



**Kagwe v Karanja & another (Environment and Land Case  
E042 of 2024) [2025] KEELC 5486 (KLR) (24 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5486 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND CASE E042 OF 2024**

**A OMBWAYO, J  
JULY 24, 2025**

**BETWEEN**

**KEVIN WILLIAM KAGWE ..... DEFENDANT**

**AND**

**MOSES KARANJA ..... 1<sup>ST</sup> PLAINTIFF**

**STEPHEN MBATIA ..... 2<sup>ND</sup> PLAINTIFF**

**RULING**

**Brief Facts**

1. The 2nd Defendant/Applicant filed the instant application dated 21st March, 2025 seeking the following orders:
  1. That the Honourable Court be pleased to strike out the Plaint as it offends the mandatory provisions of Section 6 of the *Civil Procedure Act*, Cap 21.
  2. That the Honourable Court be pleased to strike out the Plaint as it offends the mandatory provisions of Section 7 of the *Limitation of Actions Act*, Cap 22.
  3. That the costs of this application be in the cause.
2. The Application is based on grounds set out and supported by a lengthy affidavit of Stephen Mbatia the Applicant sworn on 21st March, 2025.
3. He stated that he resides on Njoro Township Block 1/1137 the suit parcel having purchased the same on 23rd June, 2016. He further stated that the suit land had close to decades of an issue of double allocation between the Plaintiff's deceased patriarch and the Defendants on the other hand. He gave a history of when the dispute began in 1997 when the Commissioner for Lands allocated the suit parcel to the late Charles Nyori Kagwe yet it had already been allotted to Stanley Ngatho. He stated that



sometime in July 1998 the late Charles Kagwe moved the court seeking injunctive orders against 3rd parties who had allegedly trespassed on an unsurveyed commercial plot at Njoro Township. He added that the deceased was aware of the claim and interests of the Defendants to the suit properties.

4. He stated that the 3rd Defendant in the initial suit, was the daughter to Hellen Wambui Gichohu who was in possession of the land before he purchased the same. He added that the 1st Defendant was also sued as a Defendant in the initial suit. He stated that the same showed that there was existence of a suit by the same parties with the same cause of action. He stated that he has been in occupation of the suit parcel since he purchased it. He also stated that the suit ought to be struck out since there are previous proceedings over the same subject matter in a court of competent jurisdiction. He stated that the suit is time barred since the cause of action arose sometime in 1984 as confirmed in the pleadings filed in 1998 by Charles Kagwe (deceased). He urged the court to strike out the Plaintiff's suit for abuse of the court process.

### Response

5. The 1st Plaintiff filed his replying affidavit sworn on 8th April, 2025 where he averred that as advised by his counsel, Section 6 of the [Civil Procedure Act](#) was a bar against the proceedings with a suit in the pendency of a previously instituted suit between same parties and same subject matter.
6. He averred that the facts of the suit fell outside the scope of the said provision. He further averred *Nakuru CMCC 1501 of 1998* related to a parcel of land known as unsurveyed plot at Njoro Township. He added that the matter was between Charles Kagwe, Joseph Mburu and Grace Njeri Kamenderi. He also averred that the parties in the said suit were different. He averred that the present suit was that of trespass on Njoro Township Block 1/1137 and Njoro Township Block 1/1138. He went on to aver that before this court could find that the subject matter in *Nakuru CMCC 1501 of 1998* was similar to the subject matter in the present suit, the Applicant ought to demonstrate a nexus between the unsurveyed plot Njoro Township and parcels of land known as Njoro Township Block 1/1137 and Njoro Township Block 1/1138.
7. He averred that the instant application seeking to invoke res sub judice under Section 6 of the [Civil Procedure Act](#) is misplaced and ought to be dismissed with costs. He further averred that the claim that the suit is barred by Section 7 of the [Limitation of Actions Act](#) does not apply since the suit is an action for trespass. He added that the same ought to be dismissed.

### Submissions

8. Counsel for the Applicant filed her submissions dated 14th June, 2025 where she gave a background of the case and identified two issues for determination. The first issue was whether the suit before court is Sub Judice and offends the provisions of Section 6 of the [Civil Procedure Act](#). She relied on Section 6 of the [Civil Procedure Act](#) and the case of [Sunit Singh varma & Anor v Uniken Limited & 2 others](#) [2022] KEELC 782 (KLR). She submits that the Plaintiffs/Respondents instituted the instant suit in their capacity as beneficiaries of the late Charles Nyori Kagwe who had previously filed a suit in 1998 where he had sued one Joseph Mburu Ndungu, Moses Karanja and Grace Njeri Kamanderi. It is counsel's submission that the 1st Defendant in the instant suit had been sued as the 2nd Defendant in the 1998 suit, and the 2nd Defendant, sued in the place of the 3rd Defendant in the 1998 suit, having acquired the property from that Defendant. She submits that the Applicant has not shown any nexus between the unsurveyed commercial plot at Njoro township and the parcels known as Njoro Township Block 1/1137 and Njoro Township Block 1/1138. She submits that it was the Applicant's case that he had purchased the suit land from one Hellen Wambui Gachohu who is the mother to Grace Njeri Kamanderi who had been sued as the 3rd Defendant in the 1998 suit.



9. She submits that the suit relates to the same parties. She also submits that the lease document filed by the Plaintiffs in the instant suit for Njoro Township Block 1/1137 shows that the same was issued on 20th November 1998, a few months after the 1998 suit was filed. She argues that the similarities in the subject parcels under inquiry were too great and too overlapping, to be merely coincidental. She relied on the case of *Muturi Investments Ltd v NBK* [2006] eKLR. It is counsel's submission that the matter in *Nakuru CMCC 1501 of 1998; Charles Nyori Kagwe v Moses Karanja & 2 others* was heard and determined.
10. She argues that the court should not turn a blind eye on the fact that the matter in issue in the instant suit is also directly and substantially in issue in a previously instituted suit. She added that in so far as parties in the 2 suits are concerned, the Applicant has shown the nexus between him and the 3rd Defendant in the 1998 suit as well as the nexus between the Plaintiffs in the instant suit and the 1998 suit.
11. The second issue is whether the suit is before court statute barred under the provisions of Section 7 and 9 of the *Limitation of Actions Act*. Counsel submits in the affirmative and argues that the Plaintiffs cause of action first arose in 1984 when the initial occupants entered into and developed the suit properties. She relied on Section 7 and 9 of the *Limitation of Actions Act*. She submits that the Plaintiffs/Respondents cannot contend that the initial and/or present occupiers are trespassers. She argues that their prayer for delivery of vacant possession falls under the provisions of Sections 7 and 9 of the *Limitation of Actions Act*, for which we submit that their suit is time barred and ought to be dismissed. *Gathoni v Kenya Co-operative Creameries Ltd.* [1982] KLR 104. She submits that the cause of action arose early and the deceased, upon getting wind of it, filed suit seeking similar prayers as this suit. She submits that even if one argues that the cause of action arose the moment the deceased was registered as proprietor of the suit land in the year 1998, given the passage of time, the suit is statute barred by virtue of passage of time.

### **Analysis and Determination**

12. This court has carefully considered the application, replying affidavit and submissions and the main issue for determination is whether the plaint stands to be struck out for offending the sub-judice principle.
13. Section 6 of the *Civil Procedure Act* provides as follows:

“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”
14. In the instant application, the Applicant has invoked the principle of sub judice. He claims that the parties in *Nakuru CMCC 1501 of 1998* are similar with those in the instant case by virtue of the Plaintiffs being beneficiaries of the estate of Charles Nyori Kagwe, the Plaintiff in the former suit. The Applicant added that the 1st Defendant herein was also a party in *Nakuru CMCC 1501 of 1998*. I have keenly perused the pleadings in *Nakuru CMCC 1501 of 1998* and the parties are *Charles Nyori Kagwe v Joseph Ndungu, Moses Karanja and Grace Njeri Kamenderi*. I have also compared the parties to those in the instant suit and it is a fact that the only same party is the 1st Defendant herein who was also a 1st Defendant in the former case. In addition, the Applicant claims that the subject matter in the two cases are similar. I have perused the pleadings in the two matters and it is not in dispute



that the subject matter in *Nakuru CMCC 1501 of 1998* was Unsurveyed Commercial Plotat Njoro Township while the subject matter in the present suit are Njoro Township Block1/1137 and Njoro Township Block1/1138.

15. It is this court's view that the Applicant has failed in discharging his evidential burden of sub judice. I say so because, for the court to establish sub judice, all the parties and the subject matter in the two cases ought to be same which is not the case in the instant matter.
16. The Applicant also claims that the suit is statute barred since the cause of action arose sometime in 1984 when the former suit being *Nakuru CMCC 1501 of 1998* was filed. Having established that the principle of sub judice has not been proved, the doctrine of limitation of time cannot be applicable in the present suit. The upshot of the above is that the application dated 21st March, 2025 is without merit and is therefore dismissed with costs. It is so ordered.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**Nakuru ENVIRONMENT AND LAND COURT**

**ENVIRONMENT AND LAND COURT**

**DATE: 2025-07-24 09:38:20**

**The Judiciary of Kenya**

