



**Golden Century Limited v Sciborski (Land Case E315 of 2025)
[2026] KEELC 2736 (KLR) (7 May 2026) (Ruling)**

Neutral citation: [2026] KEELC 2736 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E315 OF 2025**

MN KULLOW, J

MAY 7, 2026

BETWEEN

GOLDEN CENTURY LIMITED PLAINTIFF

AND

PROF ROMUALD JOZEF SCIBORSKI DEFENDANT

RULING

1. The matter is coming up for determination on the defendant’s notice of preliminary objection dated 16th October 2025 on the following grounds;
 - a. That the plaintiff’s suit is an abuse of the court process, misconceived and bad in law and should be struck out and or dismissed with costs to the defendant
 - b. That the entire suit is a blatant abuse of court procedures. The same contravenes the principle of sub judice as it was filed parallel to the defendant’s suit HCCOMM 298 OF 2025 dated 24/04/2025 and filed on the 23/06/2025
2. The Plaintiff filed a replying affidavit sworn by Lan Xiao on the 11th November 2025 and further supplementary affidavit dated 16th March 2026. He deponed that the present suit E315 OF 2025 was a fresh suit which sought for orders of vacant possession on the suit property founded on the existence of an arbitral award that had been adopted as a judgement of the court. He deponed that the plaintiff sought reliefs of eviction, injunction, and mesne profits which were well within the jurisdiction of this court which matters do not point to any similarity in the high court matter hence the requirement for sub judice for the subject matter to be the same had not been established.
3. The court directed for the notice of preliminary objection be dispensed off by written submissions and both parties complied with the plaintiff drafting submissions dated 2nd March 2026 while the defendant drafted submissions dated 11th February 2026.



Defendant's submissions

4. The defendant submitted that the suit had been brought in contravention of section 6 of the [civil procedure Act](#). He submitted that the parties in this suit and HCCOMM N0 298 of 2025 are the same. Litigating on identical issues which have arisen from the same transaction and contractual relationship. He further submitted the reliefs sought were the same hence making the matter sub judice relying on what was said in the case of Thiba Min Hydro Co Limited -Vs- Josphat Karu Ndwiga (2013) eKLR.

Counsel submitted that this amounted to an abuse of the court process and that this court lacks the jurisdiction to entertain the same as the issues being commercial are already being litigated by a court of competent jurisdiction which is the high court.

Plaintiff's submissions

5. The plaintiff submitted on whether the suit was sub judice. Counsel indicated that for sub judice to suffice, the subject matter ought to be the same which was not the case in this matter as the matter in HCCOMM 298 OF 2025 sought for compensation on an alleged loss of investment whereas this suit seeks to enforce an arbitral award that indicated the defendant to have breached the sale agreement as between the parties. That the said arbitration proceedings had already litigated on the issues raised by the defendant in HCCOMM 298 OF 2025 and hence the matter was res judicata.

Counsel submitted that the parties in the two matters are not similar which argument he states had been admitted by the defendant in his own submissions in the High court matter

He further submitted that the ELC court is the right forum to litigate on this matter as it touches on the issue of eviction and trespass which is a function given to the court by section 13 of the [Environment and Land Court Act](#).

Analysis and determination

6. Having considered the Notice of Preliminary objection and the submissions herein the only issue for determination is Whether the Notice of Preliminary Objection dated 16th October 2025 is merited.

The notice of preliminary objection dated 16th October 2025 is founded on the ground that the suit is improperly before this court as it lacks jurisdiction to entertain the same. It goes without saying that without the requisite jurisdiction a court of law down its tools meaning that the objection, if successful, is capable of finally disposing the whole matter. The objection, therefore, attains the threshold of a pure preliminary point of law. Jurisdiction is the power of the court to determine a matter. Jurisdiction is everything, and a court must first be satisfied that it has the jurisdiction to determine a matter before embarking on determining the same. Jurisdiction is conferred by [the Constitution](#) or statute or both and a court cannot arrogate itself jurisdiction it does not have.

In the case of Owners of the Motor Vessel "Lilian S" -Vs- Caltex Oil (Kenya) Ltd (1989), the court stated as follows; Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A court of law down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.....where a court takes it upon itself to exercise jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given."

7. In the instant suit the defendant argued that by dint of section 6 of the [Civil procedure Act](#) the trial court lacks the jurisdiction to try the dispute herein since the issues herein are the same issues in HCCMM 298 OF 2025 which is before another competent court that is yet to make a determination on the same.



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. The doctrine is enshrined under Section 6 of *Civil Procedure Act* which defines the doctrine as follows;“

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.”

8. The rule is meant to prevent a duplication of the reliefs or a conflict thereof, to avoid confusion and chaos and ensure order in the legal system. In *Republic vs Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* (2020) eKLR, Justice Mativo discussed the concept sub judice as follows:-“...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.”
9. This is because since the issues in the two suits are similar, it is presumed that a determination of either of them will obviously render the other spent and of no further use, and a continuation of those proceedings would amount to *res judicata*. 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: -“ 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.”
10. There is no doubt that there are two suits pending before the courts, being this suit and HCCMM 298 OF 2025. A perusal through the plaint in HCCMM 298 OF 2025 do point that plaintiff herein the 1st defendant in the high court matter and that the defendant herein is a representative of the plaintiff company in the high court matter. That being the case, even though both the Plaintiff and the Defendant both have interest in the High Court suit, it cannot be said that the parties herein are litigating under the same title as those in the commercial cause.
11. Under Article 162(2)(b) of *the Constitution* of Kenya and Section 13 of the *Environment and Land Court Act*, this court is given jurisdiction over disputes relating to the environment and the use and occupation of, and title to, land. I have looked at the facts of this case and it is clear that the dispute herein revolves around the alleged illegal occupation of the suit property by the defendant which basically will have to go into ownership rights. To that extent then, the dispute herein is properly before this court, as it is the only court seized with the jurisdiction to determine ownership rights and whether the defendant has actually trespassed on the plaintiff's suit and if eviction and injunction orders should issue.
12. This brings me to the question of whether the subject matter in the two suits is similar. Notably, Section 6 of the *Civil Procedure Act* uses the term “matter in issue” as opposed to subject matter. This distinction was explained in the case of *Kenya Bankers Association -Vs- Kenya Revenue Authority* (2019) eKLR, where the court held that:- A cursory look at the prayers sought in this case show that they relate to the same subject matter. However, the principle of sub judice does not talk about



the “prayers sought” but rather “the matter in issue” I find that the matters in issue in the suits are substantially the same.”

13. The issue in HCCOMM 298 OF 2025 concerns the issue of misrepresentation based of sale agreement dated 20th December 2020 where the plaintiff in the said matter claims for compensation of its investment from the plaintiffs. For the trial court in the said matter to adjudicate on the same will have to interrogate the relationship as between the two parties based on the contractual relationship and go into depth of what monies were paid by which party and the losses that have occurred if any. On this instant matter the plaintiff’s issue is that the defendant has failed to give vacant possession of the suit property despite there being an arbitral award which has been adopted as judgement of the court hence the need to have the said judgement be executed. The court on this matter does not have to go into details of who paid what sums and who defaulted in the sums to issue the orders sought after as there is already a court order. The plaintiff only has to prove that he is the beneficial owner with a valid court order in his favour which order gives the plaintiff leeway to apply to the court to have the defendant evicted from the suit premises if the terms of the arbitral award are not met. 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.
14. The issue of sub judice was considered in the case of Republic -Vs- Paul Kihara Kariuki, AG & 2 others, Ex parte Law Society of Kenya [2020] eKLR where the court applied the principles of sub judice in a case involving the Law Society of Kenya (LSK) and stated that it mattered not that the earlier suit was filed by the Branch of LSK while the current suit was filed by the main body. The court stated as follows: -Paraphrasing what I said in the above case, the key words in applying sub judice rule is that “the matter in issue is directly and substantially in issue in the previously instituted suit.” The test for applicability of the sub judice rule is whether on a final decision being reached in the previously instituted suit, such decision would operate as res-judicata in the subsequent suit. As concluded earlier, the answer to this question is a resounding yes. However, when the matter in controversy is the same, it is immaterial what further relief is claimed in the subsequent suit or suits.

From the above analysis however, there can be no doubt that the matters in issue are totally different. That a determination on the high court matter would not render this instant suit res judicata as the issues raised in this suit will not have been conclusively dealt with to conclusion in the high court matter. Accordingly, this instant suit and the application herein cannot be said to be sub-judice.

Final disposition

1. The upshot of the above is that;
 - i. That the Notice of Preliminary Objection dated 16th October 2025 is not merited and this court therefore has the jurisdiction to entertain the suit.
 - ii. Costs in the cause.
- It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI ON THIS 7TH DAY OF

May 2026.

MOHAMMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -



Ms. Wariara for the Plaintiff
Mr. Njenga for Defendant
Philomena W. Court Assistant

