



**Mwang v Mwangi & another (Environment and Land Case
E013 of 2025) [2025] KEELC 5581 (KLR) (28 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5581 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E013 OF 2025**

**MAO ODENY, J
JULY 28, 2025**

BETWEEN

PETER MUCHIRI MWANG PLAINTIFF

AND

PETER MWANGI DEFENDANT

AND

MUSA PATOO RESPONDENT

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion application dated 14th February, 2025 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing of the main suit, this Honourable Court be pleased to issue a temporary order of injunction restraining the Respondents either by themselves, their agents, servants and/or any other person acting on their behalf from dealing and/or interfering with all that parcel of land known as Block LR No. Njoro Township Plot No. LR No 519/361 (Njoro).
 - d. Spent.
 - e. Spent
 - f. That the OCS Njoro Police Station, do offer security in ensuring compliance of the order of eviction above.



- g. That the costs of this Application be provided for.
2. The application is supported by the annexed affidavit of Peter Muchiri Mwangi, the Applicant sworn on 14th February, 2025, who deponed that he is the registered owner of the property known as Block LR No. Njoro Township Plot No LR No 519/361 (Njoro). He deponed that in January 2025, the Respondents unlawfully trespassed and erected a car wash on the suit land without his permission. He further stated that the Respondents have refused to vacate the suit land in violation of his right to property and ownership of the suit land.
 3. Lawrence Ngugi Mwangi filed a Replying Affidavit sworn on 25th February, 2025, and deponed that he is an Advocate of the High Court of Kenya instructed by the Defendants. He stated that there is a pending case, ELC No E015 of 2025 where the parties and the subject matter are similar.
 4. Counsel further deponed that the Plaintiff /Applicant herein who is the defendant in the said suit was restrained by way of an injunction from interfering with Jennifer Wanjiku Ndegwa's peaceful enjoyment of the same. He deponed that Jennifer Wanjiku Ndegwa the Defendant herein, is the aunt of the 1st Defendant, while the 2nd Defendant is her watchman on the suit land where she runs a car wash business amongst other things.
 5. The Applicant filed a supplementary affidavit sworn on 25th March, 2025, and deponed that the matter in Nakuru ELC No E015 of 2023 has never been set down for hearing. It was his case that the application for injunction dated 16th February, 2023, filed by Jennifer Ndegwa Wanjiku against him was dismissed for non-attendance on 13th March, 2025, together with the application dated 14th February 2025, for contempt of court.

Applicant's Submissions

6. The Applicant filed submissions dated 14th May, 2025 and relied on Articles 159 (2) (d) of *the Constitution* of Kenya and the case of Raila Odinga vs The Independent Electoral and Boundaries Commission and 3 others [2013] eKLR and urged the court to give undue regard to technicalities.
7. It was the Applicant's submissions that the Respondents' advocate on record swearing an affidavit and giving evidence goes against the principles set in the case of Magnolia Pvt Limited vs Synermed Pharmaceuticals (K) Ltd (2018) eKLR. The Applicant also relied on Order 19 Rule 3 (1) of the Civil Procedure Rules 2010 and Rule 9 of the Advocates (Practice) Rules and the case of Hakika Transporters Services Ltd vs Albert Chulah Wamimitaire [2016] eKLR. The Applicant urged the court to allow the application as prayed.

Respondents Submissions

8. Counsel for the Defendants filed submissions dated 25th April, 2025, submitted that the Applicant did not file submissions within the stipulated time by the court hence should be expunged from the court record. Counsel relied on the case of Raila Odinga & 7 others vs IEBC and 3 others (Petitions 5, 3 and 4 of 2013 consolidated) (2013) KESCI (KLR).
9. Counsel submitted that prior to the current suit, Jennifer Wanjiku Muchiri had filed ELC No E015 of 2023, whereby the Applicant was restrained from interfering with the suit property. Counsel submitted that the applicant filed an application for review, which was also dismissed with costs. It was the defendant's counsel's submission that the applicant approached the Court of Appeal in case number E194 of 2023, which is still pending.



10. Counsel submitted that the applicant has filed this suit in respect of the same subject matter hence the same is res judicata and this court is functus officio on injunctive prayers against the agents of Jennifer Wanjiku Ndegwa.
11. Mr. Mwangi relied on Sections 6 and 7 of the *Civil Procedure Act* and the cases of Kenya National Commission on Human Rights vs Attorney General; Independent Electoral and Boundaries Commission (Interested Party) [2020] eKLR, Thiba Min. Hydro Co. Ltd vs Josphat Karu Ndwiga [2013] eKLR, Lotta vs Tanaki & Others [2003] 2EA 556 (CAT), Satya Bhama Gandhi vs Director of Public Prosecutions & 3 others [2018] KEHC 6100 (KLR), James Njuguna Chui vs John Njogu Kimani [2017] eKLR and Siri Ram Kaura vs M.J.E Morgan *CA 71/1960* (1961) EA 462 and urged the court to dismiss the application.

Analysis and Determination

12. The issue for determination is whether this suit was filed during the pendency of ELC No. E015 of 2023, if so what orders should the court grant. If the court answers the question in the affirmative, then it will not go into the issue whether the Applicant is entitled to an order of a temporary injunction or not.
13. For an order of injunction to issue, an Applicant must satisfy three conditions set out in the case of *Giella Vs. Cassman Brown* (1973) EA 358, namely; establish a prima facie case with a probability of success, irreparable harm that cannot be adequately compensated by an award of damages and if the Court is in doubt, it should decide on a balance of convenience.
14. On the first issue as to whether the Applicant filed this suit during the pendency of ELC, No. E015 of 2023, counsel for the Defendant/Respondents submitted that there is a similar suit, ELC No E015 of 2023 involving the same parties and the same subject matter. Counsel attached the Complaint, Defence, reply to defence, Certificate of urgency together with a Notice of Motion dated 14th February 2025.
15. The Applicant also admitted that the suit is still pending before Justice Ombwayo, but stated that the application for injunction and contempt of court was dismissed for non-attendance. This means that the case is still pending before a court of competence and a similar jurisdiction to this court.
16. When a party is aggrieved by a ruling of the court, there are several options for redress, namely: file an application for review, varying or setting aside the same or file an appeal in a higher court.
17. A party cannot be allowed to file multiple cases involving the same parties and the subject matter to ventilate his/her displeasure. That is why in the complaint, a party is required to indicate whether there is any pending case involving the same subject matter and parties. This statement is not merely cosmetic, it serves a purpose to help parties and the court to determine whether the suit offends the doctrine of *lis pendens*/sub-judice.
18. Filing a suit while a similar suit is pending before a competent court is an abuse of the court process as it offends the doctrine of sub-judice. In the Supreme Court Kenya in the case of Kenya National Commission on Human Rights vs Attorney General, Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] eKLR, where the court held 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 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.

19. The court finds that this suit offends the doctrine of sub –judice. The next question is what orders should the court grant having found that this matter was filed while a similar suit ELC No. E015 of 2023 is pending.

20. Section 6 of the *Civil Procedure Act* provides for the doctrine of sub-judice as follows:

“No court shall proceed with the trial of any suit or proceedings 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 the 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.”

21. This section deals with stay of suits and the same is envisaged and not striking out the same as counsel had submitted. The court can only strike out if an application has been made to strike out a suit on the grounds that it is an abuse of court process, frivolous and vexatious.

22. In the case of Republic vs Paul Kihara Kariuki, Attorney General & 2 Others ex parte Law Society of Kenya [2020] eKLR, the court stated as follows:

“.....there exists the concept of sub judice which in Latin means “under judgment.” It denotes that a matter is being considered by a court or judge. The concept of sub judice that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. In such a situation, order is passed by the subsequent court to stay the proceeding and such order can be made at any stage.

23. I have considered the application, the supporting documentation, submissions and find that this case is sub judice and is therefore stayed pending the hearing and determination of ELC No E015 of 2023.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 28TH DAY OF JULY 2025.

M. A. ODENY

JUDGE

