

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA AT SIAYA
SIAYA LAW COURTS
ELCLC NO. E028 OF 2025

MARY ALUOCH
ABONYO PLAINTIFF

=VERSUS=

COLLINS AUTHUR OTIENO WERE.....1ST
DEFENDANT DOMITILLA AUMA
WERE.....2ND DEFENDANT DAVID
NYAJOM OWAK.....3RD DEFENDANT
DANIEL OHONDE.....4TH
DEFENDANT KEVIN ANANDA ALINYO.....
.....5TH DEFENDANT

RULING

1 This ruling is in respect to Notice of Motion dated 28th July 2025 and 21st November 2025. The former application precipitated Notice of Preliminary Objection dated 9/10/2025 and 21/08/2025.

APPLICATION DATED 28/07/2025

2 The application dated 28/7/2025 is brought by the plaintiff **MARY ALUOCH ABONYO** and it seeks the following orders; -

- 1) Pending the hearing and determination of this application, this Honourable court be pleased to issue temporary orders restraining the defendants/respondents by themselves, their families or through their servants'

agents or assigns from entering, occupying, digging, ploughing, cultivating and or in any manner dealing with the plaintiff's/applicant's part of Land Parcel No. East Gem/Uranga/469/ and East Gem/Lihanda/916.

- 2) That pending the hearing and determination of the main suit, this Honourable court be pleased to issue temporary orders restraining the defendants/respondents by themselves, their families or through their servants' agents or assigns from entering, occupying, digging, ploughing, cultivating and or in any manner dealing with the plaintiff's/ applicant's part of Land Parcel No. East Gem/Uranga/469/Lihanda/916.
- 3) That the O.C.S Yala Police station do ensure compliance with assistance of the Area Chief East Gem Location.
- 4) That costs of this application be provided for.

3 The application is premised on the Supporting Affidavit of Mary Aluoch Abonyo sworn on the 28th July, 2025. It is deponed that the applicant is one of the registered owners of the Land parcel No. East Gem/Uranga/469 and East Gem/Lihanda/916. Copies of the official search certificates and Title Deeds are annexed. That she acquired the same from her deceased husband one ALBERT JOSEPH ABONYO ODERA vide Kisumu High Court Succession Cause No.531 of 2015 who had half share of each aforementioned parcels of land. Copies of judgment and Decree marked are annexed.

4 The applicant avers she holds a half share of the aforementioned parcels of land in trust for her children as per the Certificate of Confirmation of Grant attached. That on or about early January, 2025 the Defendant/Respondents entered

into the said parcels of land and have taken possession by digging, ploughing and/or cultivating without her consent.

- 5 The applicant wishes to sub-divide and share a half of the said parcels of land among her children who have a life interest on the suit parcels of land. That the defendants/respondents' actions have caused a great breach of peace since she is unable to sub-divide and share the suit parcels among her children. She has sought assistance from relevant Government authorities over the issue in vain save for this Honourable court orders and directions. That unless the orders sought for herein are not granted, she stands to suffer irreparably.
- 6 The application is opposed by the replying affidavit sworn by the 1st defendant on 9/10/2025. It is deponed that the application is defective and an abuse of the Court process since on 11th October, 2024, the court vide Siaya MCELC No. E043 of 2023 cancelled the title in the name the plaintiff. A copy of the judgement is annexed.
- 7 That in the said judgment, the same issues being raised in the present application came up and the court gave a determination thereby rendering this application res-judicata. The Lower Court gave directions as to how the land was to be delt with upon nullification of the title in the name of the plaintiff/applicant and to date the plaintiff has never taken any action.
- 8 That as per the judgment delivered by Hon. Limo, the Plaintiff/Applicant cannot claim with the same facts as that of the Lower Court which the Court rendered its judgment. The plaintiff/Applicant is on a finishing expedition and no clear right

can be ascertained until the orders issued in the Lower Court judgment are effected. The court is invited to dismiss the application with costs to the Defendants/Respondents.

PRELIMINARY OBJECTION

9 The 5th Defendant filed a Notice of Preliminary Objection dated 21/08/2025 on the grounds that; -

1) THAT the plaintiff instituted these proceedings on 28/7/2025 or thereabout while there was already another pending suit before another Court of competent jurisdiction touching the 5th defendant herein as the plaintiff and now the plaintiff as the Defendant over the same subject matter being **SIAYA PRINCIPAL MAGISTRATE ENVIRONMENT AND LAND COURT NO. E058 OF 2025 PENDING FOR HEARING ON 6/11/2025**

2) That the plaintiff 's pleadings in paragraph 12 of the plaint are misleading this Honorable court.

3) That there is a possibility for the two competent courts to arrive at conflicting judgments

10 The 1st 2nd 3rd and 4th defendants also filed a Notice of Preliminary Objection dated 9/10/2025 whose grounds echo the grounds raised by the 5th defendant and I will therefore not replicate them.

NOTICE OF MOTION DATED 21/11/2025

11 The Notice of Motion application dated 21ST November 2025 by the 5th defendant Kevin Ananda and which seeks for the following orders: -

1) THAT this suit be stayed under section 6 of the Civil Procedure Act on the ground that issues directly in

question herein are sub judice in Siaya Principal Magistrate's Court Case No. E058 of 2025 Kevin Ananda Alinyo Vs. Mary Aluoch Abonyo which was filed earlier and is still pending.

2) THAT this Honorable court do issue an order staying all proceedings in this matter pending the determination of Siaya Principal Magistrate's Court Case No. E058 of 2025 Kevin Ananda Vs. Mary Aluoch Abonyo.

- 11 The application is premised on the Supporting Affidavit of Kevin Ananda Alinyo sworn on the 21st November 2025. It is averred that there exists another suit related to the present suit being Siaya Principal Magistrate's Court Case No. E058 of 2025 Kevin Ananda Alinyo Vs. Mary Aluoch Abonyo, the pleadings are annexed. That the parties in the said suit are the same as the present suit and the issues surround the same subject parcel East Gem/Luhanda/916.
- 12 It is deponed that the earlier suit is still pending and has not been heard or determined and is listed for hearing on 24/2/2026 before Hon. Limo (Principal Magistrate). That unless this court stays the current proceedings, the Applicant risks double litigation, penalties, and conflicting court outcomes which should be avoided in the interest of justice and to ensure that the court's resources are not wasted on issues that are already being adjudicated.
- 13 The application is opposed by the replying affidavit of the Plaintiff Mary Aluoch Abonyo sworn on 11/12/2025. She depones that the issues in this case and the issues in Siaya Principal Magistrates Case No. E058 of 2025 Kevin Ananda Alinyo Vs. Mary Aluoch Abonyo are different from the issues in

this case. That the parties in Siaya Principal Magistrate Court Case No. E058 of 2025 Kevin Ananda Alinyo Vs. Mary Aluoch Abonyo are different from the parties in this case.

- 14 It is urged that instead of applying for a stay of Siaya Principal Magistrates Court Case No. E058 of 2025 it could only be fair that the same are consolidated with this case so that the issues are determined together. The deponent prays that the suits are consolidated.

SUBMISSIONS

- 15 The application was heard by way of written submissions. The plaintiff submissions are dated 16/2/2026 and filed on 18/2026. The 5th Defendants written submissions are dated 23/02/2026.
- 16 The 1st 2nd 3rd and 4th Defendants submissions were not on record.

ANALYSIS AND DETERMINATION

- 17 I have considered the applications and the preliminary objections raised and the submissions on record. The main issues for determination are; -

- 1) Whether the orders sought in the applications should issue
- 2) What orders should issue in the circumstances of this case
- 3) Who bears the costs?

- 18 The preliminary objections revolve around the issue of sub judice. In the case of **Mukisa Biscuits Manufacturing Co Ltd Vs West End Distributors Ltd (1969) EA 696** the court held inter alia that a preliminary Objection must be raised

on a pure point of law and no fact should be ascertained from elsewhere.

- 19 It is evident that for the court to determine whether the suit is subjudice it will have to delve into matters of facts touching on both suits. I will not however belabor the point since I note that this has been cured by the filing of the application dated 21st November 2025.

Notice of Motion Application dated 21/11/2025

- 20 Though this application was filed after the application dated 28/7/2025 it is imperative that it is disposed of first for the reason that its outcome will inform the outcome of the application dated 28/7/2025 including what orders could issue in the circumstances of the case.
- 21 The prayers sought in the application dated 21/11/2025 have already been outlined earlier in this ruling. The application is brought under article 50(1) of the constitution of Kenya 2010, Section 6 and 3A of the Civil Procedure Act and Order 51, Rule 1, of the Civil Procedure Rules. The applicant wants the present proceedings stayed pending the determination of Siaya Principal Magistrate's Court Case No. E058 of 2025 Kevin Ananda Vs. Mary Aluoch Abonyo.
- 22 The doctrine of sub-judice prevents a court from proceeding with the trial of any suit in which the matter in issue is directly and substantially the same with that in a previously instituted suit between the same parties pending before the same or another court of competent jurisdiction.
- 23 The legal regime is Section 6 of Civil Procedure Act which defines the doctrine as follows;

“6. Stay of suit

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 parties under whom they or any of them claim litigating under the same title, where such suit or proceeding is pending in the same court or any other court having jurisdiction in Kenya to grant the relief claimed.”

- 24 Discussing the rationale and objectives of the concept of sub judice Justice Mativo (as he then was) in **Republic vs Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya (2020) eKLR**, stated thus; -

“...there exists the concept of sub judice which in Latin means “under Judgement.” 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.”

- 25 The principles to be considered by a court in determining whether a matter is subjudice were enumerated by 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), as follows: -

“67. ... 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.”

- 26 I will therefore be guided by the above parameters. The 5th defendant claims that he filed Siaya Principal Magistrate’s Court Case No. E058 of 2025 Kevin Ananda Alinyo Vs. Mary Aluoch Abonyo, where the parties are the same including the subject matter being parcel East Gem/Luhanda/916 with the present suit. That the said suit was filed before the present suit and is still pending.
- 27 The 5th defendant annexed a copy of the plaint dated 14/4/2025 -commencing the suit No. E058 of 2025 above. The plaintiff is Kevin Ananda Alinyo suing as administrator of the estate of Philip Alinyo Omoro and the defendant is Mary Aluoch Abonyo. The subject matter is land registration No. East Gem/Luhanda/916.
- 28 The present suit is commenced by Mary Aluoch Abonyo sued as defendant in the above suit. She has sued Kevin Ananda as the 5th defendant in the present suit. It is not doubt the two parties feature in both suits.
- 29 With regard to the subject matter the present suit involves land registration No. East Gem/Luhanda/916 and land registration No. East Gem/Luhanda/469. The plaintiff’s

complaint is that the defendants have entered the properties where she owns half share in each and have taken possession by digging ploughing and cultivating without consent.

- 30 I note that in the present suit she has sued 4 more defendants in addition to the 5th defendant who is the plaintiff who has sued her in suit No. E058 of 2025 herein. The plaintiff in E085 of 2025 claims an interest in only East Gem/Luhanda/916 and he craves that for orders of eviction and a permanent injunction against Mary and her agents and cancellation of Mary's title.
- 31 In my view there is duplicity of claims as between Mary and the 5th defendant on the parcel Gem/Luhanda/916. It was wrong for Mary to sue the 5th defendant in the present subsequent suit seeking a permanent injunction when she had already been sued by the 5th defendant in an earlier suit where she could defend her interests in the parcel. The plaintiff in the present suit urges that the parties are not the same but I think I have already made myself clear as to the claim between her and the 5th defendant. The inclusion of the other additional parties would be a non-issue as between the claim between Mary and the 5th defendant for purpose of the doctrine of subjudice.
- 32 It is also not in dispute that the suit filed in Siaya Principal Magistrate's Court Case No. E058 of 2025 Kevin Ananda Alinyo Vs. Mary Aluoch Abonyo was first in time and is still pending. The Respondent Mary does deny that the suit in the lower court has not been determined and that she had been sued therein before she filed the present suit.

- 33 To me the danger of the likelihood of existence of two decisions on the same subject matter is real and must be avoided in tandem with the objectives of Section 6 of the Civil Procedure Act.
- 34 I have seen the plaintiffs reply proposing that the suit in the Magistrates court is consolidated with the present case so that the issue may be heard together. This seems to me to be an admission of duplication. Be that as it may consolidation is not a solution as the plaintiff in the lower court suit is not interested in the parcel 469.
- 35 This court's view and considering the claims herein, it would be safer for the present suit to be stayed for the reasons that the subdivision which the plaintiff craves to undertake on behalf of her children must await the resolution of the dispute between Kevin and herself because it touches on the parcel 916.

Application dated 28/7/2028

- 36 I will now proceed to consider whether the orders of temporary injunction sought in the application dated should issue.
- 37 Firstly in view of the finding of the court that these proceedings should be stayed I would refrain from issuing any orders touching on the parcel Gem/Luhanda/916. The property is under litigation in another court and if there any orders of injunction to issue then the same should be a subject of consideration by the trial court and not this forum.
- 38 What about the other subject being parcel No. East Gem/Uranga/469. I have noted the contents of the judgement in MCELC/E043/2023 where Collins and Domitila Auma Were

are sued as defendants and are also sued in the present suit as 1st and 2nd Defendants. The subject matter was predominantly parcel East Gem /Uranga/469 and its ownership. The trial court found that Collins was entitled to ½ share of the parcel and Mary half share of the parcel. The title in the name of Mary was cancelled which I understand to enable the partition into the name of both Mary and Collins. It is also noted that the 2nd defendant in the present proceedings was in the parcel with the permission of the 1st defendant in these proceedings.

39 I take the view that there would be no prima facie case established by the applicant there being evidence that the title she claims under was cancelled. It is also not clear that she now has a title reflecting her other half. There is no material as well to show that it is her half share that is occupied. Thirdly I would be concerned because this court is not sitting on appeal of the decision of the trial court. I say so because Mary states in her reply to defence dated 31/10/2025 that the orders issued in Siaya CMCC No. MEELC E043 of 2023 were issued in disregard of the orders of the High Court in Kisumu 513 of 2015 herein.

40 For the foregoing reasons I find no merit in the application dated 28/7/2025.

41 The upshot of the foregoing is that the preliminary objection and the applications dated 28/7/2025 and 21/11/2025 are disposed in the following terms; -

1) THAT this suit be stayed under section 6 of the Civil Procedure Act

pending the determination of Siaya Principal Magistrate's Court Case No. E058 of 2025 Kevin Ananda Vs. Mary Aluoch Abonyo.

- 2) THAT the Notice of Motion application dated 28/7/2025 is dismissed.
- 3) There shall be no orders as to costs.

Orders accordingly.

Dated at Siaya this 21st Day of April, 2026

HON. JUSTICE A. E. DENA

JUDGE

21/4/2026

Ruling delivered virtually through Microsoft Teams Video Conferencing Platform in the Presence of:

Mary Aluoch Abonyo Plaintiff

Mr. Owino for 1st and 2nd Respondent

Mr. Okara for 5th Respondent

Court assistant: Dorothy Owuor