

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCLC/E161/2025

PETER NJUNGE MUTUGI.....PLAINTIFF

VERSUS

JOHN KISURKAT KANYI..... 1ST DEFENDANT

ISAYA OLOWUAYA KANYI..... 2ND DEFENDANT

JOSHUA LETELA.....3RD DEFENDANT

KILEKU ENE LETELA
4THDEFENDANT

KASIRMO SEET5TH DEFENDANT

NTUATI JOEL SEET6TH
DEFENDANT

ELIJAH NTOYIAN7TH
DEFENDANT

MPALUA PARMUAT MBUIYA8TH
DEFENDANT

LOIJIE MPALUA9TH
DEFENDANT

SANKEI KISURKAT10TH DEFENDANT

NICHOLAS NKONINA11TH DEFENDANT

LEPAPA KORINKO12TH
DEFENDANT

ANTHONY METIAN MUTUTUA13TH DEFENDANT

KISAJON ENE SELEON14TH
DEFENDANT

RULING

(In respect of the Defendants' Preliminary objection dated 29th November 2025)

Introduction

1. The Defendants have raised a Notice of Preliminary Objection dated 29 November, 2025 seeking dismissal of the Plaintiff's suit based of the following grounds;

- (1) *That this suit is sub judice pursuant to Section 6 of the Civil Procedure Act, the subject matter herein being land parcel KAJIADO/ELANGATA WUAS/3666, which is a subdivision of KAJIADO/ELANGATA WUAS/794, the latter being directly in issue and pending determination before this Honorable Court in ELCL Petition No. E015 of 2025.*
- (2) *That the issues for determination in this suit are directly and substantially in issue in ELCL Petition No. E015 of 2025, which concerns community land within Elangata Wuas Group Ranch, including parcel KAJIADO/ELANGATA WUAS/794 from which the suit property herein was derived.*
- (3) *That the Plaintiff herein is the 1st Interested Party in ELCL Petition No. E015 of 2025, and is therefore litigating under the same title and in respect of the same subject matter, rendering the present proceedings impermissible parallel litigation.*
- (4) *That on 24 October 2025, this Honorable Court in ELCL Petition No. E015 of 2025 issued conservatory orders restraining the Respondents from alienating, transferring, charging, leasing, developing, or in any manner interfering with the community land, which orders remain valid and binding.*

(5) That the institution and prosecution of the present suit undermines and seeks to circumvent the subsisting conservatory orders of this Honorable Court, amounts to an abuse of the court process, and renders this suit incompetent and liable to be struck out or stayed in limine.

Courts directions

2. When the matter came up for directions on 3 February, 2026, the court in concurrence with the Plaintiffs' and the Defendants' counsel directed that the preliminary objection be canvassed by way of written submission. The parties duly complied by filing their respective submissions which this court has considered in writing this ruling.

Issue for determination

3. The singular issue for determination based after careful evaluation of the Defendants notice of preliminary objection and arguments advanced by learned counsel in their respective submission is whether the objection has met the legal threshold.

Determination

4. The doctrine of *sub judice* rule is provided for in Section 7 of the Civil Procedure Act (Cap. 21) in the following terms;

“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.”

5. The motive behind the *sub judice* rule was reflected upon by the Supreme Court in *Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties)* [2020] KESC 54 (KLR) as follows;

“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.”

6. Similar sentiments were expressed by the Court of Appeal in *Rajab v Kaur & another [2025] KECA 40 (KLR)* in the following words;

“The doctrine of the sub judice rule arises from the realisation that in the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter should be avoided so as to preserve judicial resources in terms of time spent on a matter that could be resolved in one suit. Secondly, a multiplicity of suits clogs the wheels of justice, holding up resources that would be available to fresh matters, and creating and or adding to the backlog of cases that the courts have to deal with. However, as the rule states, it is the subsequent suit or proceedings that are to be stayed.”

7. The criteria of establishing whether a lawsuit is *sub judice* was summarized by the Court of Appeal in *Muchiri vs Board of Management of Kenya Hospital Association & 2 others [2025] KECA 2315 (KLR)* in the following terms;

“In order to meet the criteria for sub judice rule, the court must be satisfied that:

(1) The suit or issue is directly and substantially in issue in the previously instituted suit.

(2) The previous suit or proceeding and the current suit are between the same parties or parties under whom they or any of them claim.

(3) The parties are litigating under the same title.

(4) The suit or proceeding is pending in the same or any other court.

(5) The court before which the suit or proceedings is pending has jurisdiction in Kenya to grant the relief claimed.”

8. In the current suit, the Plaintiff has instituted legal proceedings against the 1st to 14th Defendant’s respectively through a Plaint dated 29 November, 2025. The Plaintiff alleges that he is the registered proprietor of KAJIADO/ELANGATA WUAS/3666 acquired from Elangata Wuas Group Ranch. However, the Defendants have knowingly interfered with the said parcel of land despite having been allocated their own respective portions being

KAJIADO/ELANGATA WUAS/366, 387, 377, 287, 348 and 364 by the Elangata Wuas Group Ranch.

9. The Plaintiff claims that the continuous unlawful occupation and interference of the suit property by the Defendants through acts of trespass has inhibited his peaceful and quiet enjoyment of his parcel of land depriving him the right and opportunity to use and undertake development therein. Considering the Defendants have failed to stop their unlawful actions despite being served with a notice to vacate, the Plaintiff seeks judgment against them for various orders, namely; declaration that as an indefeasible owner of KAJIADO/ELANGATA WUAS/3666, he is entitled to its quiet and uninterrupted possession; permanent injunction restraining the Defendants from interfering with the property in whatsoever manner; eviction of the Defendants from the suit property; and that the officer commanding police post Mile 46 be directed to enforce the eviction orders.

10. In the constitutional Petition No. E015 of 2025, John Kaleyia Ole Kepas, Wilson Ipitet Letema, Judah Ordination Ncharo; Yiapas Ole Shungeya And Negarua Ole Likama Tikoe have sued Kanchori Ole Sinkeen; Daniel Nkinyi and Samperu Ole Nkongoni are sued in their personal and official capacities as the trustees of Elangata Wuas Group Ranch; alongside the Attorney General; Registrar of Lands, Kajiado; and the County Government of Kajiado as Respondents. They are

accused of violating Sections 8(2), 17(1) and 20(1) of the Land (Group Representatives) Act, Section 7 & 11, 15(3)-(5), 20, 21, 22, 23, 27, 35 and 47(1)-(3) of the Community Land Act, 2016; and Section 26(1) of the Land Registration Act, 2012.

11. The Petitioners assert that during the subdivision of KAJIADO/ELANGATA WUAS Community group land, 493 individual parcels, each measuring roughly 109.3 hectares were distributed to its registered members while (22) large parcels were reserved for essential common purposes. The reserved parcels planned for survival, sustainability, and development of the community included water points and access corridors, grazing areas, conservation and tourism zones, sites for public utilities; and cultural activities and other communal gatherings. The reserved portions encompassed KAJIADO/ELANGATA WUAS/787, 776, 982, 792, 782,784, 781, 790, 791, 780, 785, 783, 788,775, 777, 778, 779 and 793.

12. The Petitioners avers that in 2015, the 1st Respondent illegally, unlawfully and fraudulently allocated, sold, and transferred the very common areas to outsiders and private developers without the consent and participation of the community. As a result, alienation of the reserved areas has caused and continues to cause severe, multi-generational harm to the entire community due to environmental degradation, economic precarity, social and cultural disruption, water scarcity: and violation of inter-generational equity. Premised on these assertions, the Petitioners seek numerous orders including a declaration that the alienation, sale

and subdivision of the common areas was unconstitutional, illegal, fraudulent and null and void; the 1st Respondent breached their fiduciary duty when they disposed off the parcel without the community's consent; and an order directing the Attorney General and Registrar of Lands, Kajiado to cancel the resultant titles, entries, transfer or encumbrances in respect of the reserved common areas parcels amongst them KAJIADO/ELANGATA WUAS/794.

13. Evidently, based on the comparative scrutiny of the issues in the two matters, the parties, the reliefs sought and the subject matter in this present suit and ELCL Petition No. E015 of 2025, the criteria for invoking the *sub judice* rule has not been met. This is because the Plaintiff is not a party to the proceedings in ELCL Petition No. E015 of 2025. On this ground alone, I find that the Preliminary objection is not merited.

14. Further and more importantly, this court will require to probe the factual issues in both matters. Such ascertainment contradicts the laid down principles in respect of a preliminary objection stipulated in the dictum of **Mukisa Biscuit Manufacturing Co. Ltd.**

15. Accordingly, I hereby proceed to dismiss the Defendants' Preliminary objection dated 29th November 2025 with costs to the Plaintiff.

Ordered accordingly.

Dated, Signed and Delivered Virtually this 23rd Day of April, 2026.

M.D. MWANGI
JUDGE

In the virtual presence of:

Mr. Kamau for the Plaintiff

Mr. Sakimpa for the Defendants

Court Assistant: Peninah

M.D. MWANGI
JUDGE

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