

REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI
COMMERCIAL & TAX DIVISION
CIVIL SUIT NO E080 OF 2024

**ISKAASHATO KENYA
LIMITED.....PLAINTIFF/RESPONDENT**

-VERSUS-

**MOHAMED DAHIR MAALIM.....1ST
DEFENDANT/APPLICANT**

**MARIAM ALI SAMATAR.....2ND
DEFENDANT/APPLICANT**

**AFPEIC LIMITED.....3RD
DEFENDANT/APPLICANT**

AND

**BUSINESS REGISTRATION SERVICES.....1ST
INTERESTED PARTY**

**ANTE RAGUZ.....2ND
INTERESTED PARTY**

**MOHAMED ELTAF.....3RD
INTERESTED PARTY**

**ANTHONY KEGODE.....4TH INTERESTED
PARTY**

**JONCO COMPANY LIMITED.....5TH
INTERESTED PARTY**

RULING

1. This Ruling arises out of the Defendants/Applicants application seeking to strike out the Plaintiff’s suit on

account of being Sub judge. The Motion is dated 12th April, 2026.

Background Facts

2. The Defendants herein filed the Notice of Motion dated 12th April 2024 seeking the following orders;

a) The Court to strike out this suit initiated by an Amended Plaintiff dated 6th March, 2024 as this Court lacks the requisite jurisdiction to hear and determine this suit as it is sub judice.

b) Costs of this application be borne by the Respondent.

3. The Application was supported by the Affidavit of **Mohamed Dahir Maalim**. He stated that the dispute concerns the same subject matter already pending before the **Environment and Land Court in Milimani ELC NO. E080 of 2023 Jonco Company Limited v W. Mirii & 4 Others.** It was filed on 18th September 2023 by **Jonco Company Limited**, in which the current Defendants are the company's directors. In that case, the Plaintiff/Respondent in the present matter was joined as the 6th Defendant following an

application dated 22nd November 2023. The issues raised in that application, particularly those in paragraph 7, mirror the issues raised in the Amended Plaintiff dated 6th March 2024.

4. Further, both suits revolve around the ownership of the same property, Nairobi Block 49/245 (formerly Plot No. 36/VII/423), which is acknowledged in several paragraphs of the amended plaintiff. It is asserted that the Environment and Land Court is vested with the requisite jurisdiction under **Section 13 of the Environment and Land Court Act** to determine ownership and grant damages or compensation. Consequently, it is submitted that the Respondent can pursue its claims and counterclaims within the earlier suit. The present case is argued to be a later suit and therefore an abuse of the Court process that ought to be struck out.
5. In reply, the Plaintiff filed the Replying Affidavit, sworn on 20th June 2024. The Respondent contended that the present application lacks merit because it does not meet the legal threshold required for a matter to be declared *sub judice*. While it is acknowledged that **Environment and Land Court in Milimani ELC NO. E080 of 2023 Jonco**

Company Limited v W. Mirii & 4 Others exists, the Respondent states that the Defendants in the present suit are neither directors nor shareholders of Jonco Company Limited. This is confirmed by the latest CR12. The company's shareholding is attributed to Ante Raguz, Mohamed Eltaff, and Anthony Kegode, who collectively hold all the issued shares.

6. Further, it is argued that the issues in the two suits are fundamentally different. The Environment and Land Court case concerns the ownership of Nairobi Block 49/245, whereas the present suit focuses on the alleged fraudulent acquisition of **Jonco Company Limited**. It further deals with the subsequent misuse of the company, resulting in financial loss to the Plaintiff. It is also maintained that the Environment and Land Court lacks jurisdiction over company-related disputes, which fall under the Commercial Division of the High Court. Lastly it is submitted that the parties involved in the two suits are entirely different. Consequently, the Respondent asserted that the application seeking to declare the matter *sub judice* is unfounded.

Issues for determination

7. The Court has carefully considered this application, the response thereto, the written submissions on record and the oral highlights by Counsel for the parties. The Court frames a single issue for determination as follows: -

a) *Whether the Plaintiff/Respondent's suit is sub judice.*

Analysis

8. **Section 6 of the Civil Procedure Act** provides that:

“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.”

9. It is trite that, to invoke the *sub judice* bar, the earlier suit must be pending, the parties must be the same or claiming under the same title, and the issues must be directly and substantially the same.

10. The Supreme Court of Kenya **in Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR)**, stated therein as follows: -

“67.... 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.”

11. The Applicants submit that their application is based on the ground that the subject matter in **Environment and Land Court in Milimani ELC NO. E080 of 2023 Jonco Company Limited v W. Mirii & 4 Others** concerns Plot No. 36/VII/423, now Nairobi Block 49/245. In that suit the 1st, 2nd, and 3rd Defendants, who are the Applicants herein, are also directors of the Plaintiff in the Environment and Land Court case. The Applicants contended that the Plaintiff, as

the 6th Defendant in the said proceedings, is capable of raising a counterclaim and seeking damages within that suit. They submit that the Environment and Land Court has the jurisdiction and mandate to award damages. That therefore the Plaintiff can pursue any damages allegedly arising from the issuance of interim orders in the same Environment and Land Court case within those proceedings.

12. On the other hand, it was the Respondent's case that the Defendants and the 1st-4th Interested Parties are not parties in **Environment and Land Court in Milimani ELC NO. E080 of 2023 Jonco Company Limited v W. Mirii & 4 Others**, and therefore, the parties in the present suit are entirely different from those in that case. Additionally, the issues in the two matters are distinct: **Environment and Land Court in Milimani ELC NO. E080 of 2023 Jonco Company Limited v W. Mirii & 4 Others** concerns the ownership of land parcel NAIROBI/BLOCK 49/245, whereas the present suit addresses the alleged fraudulent acquisition of **Jonco Company Limited**, the 5th Interested Party, by the Defendants, as determined by the Registrar of Companies. It

also raises issues of the alleged use of the company to perpetrate fraudulent activities that caused financial loss to the Plaintiff. Consequently, the matters are fundamentally different, and in any event, the Environment and Land Court lacks jurisdiction to determine company-related disputes, which under **Section 3 of the Companies Act, 2015** and the **Chief Justice's Practice Directions of 18th November 1997** fall within the jurisdiction of the Commercial Division of the High Court.

13. Is there more than one suit over the same subject matter? And are the suits between the same parties or their representatives? Notably, the parties in both suits are not the same.
14. On the issue of the subject matter - it is the Court's understanding that the subject matter for determination in **Environment and Land Court in Milimani ELC NO. E080 of 2023 Jonco Company Limited v W. Mirii & 4 Others** is the ownership of and use NAIROBI/BLOCK 49/245. On the other hand, the subject matter for determination in this suit is the fraudulent use of **Jonco Company Limited**, the 5th

Interested Party, by the Defendants, that eventually led to monetary losses to the Plaintiff herein.

15. In applying the *sub-judice* rule, a Court must be satisfied that the matter in issue is directly and substantially in issue in the previous suit. From the above analysis, however, there can be no doubt that the matters in issue are totally different. Accordingly, this instant suit and the application herein cannot be said to be *sub-judice*. The Motion therefore fails.

16. As to costs, the same follow the event and are awarded at the discretion of this Court.

Determination

17. The Defendants/Applicants' application by way of a Notice of Motion dated 12th April 2024 is hereby dismissed in its entirety for lack of merits.

18. The costs of the Motion are awarded to the Plaintiff/Respondent.

19. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MILIMANI THIS
15TH DAY OF APRIL, 2025.**

NJOROGE BENJAMIN K.

JUDGE

In the presence of;

Miss Nkatha holding brief for Mr. Aden for the
Plaintiff/Respondent

Miss Ng'ang'a holding brief for Miss Kariuki for the
Defendant/Applicant

N/A for the Interested Parties/Respondents

Mr. John Paul - Court Assistant.