

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**  
**ELC LC PETITION NO. E005 OF 2026**

**SUPERCLEAN SHINE ENTERPRISE LTD ..... 1<sup>ST</sup>  
PETITIONER  
KING PRIME INTERNATIONAL LIMITED..... 2<sup>ND</sup>  
PETITIONER PRIME THE PACE  
LIMITED..... 3<sup>RD</sup> PETITIONER PRIME AUTO  
AND GENERAL  
ENTERPRISES LIMITED..... 4<sup>TH</sup>  
PETITIONER**

**VERSUS**

**KENYA RAILWAYS CORPORATION..... 1<sup>ST</sup>  
RESPONDENT NATIONAL POLICE  
SERVVICE..... 2<sup>ND</sup> RESPONDENT MR. PHILIP J.  
MAINGA EBS MANAGING  
DIRECTOR, KENYA RAILWAYS  
CORPORATION..... 3<sup>RD</sup>  
RESPONDENT  
OFFICER MAUREEN CHEPKEMBOI OCPD  
RAILWAYS..... 4<sup>TH</sup>  
RESPONDENT DOUGLAS KANJA KIROCHO, CBS, OGW  
INSPECTOR GENERAL,  
NATIONAL POLICE SERVICE..... 5<sup>TH</sup>  
RESPONDENT**

**RULING**

1. What is coming up for Ruling is the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' Notice of Preliminary Objection dated 16<sup>th</sup> February, 2025 (*sic*) premised on the grounds, that:

- i. The Petition and Application herein contravene the doctrine of lis pendens which prevents a party from filing multiple suits over the same dispute in different courts.*
  - ii. The subject matter of this suit is directly and substantially in issue in Milimani CM ELC Case No. 1155 of 2025: Super Clean Shine Enterprise Limited -Vs- Kenya Railways Corporation & The Hon. Attorney General and MC ELC No. 1153 of 2019: King Prime International Limited & 4 Others -Vs- Kenya Railways Corporation & The Hon. Attorney General.*
  - iii. The present application is an abuse of the court process and is bad in law as it seeks to forum shop in multiple courts over the same subject matter.*
  - iv. The Application is an abuse of Court process and should be struck out in limine.*
2. The parties made oral submissions on the Preliminary Objection. Learned counsel, Mr. Obuya, appearing for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents, submitted that there are parallel suits touching on the same subject matter and issues already pending before other courts, namely **Milimani CM ELC No. 1153 of 2019** and **Milimani CM ELC No. 1155 of 2025**.
3. Counsel submitted that the Petitioner seeks injunctive relief restraining eviction from the suit property, which reliefs, he

argued, are substantially similar to those sought in the earlier proceedings. He noted that an order was issued in **Milimani CM ELC No. 1155 of 2025**, and further noted that there is a pending application for contempt in respect of the orders of injunction that were issued in the said suit.

4. Counsel also noted that there is an order in **Milimani CM ELC No. 1153 of 2019**. In his view, the multiplicity of proceedings demonstrates that identical reliefs are being sought before different courts.
5. On his part, Mr. Okwach, learned counsel for the 1<sup>st</sup> Petitioner, indicated that he would not participate in the Preliminary Objection and would instead associate himself fully with the submissions made on behalf of the 2<sup>nd</sup> to 4<sup>th</sup> Petitioners.
6. Mr. Ligunya, learned counsel for the 2<sup>nd</sup> -4<sup>th</sup> Petitioners, opposed the objection and submitted that it was improperly taken. He argued that the doctrine of *lis pendens* relied upon by the Respondents is intended to preserve the subject matter of litigation from being sold or transferred during the pendency of proceedings, which, according to him, is not the issue before the court.
7. Counsel contended that the question of whether similar matters exist is one of fact requiring a substantive examination of the causes of action in each suit. He submitted that it is the Respondents who raised the issue of **Milimani CM ELC No. 1153 of 2019** in an affidavit sworn

on 2<sup>nd</sup> February 2026 in **Milimani CM ELC 1155 of 2025** and that vide the aforesaid affidavit, they stated that the 2019 matter was last in court in September 2019.

- 8.** According to counsel, a suit stands dismissed where no step is taken for two years. He therefore urged the court to call for and examine the file in order to ascertain whether the issues therein are indeed similar to those raised in the present Petition and application. It was asserted that that the question of similarity cannot be determined in the absence of a replying affidavit. As a consequence, the objection cannot be sustained.
- 9.** Nonetheless, counsel maintained that the prayers in **Milimani CM ELC No. 1153 of 2019** are distinct from those sought herein, as they concerned the threatened demolition and quiet possession of the suit property by tenants; that **CMCC No. 1155 of 2025** similarly involves tenant-based claims, whereas the present Petition has been instituted by a head lessor who alleges that the premises were unlawfully invaded and demolished, together with tenants whose properties were destroyed.
- 10.** According to counsel, despite the demolition, the head lessor retains the leasehold interest and seeks restoration of possession, which raises a different subject matter altogether. He therefore urged the court to find that the three suits are distinguishable and that the prayer to strike out the Petition and the application is not legally grounded.

11. In reply, Mr. Obuya reiterated that the current application seeks injunctive relief restraining eviction, which he maintained is the same relief sought in the earlier suits. He argued that the Plaintiffs in those matters are substantially the same parties now appearing as Petitioners and that the remedies sought herein are merely collateral attempts to relitigate issues already before other courts. Counsel added that the Petitioners have already been evicted and therefore urged the court to dismiss the application.
12. Having considered the Preliminary Objection, and the submissions thereto, the issues that arises for determination are whether the Preliminary Objection is competent and if so, whether the Preliminary Objection is merited?
13. Vide the present Preliminary Objection, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents seek to have the Petition and the accompanying Notice of Motion struck out. Their objection in this regard can be summarized as being two-fold. First, that the proceedings offend the doctrine of *lis pendens*, and second, that the subject matter herein is directly and substantially in issue in **Milimani CM ELC Case No. 1155 of 2025: Super Clean Shine Enterprise Limited -vs- Kenya Railways Corporation & The Hon. Attorney General** and **MC ELC No. 1153 of 2019: King Prime International Limited & 4 Others -vs- Kenya Railways Corporation & The Hon. Attorney General** constituting an abuse of the court process and warranting dismissal.

14. The Petitioners have opposed the objection asserting that it is not only unmerited, but incompetent as the issues therein do not meet the threshold of a proper preliminary objection capable of disposing of the matter at this stage.
15. The threshold of a Preliminary Objection was set out by the Court of Appeal in the *locus classicus* case of **Mukisa Biscuits Manufacturing Co. Ltd. vs West End Distributors (1969) EA 696 at 700** wherein Law, JA stated:

***“...a ‘preliminary objection’ consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”***

16. Newbold, P further held:

***“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial***

***discretion. The improper raising of points by way of Preliminary Objection does nothing but unnecessarily increases costs and, on occasion, confuse the issues. This improper practice should stop.”***

17. The Supreme Court in the case of **Hassan Ali Joho & Another vs Suleiman Said Shahbal & 2 Others [2014] eKLR** re-affirmed the principle as set out in the **Mukhisa Case(supra)** stating:

***“A preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”***

- 18.** As aforesaid, the Objection herein is premised on two grounds *to wit* breach of the doctrine of *lis pendens*, and contravention of the doctrine of *sub judice*.
- 19.** Beginning with the doctrine of *lis pendens*, the same concerns acts undertaken during the pendency of litigation and is anchored on the principle that the subject matter of a dispute must be preserved until the court finally determines the rights of the parties.
- 20.** In *Naftali Ruthi Kinyua vs Patrick Thuita Gachure & Another [2015] eKLR*, the court, citing Black's Law Dictionary, 9<sup>th</sup> Edition, described *lis pendens* as the jurisdiction, power, or control acquired by a court over property while a legal action relating to that property remains pending.
- 21.** The Court of Appeal in *Cove Investments Limited vs Rono & 2 others (Civil Appeal (Application) E051 of 2025) [2025] KECA 1089 (KLR)* restated the scope and continuing applicability of the doctrine in Kenya, emphasizing that the maxim *pendente lite nihil innovetur* - that nothing new should be introduced during the pendency of a suit remains part of Kenyan law through the common law and equitable principles preserved under **Section 3(2)(c)** of the **Judicature Act**.
- 22.** The court observed in the said case that the doctrine arises where proceedings concerning specific immovable property

are pending before a competent court and operates to prevent dealings with the property that would defeat or prejudice the litigation. It further clarified that the doctrine's primary objective is to ensure that the court retains effective control over the subject matter so that its judgment is not rendered futile.

23. Applying the foregoing principles to the present objection, the court is not persuaded that the Respondents have properly invoked the doctrine. First, the material placed before the court does not demonstrate that the Petitioners have transferred, alienated, or otherwise dealt with the suit property in a manner contemplated under the doctrine. The grievance before this court concerns alleged demolition, dispossession, and continuing interference with property rights rather than a *pendente lite* alienation by a litigant.
24. Secondly, and more fundamentally, *lis pendens* does not operate as a bar to the institution of fresh proceedings; it merely subjects any dealings with the property to the eventual outcome of the pending suit. This is not a proper preliminary question.
25. Moving to the concept of *sub judice*, the same is a legal concept codified under **Section 6** of the **Civil Procedure Act** which provides thus:

***“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”***

26. It is clear that the concept of *res sub judice* goes to the jurisdiction of a court. As to whether the same can be brought by way of preliminary objection, the court relies on the exposition by the Court of Appeal in **John Florence Maritime Services Limited & Conken Cargo Forwarders Limited vs Cabinet Secretary for Transport and Infrastructure, Attorney General, Kenya Maritime Authority & Office De Gestion Du Freit Maritime (OGEFREM)** albeit discussing the related concept of *res judicata*, thus:

***“There is no legal requirement or factual basis for the submission that the doctrine must only be invoked and or ventilated through a formal application. It can be raised through pleadings as well as by way of preliminary objection.”***

27. The court notes that although the doctrine of *sub judice* under **Section 6** of the **Civil Procedure Act** constitutes a jurisdictional plea that may properly be raised by way of a preliminary objection, its determination must be founded on

sufficient and admitted material properly placed on the court record.

28. Only where such material exists can the court undertake a comparative analysis to ascertain whether the matters in issue are directly and substantially the same in a previously instituted suit between the same parties, litigating under the same title.
29. In the present case, the only material placed before this court comprises the Petitioners' pleadings and annexures, namely the Petition, the Notice of Motion, the supporting affidavits dated 19<sup>th</sup> January, 2026, and the present Notice of Preliminary Objection. While reference has been made to **MC ELC No. 1153 of 2019** and **MC ELC E1155 of 2025**, the documents availed in respect thereof are limited to orders issued in those matters and the Motion of 9<sup>th</sup> January, 2026 in **MC ELC E1155 of 2025**.
30. While the exhibited orders and the Motion of 9<sup>th</sup> January, 2026 confirm the existence of proceedings before the Magistrates' Court and the grant of interim injunctive relief therein, they do not disclose the precise and entire scope of the disputes in those proceedings. As such, the court is unable to undertake the requisite comparison mandated under **Section 6 of the Civil Procedure Act**.
31. Indeed, the Respondents would have been excused if the previous suits were pending before this court. In such a case, the court can call for its file and compare the pleadings

therein. However, to the extent that the Respondents made reference to suits filed in the lower court, the right thing was for them to file a formal application annexing the primary pleadings in the two suits to enable the court ascertain if the causes of actions in the two suits are similar to the cause of action in the present Petition. They did not do so.

- 32.** Therefore, to uphold the Preliminary Objection on the basis of incomplete material offends the principles of fairness and procedural justice. A Preliminary Objection must be determined strictly on the face of the pleadings and undisputed material.
- 33.** Ultimately, it is the finding of the court that the Preliminary Objection is not competent. The same is hereby dismissed with costs.

**Dated, signed and delivered virtually in Nairobi this 26<sup>th</sup> day of February, 2026.**

**O. A. Angote**  
**Judge**

**In the presence of;**

Mr. Ligunya for Petitioner/Respondent

Mr. Obuya for Respondent/Applicant

Court Assistant: Tracy