



**Kenya African National Traders & Farmers Union (KANTAFU)  
v Tumbo & 2 others (Environment and Land Case Civil Suit  
29 of 2019) [2026] KEELC 2001 (KLR) (14 April 2026) (Ruling)**

Neutral citation: [2026] KEELC 2001 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT AND LAND CASE CIVIL SUIT 29 OF 2019  
AY KOROSS, J  
APRIL 14, 2026**

**BETWEEN**

**KENYA AFRICAN NATIONAL TRADERS & FARMERS UNION  
(KANTAFU) ..... PLAINTIFF**

**AND**

**PETER LAVU TUMBO ..... 1<sup>ST</sup> DEFENDANT**

**DAVID TUMBO LAVU (BOTH SUED IN THEIR CAPACITIES AS  
THE LEGAL REPRESENTATIVES OF THE ESTATE OF TUMBO LAVU-  
DECEASED) ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**CAROLINE TABITHA ..... INTERESTED PARTY**

**RULING**

1. Before this court for determination is the defendants’ amended notice of motion dated 30 May 2025, which is said to have been brought under Articles 47 and 50 of *the Constitution* of Kenya, Section 7 of the *Civil Procedure Act*, Orders 11, 18 Rule 10, and 51, Rule 1 of the Civil Procedure Rules, and all enabling provisions of the law. They seek the following orders from this court:
  - a. Spent.
  - b. That, this Honourable Court does strike out this matter for being res judicata.
  - c. That, this court do strike out this matter for being sub-judice.
  - d. That, this court do strike out this matter for not disclosing/raising a reasonable cause of action.
  - e. That, this court do issue any other remedy that it deems fit.



- f. That the costs of this application be borne by the plaintiff.
2. The motion is grounded on the apparent facts on its face and the 1<sup>st</sup> defendant's supporting affidavit, sworn on 30 March 2025 and in summary, he informs the court that the plaintiff previously filed a similar suit, Machakos Elc Case No 309 OF 2012, against the defendants, which raised identical issues to the current case. The earlier case was prosecuted for over eight years before being dismissed in 2021 due to a lack of prosecution after the plaintiff abandoned it. No effort was made to reinstate the dismissed suit.
  3. Despite this, the plaintiff filed the current suit in 2019, even while the previous case was still ongoing, and failed to inform the court of the pending earlier case. The plaintiff also sued the children of the original defendants in their personal capacity. The failure to disclose the prior suit and the filing of duplicate suits are argued to be contrary to the rules of equity and to the statutory requirements for full disclosure to the court. It is therefore argued that, in the interest of justice and to protect judicial integrity, the current suit should be struck out as *res judicata*.
  4. The interested party did not object to the motion; nonetheless, while not denying the existence of the prior suit, the plaintiff's treasurer, Ibrahim Wanene King'ati Nuthu, objects to the motion and, in his affidavit dated 25 March 2025, briefly asserts that the plaintiff's suit is not *res judicata*, as alleged by the defendants. There is no evidence before the Honourable Court to show that the plaintiff has violated Section 7 of the *Civil Procedure Act*. The plaintiff's suit was filed in accordance with a court order issued on 07 February 2019 by Justice D. K. Kemei in Succession Cause Number 80 of 2011.
  5. According to the court's directions, both parties filed their respective submissions on the motion, with the defendants' submission filed by Ms. BM Mungata & Co. Advocates dated 15 December 2025, and the plaintiff's submission filed by Ms. L. N. Ngolya & Co. Advocates dated 4 December 2025 (erroneously indicated as those of the 1st defendant). The court has thoroughly reviewed these rival submissions and the arguments therein, together with the applicable legal provisions and cited judicial precedents, which will be integral to the court's analysis and final decision. Accordingly, after careful consideration of the motion, its grounds, affidavits, and submissions, the sole issue for determination is whether, upon dismissal of a suit for want of prosecution under Order 17 Rule 2 of the Civil Procedure Rules (CPR), a plaintiff is precluded from entertaining a new suit.
  6. Before addressing this matter, it is essential to first consider the preliminary issues of sub judice and *res judicata*, as respectively found in our Sections 6 and 7 of the *Civil Procedure Act*, which were raised in the motion and argued in the submissions. In agreement with the plaintiff, these doctrines are inapplicable in the circumstances of this case since there is no pending suit and the prior case was dismissed under Order 17 Rule 2 of the Civil CPR.
  7. To elaborate, regarding sub judice, had the defendants applied to this court prior to 8 November 2021, the date on which the prior case was dismissed, the court would have had no hesitation in arriving at a favourable finding, as it is not permissible for the plaintiff to have filed the instant suit during the pendency of the prior case. Nevertheless, this issue is raised late in the day, after the horse has bolted.
  8. Respecting *res judicata*, it cannot apply here because the prior case was never heard on the merits. Consequently, the defendants' assertions that the suit is barred by the doctrines of *res judicata* and sub judice cannot arise at this juncture. Respecting the prayer for non-disclosure of a cause of action, no advances have been made on it in the grounds in support of the motion, the supporting affidavit, or the submissions, and it appears abandoned. Thus, this court will not belabour on it. Accordingly, the court will now proceed to consider the substantive issue for determination.



9. In addressing this matter, it is acknowledged that neither party addressed this issue in their submissions. However, it is uncontested that the prior suit was dismissed for want of prosecution. Due to the fact that incomplete proceedings were brought to this court's attention by the defendants, and there was uncertainty as to whether the suit was dismissed under Order 12 or Order 17 of the CPR, which directly affects the manner in which a party may approach the court following a dismissal for want of prosecution, this court, requested for the prior case file from the registry staff. On perusal, the prior case revealed that the suit was dismissed on 8 November 2021 under Order 17, Rule 2 of the CPR, subsequent to a notice duly issued by this court on 26 October 2021, with the plaintiff having been served through his erstwhile advocates, Ms. Kingara & Co. Advocates.
10. The dismissal of suits for want of prosecution mainly depends on how long it takes to pursue the case. The core principle is that justice should be delivered without unnecessary delays, encapsulated in the saying that "justice delayed is justice denied." The reason for dismissing suits for lack of prosecution is to ensure that litigation moves forward and concludes promptly. It is unjust to file a case and then let it remain idle, hanging over the other party like the sword of Damocles. Dismissals serve to clear court backlogs caused by parties unwilling to pursue their cases. Pending cases that remain inactive create congestion, leading to public mistrust and diminishing confidence in the judiciary. Therefore, dismissals help reduce the growing caseloads and backlog, preventing stale suits from clogging the judicial system.
11. Based on this, we shall investigate the legal provisions pertaining to the dismissal of a suit under this legal regime. Under Order 17 Rule 2(1) of the CPR, if a party takes no action for a period of one year, the court may issue a written notice to the parties requiring them to justify why the suit should not be dismissed. Should no satisfactory explanation be provided, the court possesses the authority to dismiss the suit. In the present case, the plaintiff experienced this scenario when its previous suit, filed in 2012, remained unprosecuted for 9 years, ultimately resulting in its dismissal on 8 November 2021.
12. Following such a dismissal, an aggrieved party may petition the court in accordance with Order 17 Rule 2 (6) of the CPR to have the suit reinstated. In this case, the plaintiff did not pursue such a motion and, furthermore, misused the court process and violated the doctrine of sub judice by instituting this suit on 19 March 2019, during the pendency of the prior matter.
13. From the record, the law firm representing the defendants herein was not the same as that which represented them in the prior case (Ms. F.M. Mulwa Advocates was on record), which may have led to a lack of awareness of the prior case. This may also explain why the sub judice issue was raised only at a late stage. It is worth noting that the plaintiff cannot hide behind the ruling of 7 February 2019 in Succession Cause Number 80 of 2011 to argue that its case is not an abuse of court process. In this succession cause, the plaintiff, then a 1st interested party, was directed to pursue his case in the appropriate court. In other words, to pursue its claim in the prior case and not file this suit.
14. Be that as it may, the legal framework established by Order 17 Rule 6 of the CPR only permits a party to file an application with the court that dismissed the case for the court to exercise its discretion regarding reinstatement. Such discretion is usually exercised on a case-by-case basis, and upon denial for reinstatement, a party can seek a review or appeal against such a decision.
15. In enacting this provision, the framers were mindful that allowing a party who has demonstrated laxity in prosecuting its case to initiate new actions upon each dismissal would repeatedly undermine the integrity of the justice system and impose an undue burden on litigants and the court, not only through endless litigation but also by consuming time and resources. This issue is not novel and has been dealt with in a line of court decisions: -



In *Mumira v Attorney General* (Constitutional Petition E007 of 2020) [2022] KEHC 271 (KLR) (8 April 2022) (Ruling), the court stated: -

“In my view, the proper cause of action for the Petitioner was to either apply to set aside the order dismissing the Petition for want of prosecution or apply for review the order or prefer an appeal against the dismissal. It is not open for the Petitioner to instate afresh suit disguised as a constitutional Petition replicating the same issues now camouflaged as breach of constitutional rights.”

In *Mutinda (Suing as the Legal Representative of the Estate of Syokau Kinama alias Beth Syokau Kinama) & another v Agutu & 2 others* [2023] KEELC 20843 (KLR), the court, on considering Order 17 Rule 6 of the CPR, held:-

“For that reason therefore, a party whose suit is dismissed for want of prosecution ought not file a fresh suit but should apply to reinstate their suit. Filing a fresh suit would make a mockery of the order of dismissal for want of prosecution and in my view would amount to abuse of the court process.”

Lastly, in *Chepkwony v National Bank (K) Limited* [2025] KEHC 347 (KLR), the court found: -

“It is not open for the Applicant to bring a fresh action based on the same facts and circumstances as Eldoret HCC No. 17 of 1998 which was dismissed for want of prosecution. The proper cause of action for the Applicant was to either apply to set aside the order dismissing the suit for want of prosecution (which the Applicant in fact did but was unsuccessful) or apply for review of the order of dismissal or prefer an appeal against thereto.”

16. Consequently, guided by the law and judicial precedents and for the above reasons, this court concurs with the defendants that this suit constitutes an abuse of the judicial process. Therefore, the notice of motion dated 30 May 2025 is found meritorious and is hereby granted. Given the defendants’ success, they shall be awarded costs. Accordingly, the court issues the following final orders:

- a. The plaintiff’s suit is hereby struck out.
- b. The defendant shall have costs of the suit and of the motion dated 30 May 2025.
- c. This file is hereby effectively marked as closed.

Orders accordingly.

**DELIVERED AND DATED AT MACHAKOS THIS 14<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. A. Y. KOROSS**

**JUDGE**

**14. 04.2026**

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform

In the presence of;

Ms. Kanja Court Assistant

Mr. Ngolya for plaintiff.

Mr. Mutava for defendants.



Mr. Mureithi holding brief for Mr. Kingori for the interested party

