedure Act.

b. The Notice of Preliminary Objection is fundamentally fatally defective, misconceived, frivolous, vexatious, and constitute a flagrant abuse of the Court process.

c. The Application (sic) is brought in bad faith.

d. That the Notice of Preliminary Objection constitute an abuse of the Court process and ought to be struck out with costs to the Plaintiff.

Issues for Determination.

18. The 1st Defendant filed submissions on 16th February, 2024 while the Plaintiff filed submissions on 3rd October, 2025.

19. The 1st Defendant submits on the following issues;

a. Whether the preliminary objection is merited.

b. Whether the doctrine of sub judice should be applied and what is the rationale.

c. Who should bear costs.

20. On the first issue, the 1st Defendant relies on **Section 6** of the Civil Procedure Act, the judicial decision of **Seven Seas Technologies Limited versus Eric Chege [2014] eKLR**

and submits that the preliminary objection raises the issue of *sub judice*.

21. The 1st Defendant also submits that *sub judice* is a pure point of law which can be raised by way of a preliminary objection.
22. The 1st Defendant further submits that in determining whether a matter is *sub judice*, the Court has to determine whether there are two suits pending in Court, whether the parties are the same and/or whether the parties are litigating under the same title. The Court has to also consider whether the subject matter in both suits is the same.
23. On the second issue, the 1st Defendant relies on the judicial decisions of **Speaker of National Assembly & another versus Senate & 12 Others [2021]eKLR, Joel Kenduiwo versus District Criminal Investigation Officer Nandi & 4 Others [2019]eKLR, Kenya National Commission on Human Rights vs Attorney General,**

Kenya Bankers Association versus Kenya Revenue Authority [2021]eKLR and Independent Electoral & Boundaries Commission & 16 Others [2020]eKLR.

- 24.** It is the 1st Defendant's submissions that Kericho CM ELC Case No. E041 of 2022 is pending before the subordinate Court.
- 25.** It is also the 1st Defendant's submissions that the parties in the said suit are;

“George Fredrick Ngetich versus Benard Kiprono Kirui, Kevin Kipngetich Kirui, Sheila Chepngetich and Ednah Chepkemoi Rono.”

- 26.** It is further the 1st Defendant's submissions that the parties in the present suit are similar to the parties in Kericho CM ELC Case No. E041 of 2022.

27. The 1st Defendant submits that the present suit is therefore *sub judice*.
28. The 1st Defendant also submits that the Courts have held that where two or more suits are filed over the same subject matter before Courts that have jurisdiction, the suit filed first should be heard and the latter suit stayed.
29. The 1st Defendant further submits that since Kericho CM ELC Case No. E041 of 2022 was filed first, the present suit should be stayed pending its hearing and determination.
30. The 1st Defendant relies on the judicial decision of **Muchanga Investments Limited versus Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR** and submits that the filing of separate suits despite the existence of similar suits amounts to an abuse of the Court process.

- 31.** The 1st Defendant also submits that multiplicity of actions over the same subject matter even where there exists a right to bring an action, should be regarded as an abuse of the Court process.
- 32.** The 1st Defendant further submits that abuse of the Court process is an obstacle to the efficient administration of justice.
- 33.** The 1st Defendant relies on **Order 2 Rule 15 (1)(d)** of the Civil Procedure Rules and urges the Court to find that the Plaintiff's Notice of Motion application dated 24th January, 2023 is *sub judice* and should be struck out.
- 34.** The 1st Defendant submits that she has demonstrated that the parties in the present suit and the parties in Kericho CM ELC Case No. E041 of 2022 are the same and the subject matter is also the same and urges the Court allow the preliminary objection with costs.

35. The Plaintiff in her submissions relies on the judicial decision of **Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969] EA 696** and submits on the following issues;

a. Whether this proceedings are sub judice pursuant to the provisions of Section 6 of the Civil Procedure Act.

b. Whether the preliminary objection raises issues of fact that have to be ascertained.

36. On the first issue, the Plaintiff relies on **Section 6** of the Civil Procedure Act, the Supreme Court of Nigeria's judicial decision of **Ocheja Emmanuel Dangana vs Hon. Attai Aidoko Alo Usman & Others, SC 480/2011 and SC 11/2012 (Consolidated)** and submits that this Court is established under **Article 162 (2) (b)** of the Constitution of Kenya.

- 37.** The Plaintiff submits that in the present suit, she is seeking for orders of cancellation of titles for land parcel No's Kericho/Kapsuser/6245 & 6246 which were allegedly obtained through fraud.
- 38.** The Plaintiff also submits that in Kericho CM ELC Case No. E041 of 2022, the 1st Defendant is seeking that a public road be established between land parcel No's Kericho/Kapsuser/6246 and 3098 among other orders.
- 39.** The Plaintiff further submits that at paragraphs 24 and 25 of the Amended Plaintiff, she has averred that Kericho CM ELC Case No. E041 of 2022 is pending in Court.
- 40.** The Plaintiff relies on the judicial decision of **Kenya Airports Authority vs Anthony Mutumbi Wachira [2015] eKLR** and submits that the issues raised in the present suit and

the issues raised in Kericho CM ELC Case No. E041 of 2022 are different and that the parties are also different.

- 41.** On the second issue, the Plaintiff relies on the judicial decision of **Oraro vs Mbaja [2005]eKLR** as was cited in **Margaret Nyiha Gatambia & 2 Others vs Peninah Ngechi Njaaga & 3 Others [2019]eKLR, Quick Enterprises Ltd versus Kenya Railways Corporation, Kisumu High Court Civil Case No. 22 of 1999** and submits that the 1st Defendant's Preliminary Objection lacks merit and should be dismissed with costs.

Analysis and Determination.

- 42.** I have considered the 1st Defendant's Preliminary Objection, the response thereto and the rival submissions. The only issue that arises for determination is whether the 1st Defendant's Preliminary Objection has merit.

43. The judicial decision of **Ushago Diani Investment Limited v Abdulwahab (Environment & Land Case 12 of 2023) [2023] KEELC 20213 (KLR) (27 September 2023) (Ruling)** cited with approval **Oraro v Mbaja [2005] eKLR 141** where the Court, on the nature of preliminary objections, held as follows on;

“A preliminary objection is now well identified as and 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 process 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. Where a Court needs to investigate facts, a matter cannot be raised as a preliminary objection anything that purports to be a preliminary objection must not

deal with disputed facts and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”(Emphasis mine)

- 44.** The 1st Defendant submits that Kericho CM ELC Case No. E041 of 2022 is pending before the subordinate Court.
- 45.** The 1st Defendant also submits that the parties in the said suit and the present suit are the same and that the subject matter in both suits is also the same.
- 46.** The 1st Defendant also submits that the present suit is therefore *sub judice* and that since it was filed after Kericho CM ELC Case No. E041 of 2022, it should be stayed.
- 47.** The Plaintiff on the other hand submits that the issues raised in the present suit and the issues raised in Kericho CM ELC Case No. E041 of 2022 are not the same and neither are the

parties the same. The Plaintiff, therefore, submits that the present suit is therefore not *sub judice*.

48. Section 6 of the Civil Procedure Act provides 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.”

49. In the judicial decision of **Cyrus Mucebiu Irungu v Martha Wanjiru Irungu & another [2022] KEELC 810 (KLR)** the Court held as follows;

“...I agree with the submission by counsel for the Plaintiff that the issue of sub-judice does

require the ascertaining of facts or probing of evidence in the two earlier suits mentioned by the 1st defendant which this honourable Court is not privy to. It therefore follows that the issue of sub-judice is not a pure point of law capable of being considered as a preliminary objection properly raised and does not meet the litmus test of what in law amounts to a preliminary objection.”

50. In the judicial decision of **Margaret Wachu Karuri v John Waweru Ribiro [2021] KEELC 2793 (KLR)** the Court 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 be (sic) ascertaining whether the issues raised in the

instant suit are the same as the once (sic) in the Appeal aforesaid and further interrogate the prayers sought whether they are the same and or relate to the same issues. On whether or not the same is Subjudice, facts have to be ascertained and a Preliminary Objection cannot be raised on disputed facts. Therefore, this Court holds and finds that what has been raised by Defendant/Objector does not amount to a Preliminary Objection, and thus the Preliminary Objection is not merited. (Emphasis mine)

51. Courts have held that the issue of *sub judice* requires the Court to ascertain facts and probe evidence and it is therefore not a pure point of law that can be raised through a preliminary objection.

Disposition.

52. Taking the foregoing into consideration, I find that the 1st Defendant's Preliminary Objection dated 30th October, 2023 lacks merit and it is hereby dismissed with costs.

53. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KERICHO
THIS 12TH DAY OF FEBRUARY, 2026.**

**L. A. OMOLLO
JUDGE.**

In the presence of: -

Miss Cherotich for the Plaintiff.

**Mr. Ojwang for Chepkemoi for 2nd, 3rd and 4th
Defendants**

Miss Koech for 1st Defendant- Absent.

Court Assistant; Mr. Joseph Makori.

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