

3. The Court did then direct that the present PO would be canvassed by way of written submissions.
4. The Applicant did proceed to file his submissions dated 04.09.2025 while the Respondent did file his submissions dated 11.09.2025.

FACTS PLEADED IN THE PLAINT DATED 19.05.2025.

5. The facts pleaded in the Complaint dated 19.05.2025 are as follows; -
 - i) The Plaintiff did state that the 1st Defendant herein is the registered owner of a property known as KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/72 (hereinafter referred to as **“the suit property”**)
 - ii) The Plaintiff did purchase a portion of five (5) Acres on the suit property from the 1st Defendant herein.
 - iii) Upon purchase of the portion of 5 Acres within the suit property, the Plaintiff did take possession and use of the same pending the sub-division and transfer from the 1st Defendant.
 - iv) In addition to the Plaintiff herein, the suit property had been sold to other third parties.
 - v) According to the Applicant, the third parties did have a disagreement with the 1st Defendant which did result to a suit known as ELDOROT ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015.
 - vi) The parties in the proceeding known as ELDOROT ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 was the 1st Defendant was the Plaintiff and GETRUDE

JERUTO, BYNADETTE CHEPKEMBOI, STANLEY KIPTALAM KIPROP, PHYLIS KOBILO KIPROP, ZEPHANIAH KANGOGO CHEBET, LUKA LOKOCHO & EMILY JEMELI MASIT as Defendants.

- vii) The Plaintiff admits that he was never a party to the proceeding known as ELDORET ENVIRONMENT & LAND CASE NO. 196 OF 2015.
- viii) Be as it may, the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015 was resolved by way of Mediation Agreements duly adopted by the Court.
- ix) However, in the Mediation Agreements adopted in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015, the 2nd Defendant's name was included therein as an owner of land within the suit property.
- x) Based on this Mediation Agreements recorded in ELDORET ENVIRONMENT & LAND COURT CASE NO 196 OF 2015, the 2nd Defendant herein did trespass into the Plaintiff's portion of land on the suit property.
- xi) The Plaintiff being aggrieved by the entry of the 2nd Defendant into his portion of land did file a proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC CASE NO. E175 OF 2024 seeking for eviction Orders thereof.
- xii) At the time of filing the present suit, the said proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC CASE NO, E175 OF 2024 was pending determination.

- xiii) The Plaintiff states that the Mediation Agreements executed by the 1st and 2nd Defendants and adopted in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015 were null and void to the extent that they dispossessed him of his portion of land without being accorded a fair hearing or being a party to the same.
- xiv) The Plaintiff therefore sought this Court to make a declaration that the Mediation Agreements adopted in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015 were bad in law and the Court did not have jurisdiction to take away the Plaintiff's portion of land without him being a party to the suit.
- xv) The Plaintiff was of the view that the 2nd Defendant herein was never a purchaser of any portion of the suit property from the 1st Defendant and as a result of this omission, the 2nd Defendant was not a legitimate party to the Mediation Agreements adopted in the proceedings known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015.
- xvi) The Plaintiff did plead that he was opposed to the Deputy Registrar executing any documents for the transfer of the suit property based on the Mediation Agreements adopted in ELDORET ENVIRONMENT AND LAND COURT CASE NO.196 OF 2015.
- xvii) In conclusion, the Plaintiff sought to be declared the lawful owner of a portion measuring 5 Acres within the suit property.

- xviii) Further, the Plaintiff sought for orders of transfer of the 5 acres within the suit property from the 1st Defendant to himself.
- xix) Lastly, the Plaintiff sought for an Eviction Order and Permanent Injunction against the 1st and 2nd Defendants over the portion of 5 acres within the suit property.

FACTS PLEADED IN THE 2ND DEFENDANT'S DEFENCE

- 6. The 2nd Defendant herein did oppose the Plaint filed by the Plaintiff herein through a Defence dated 05.06.2025.
- 7. The facts pleaded in the 2nd Defendant's Defence were as follows; -
 - i) The 2nd Defendant did admit that there was a proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E175 OF 2024 which was pending before the Chief Magistrate's Court.
 - ii) Based on this disclosure by the Plaintiff, the present suit herein was Sub Judice the proceeding known as ELDORET CHIEF MAGISTRATES COURT ELC NO. E175 OF 2024 and should be struck out.
 - iii) In addition to the above, the 2nd Defendant did plead that the Mediation Agreements adopted in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 were in relation to a property known as LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/82.
 - iv) However, according to the Plaintiff's Affidavit dated 19.05.2025, the portion of 5 acres being claimed by the Plaintiff was on the property known as LR.NO.KARUNA/KARUNA BLOCK 4(CHEPLASKEI)/74.

- v) In view of this fact, the Plaintiff herein did not have any locus to challenge the Mediation Agreements adopted in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015 which dealt with the property known as LR.NO. KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/82 or stop the execution of the Orders therein.
 - vi) The 2nd Defendant did plead that the Plaintiff herein was guilty of perjury for stating that there was no other pending suit between the parties herein yet the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 was pending determination.
 - vii) Lastly, the 2nd Defendant did further aver that the present suit did not disclose any cause of action against him and it was only an attempt by the Plaintiff and the 1st Defendant to frustrate the implementation of the Mediation Agreements adopted in the proceeding known as ELDORET ENVIRONMENT AND LAND CASE N.196 OF 2015.
 - viii) In conclusion, the 2nd Defendant sought the present suit to be dismissed with costs.
8. The Court having duly outlined the facts pleaded in the Plaintiff and the 2nd Defendant's Defence, it will now proceed to identify the issues raised in the present PO and seek to make its determination on the same.

**ISSUE NO. 1- IS THE PLAINT DATED 19.05.2025 SUB-
JUDICE THE PROCEEDING KNOWN AS**

**ELDORET CHIEF MAGISTRATE'S COURT ELC
CASE NO. E175 OF 2024?**

**ISSUE NO.2- DOES THE PLAINTIFF HEREIN HAVE LOCUS
STANDI TO CHALLENGE THR ORDERS MADE
IN ELDORET ENVIRONMENT & LAND COURT
CASE NO. 196 OF 2015?**

ISSUE NO.3- IS THE PRESENT PO MERITED OR NOT?

**ISSUE NO. 4- WHO SHALL BEAR THE COSTS OF THE
PRESENT P.O?**

9. The Court having identified the above issues for determination, the same will now be discussed as follows.

**ISSUE NO. 1- IS THE PLAINT DATED 19.05.2025 SUB-
JUDICE THE PROCEEDING KNOWN AS
ELDORET CHIEF MAGISTRATE'S COURT ELC
CASE NO. E175 OF 2024?**

10. The first issue for determination is whether or not the Plaintiff dated 19.05.2025 is Sub-Judice the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024.
11. According to the Applicant, the Respondent herein was well aware of the existing proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 at the time of filing the Plaintiff dated 19.05.2025.

12. The Applicant did state in his Defence dated 05.06.2025 that the dispute relating to the ownership of the 5 acres portion claimed by the Respondent herein was already being litigated in the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024.
13. In essence, the Applicant sought to have this suit be dismissed for being Sub-Judice and an abuse of the Court process.
14. The Respondent herein after the service of the Applicant's Defence dated 05.06.2025 did not file any Reply to Defence thereof.
15. In the Submissions filed by the Respondent dated 11.09.2025, the issue of whether the present suit was Sub Judice was canvassed therein.
16. According to the submissions filed by the Respondent, there was an admission that the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 was against the Applicant herein.
17. The Respondent did submit that the difference between the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 and the present suit was on the reliefs sought.
18. In essence therefore, the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 and the present suit were distinct from each other and should be heard separately.

19. The principle of Sub Judice is predominantly provided for under Section 7 of the Civil Procedure Act, Cap 21.
20. The principle of Sub Judice was substantively discussed by the Supreme Court in the case of **KENYA NATIONAL COMMISSION ON HUMAN RIGHTS-VERSUS- THE ATTORNEY GENERAL & OTHERS (2020) eKLR** where it did observe the following; -

“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, 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.

21. Based on the above authority as read within Section 7 of the Civil Procedure Act, Cap 21, there are four ingredients that a Court has to evaluate in determining whether a proceeding is Res Judicata or Sub- Judice.
22. The four ingredients are namely the cause of action pleaded in the previous proceeding and the subsequent proceeding, the parties in the previous proceeding and the subsequent proceeding, the title under litigation in the previous proceeding and the subsequent proceeding and lastly whether the Court that handled the previous proceedings had jurisdiction to entertain the same.
23. Based on the four outlined ingredients, the Court will now apply the same to the facts pleaded hereinabove to resolve this issue.
24. To begin with, the Respondent herein did admit that there was another matter known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 which he had filed against the Applicant.
25. As such, the existence of two proceedings between the Applicant and the Respondent is a fact confirmed by both parties.
26. In the Respondent's List of Documents dated 19.05.2025, the Plaintiff filed in the proceedings known as ELDORET CHIEF

MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 were duly presented to this Court.

27. In the Plaint dated 01.10.2024 filed in the previous proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 the following facts can be ascertained; -
- a) The Plaintiff herein is the same Plaintiff as is in the present suit.
 - b) The Defendant herein is the 2nd Defendant in the present suit.
 - c) The issue in the previous suit is the ownership of a portion of land measuring 5 Acres within LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/74 while in the present suit the issue is a portion measuring 5 acres within is LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/72.
 - d) The jurisdiction of the Court entertaining the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 was admitted by both the Applicant and the Respondent.
28. Based on the above facts, it is clear that the property that was under litigation in the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 was LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/74 while in the present suit, the property under litigation in the present suit is LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/72.
29. In addition to the above, the Respondent's claim in the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 was that he had purchased a portion of 5 acres

within LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/74 from the Respondent herein.

30. In the present suit, the Respondent's claim is that he had purchased a portion of 5 acres within LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/72 from the 1st Defendant.
31. In essence, the pleadings in the previous proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024 and the present suit paint a picture that the Respondent bought two portions of 5 acres from the 2nd Defendant within the property known as LR.NO. KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/74 and another portion of 5 Acres from the 1st Respondent from the property known as LR.NO.KARUNA/KARUNA BLOCK 4 (CHEPLASKEI)/72.
32. Whether this is the true and correct position is an issue for determination at the main hearing.
33. Be as it may, this Court is of the view and finding that the present suit is not Sub Judice the proceeding known as ELDORET CHIEF MAGISTRATE'S COURT ELC CASE NO. E175 OF 2024.

**ISSUE NO.2- DOES THE PLAINTIFF HEREIN HAVE LOCUS
STANDI TO CHALLENGE THR ORDERS MADE
IN ELDORET ENVIRONMENT & LAND COURT
CASE NO. 196 OF 2015?**

34. The second issue is whether or not the Respondent herein can challenge the Mediation Agreements recorded in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 in the present suit.

35. The Applicant's basis of raising the present objection is premised on paragraphs 6 to 11 of the Plaint dated 19.05.2025.
36. The Applicant admits that indeed there was a proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 which was concluded through various Mediation Agreements adopted therein.
37. The Applicant did plead in the Defence dated 05.06.2025 that the Respondent herein was never a party in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 and therefore had no locus standi to challenge the Mediation Agreements adopted therein in settlement of the matter.
38. The Respondent in the present P.O did refer to the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015.
39. The Respondent in particular under paragraph 6 to 15 of the Plaint did allege that the Mediation Agreements adopted in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 were annulity and did dispossess him of a piece of land which he had lawfully acquired.
40. To resolve this issue, the Court needs to ask itself whether the legality of the Mediation Agreements adopted as a Consent Judgement in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 can be determined in this suit.
41. To begin with, the Respondent did plead that he was not a party in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015.

42. Secondly, the Respondent was not a party to the Mediation Agreements that were adopted as Consent Orders in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015.
43. Based on the Respondent's pleadings in the present suit and in particular Paragraph 6 to 14 of the Complaint dated 19.05.2025, it is clear that one of the causes of action is the legality of the Mediation Agreements that were adopted as Consent Judgements in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015.
44. Clearly therefore, the legality of the Mediation Agreements adopted as Consent Judgements in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 can only be heard and determined in the same suit as they were recorded.
45. As such, the Respondent herein does not have the locus standi to litigate the legality of the Mediation Agreements adopted as Consent Judgements in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 in the present suit.
46. In essence, this Court hereby upholds the Applicant's Objection that the Applicant herein does not have locus standi to raise the issue of the legality of the Mediation Agreements adopted as Consent Judgements in the proceeding known as ELDORET ENVIRONMENT & LAND COURT CASE NO.196 OF 2015 in this suit.

ISSUE NO.3- IS THE PRESENT PO MERITED OR NOT?

47. Based on the determinations made in Issue No. 1 and 2, the Court is of the finding that the present PO is partially merited.

ISSUE NO. 4- WHO SHALL BEAR THE COSTS OF THE PRESENT P.O?

48. On costs, the Court is of the finding that the same will abide the outcome of the main suit.

CONCLUSION

49. In conclusion, the Court hereby makes the following Orders in determination of the present PO; -

A.THE PRELIMINARY OBJECTION DATED 05.06.2025 IS PARTIALLY MERITED.

B.THE PLAINT DATED 19.05.2025 IS NOT SUB-JUDICE THE PROCEEDING KNOWN AS ELDORET CHIEF MAGISTRATE’S COURT ELC CASE NO. E175 OF 2024.

C.THE RESPONDENT HEREIN WHO IS THE PLAINTIFF IN THE PLAINT DATED 19.05.2025 LACKS THE LOCUS STANDI TO CHALLENGE THE LEGALITY OF THE MEDIATION AGREEMENTS AND/OR CONSENT JUDGEMENT PRONOUNCED IN THE PROCEEDING KNOWN AS ELDORET ENVIRONMENT & LAND COURT CASE NO. 196 OF 2015 IN THE PRESENT SUIT.

D.THE COSTS OF THE PRESENT PO WILL ABIDE THE OUTCOME OF THE MAIN SUIT.

DATED, SIGNED and DELIVERED at ELDORET this on this 19TH DAY OF MARCH 2026.

**EMMANUEL M.WASHE
JUDGE**

IN THE PRESENCE OF:

Court Assistant: Brian

Advocate For Applicant: Mr. Kipnyekwei

Advocate For Respondent: Mr. Orina