



REPUBLIC OF KENYA



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Maru v Kios & 4 others (Environment and Land Miscellaneous Case E010 of 2025) [2025] KEELC 5461 (KLR) (22 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5461 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND MISCELLANEOUS CASE E010 OF 2025
GMA ONGONDO, J
JULY 22, 2025

BETWEEN

STEPHEN KIPTABUT MARU APPLICANT

AND

LILIAN KIOS 1ST RESPONDENT

ISSAC SANG 2ND RESPONDENT

WESLEY TUM 3RD RESPONDENT

DAVID MUREI 4TH RESPONDENT

GEORGE LETTING 5TH RESPONDENT

RULING

1. The instant ruling is in respect of the preliminary objection dated 26th March 2025 herein by the respondents through Rotich, Langat & Partners Advocates premised upon the grounds thus;
 - a. That this honourable court lacks statutory jurisdiction to entertain the suit instituted via application dated 24th February 2025.
 - b. That the fatal suit instituted via the application dated 24th February 2025 offends the mandatory provisions of section 5 of the *Civil Procedure Act* Chapter 21 of the Laws of Kenya (The CPA herein) which clearly states that; ‘ Any court shall, subject to the provisions herein contained have jurisdiction to try all suits of a civil nature excepting suits of which it’s cognizance is either expressly or impliedly barred.’
 - c. That the fatal suit instituted via the application dated 24th February 2025 offends the mandatory provisions of section 19 of the CPA which provides that; ‘Every suit shall be instituted in such manner as may be prescribed by the rules.’



- d. That the fatal suit instituted via the application dated 24th February 2025 offends the mandatory provisions of Order 3 Rule (i) and (ii) of the Civil Procedure Rules 2010 which provides that; ‘Every suit shall be instituted by way of a plaint or in such other manner that may be prescribed.’ As a general rule a suit can only be instituted by way of a Plaint , Petition or an Originating Summons.
 - e. That the fatal suit instituted via the application dated 24th February 2025 is frivolous and vexatious and as such amounts to an abuse of the court process.
 - f. That the application dated 24th February 2025 is a non stater for lack of jurisdiction and improper institution.
 - g. That the fatal suit instituted via the Application dated 24th February,2025 is sub judice in contravention of Section 8 of the CPA reason being there is another ongoing suit being Kapsabet CMELC 12 of 2019 Stephen Kiptabut Maru Vs George Kiproop Letting Weslet Kiptoo Tum & Lilian Cheptarus Kios over the same subject properties.
 - h. Consequently, the 1st and 5th respondents pray that the applicants’ application dated 24th February 2025 be dismissed with costs for being an abuse of the court process and for the grounds listed above.
2. In the replying affidavit of thirteen paragraphs sworn on 26th March 2025 by the 5th respondent, it is averred in part that the suit has been originated by way of the present application which is fatally defective, an afterthought and an abuse of the court process. That the application is sub judice in contravention of section 8 of the CPA reason being there is another suit, Kapsabet CMEEELC 12 of 2019; Stephen Kiptabut Maru-vs-George Kiproop Letting, Weslet Kiptoo Tum and Lilian Chaptarus Kios over the same subject properties. That therefore, the court lacks requisite jurisdiction over the application which should be struck out in limine with costs to the respondents.
 3. It is worth to note that the applicant through Yuri Law and Company Advocates commenced the present matter by way of a Notice of motion dated 24th February 2025 for orders;
 - a. That the 1st, 2nd, 3rd, 4TH and 5th Respondents be permanently injuncted from trespassing into the Plaintiff /Applicant’s land parcels Registered as Nandi/Legemet 293/300/301/302/303/304/305/306 and 307.
 - b. That the 1st, 2nd, 3rd, 4th, and 5th Respondent be permanently estopped and injuncted from utilizing the land parcels of the Plaintiff/Applicant.
 - c. That the OCS, Ndurio Police Station, Area Chief, Ndurio Location and the Sub County Administrator, Nandi South do enforce these orders.
 - d. That cost of this application be provided for.
 4. The applicant lamented, inter alia, that the respondents have illegally and without any right whatsoever trespassed into the applicant’s property, cleared portions thereof and continuously cultivated the same despite the warnings from the applicant. That the 3rd and 5th respondents in violation of the court orders against them in March 2023 in Land case No. 12 of 2019 have continued to trespass into the applicant’s property hence, precipitating this application.
 5. In the supplementary affidavit sworn on 15th May 2025, the 1st respondent averred in part;
 - a) That the application dated 24th February,2025 is fatally defective and it is an abuse of this Honourable Court’s process, time and resources for being vexatious and frivolous.



- b) That the fatal suit instituted via the Application dated 24th February,2025 is sub judice in contravention of Section 8 of the CPA reason being there is another ongoing suit being Kapsabet CMELC 12 OF 2019 Stephen Kiptabut Maru Vs George Kiprof Letting, Wesley Kiptoo Tum & Lilian Cheptarus Kios over the same subject properties which has a mention date on 13th August,2025. (See annexed and marked LK-3 being a copy of the Court Tracking System print out of MCELC 12/2019).
- c) That therefore to prevent further abuse of the court process and waste of this Honourable Court's time. I pray that this Court dismisses the fatally defective application dated 24th February,2025 with costs to me.
6. Hearing of the preliminary objection was by way of written submissions further to this court's directions given on 1st April 2025.
7. By the respondents' submissions dated 16th May 2025, reference is made to the orders sought in the application and hat the substantive injunctive orders sought therein by way of a fatally defective Notice of motion without any underlying suit or claim which is also an abuse of the court process. That as a general rule, a suit can only be instituted by way of a plaint, petition or originating summons. Reliance was made on sections 8 and 19 of the CPA , Order 3 Rule (i) (ii) of the Civil Procedure Rules 2010, the case of Proto Energy Limited-vs-Hashi Energy Limited Misc 180 of 2018. That the application is sub judice as there is Kapsabet CMELC 12 of 2019 involving the same parties and the same suit property fixed for mention on 13th August 2025. Thus, counsel for the respondent termed the application full of malice and implored the court to dismiss the same with costs to the respondent in the interest of justice.
8. Learned counsel for the applicant failed to file submissions relating the preliminary objection. This is the revelation from the Court Tracking System (CTS) as at the time of delivery of this decision.
9. In the foregone, is the preliminary objection sustainable?
10. The gravamen of the preliminary objection is that the application is sub judice. Sections 5, 6 and 8 of the CPA (supra) are a foundation of the principle of sub-judice. Indeed, section 8 stipulates that;
- Where a plaintiff is precluded by the rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of that cause of action.
11. Further, in Black's Law Dictionary 10th Edition at page 1652, the term 'Sub judice' is defined thus;
- '{Latin 'under a judge'} Before the court or judge for determination.'
12. Similarly, Concise Oxford English Dictionary 12th Edition at page 1436, defines 'sub-judice' as follows;
- 'under judicial consideration and therefore prohibited from public discussion elsewhere.'
13. In section 2 of the CPA, the term 'suit' means all civil proceedings commenced in any manner prescribed and the same is fortified by the decision in Proto Energy Ltd case (supra) which referred to Order 3 Rule (i) (ii) of the Civil Procedure Rules 2010. Section 19 of the CPA reads;
- 'Every suit shall be instituted in such manner as may be prescribed by the rules.'
14. This court is guided by the Court of Appeal decision in the case of Kenya Ports Authority-vs-Modern Holding (EA) Limited (2017) eKLR that jurisdiction is such a fundamental matter that it can be raised at any stage and time of proceedings. That parties be accorded the opportunity to be heard thereof.



15. The present dispute involving the same property and the same parties, is also a suit namely Kapsabet Chief Magistrate's court Environment and Land case number 12 of 2019. The same is set for mention on 13th August 2025 before the said court.
16. So, it would not be right for the same matter to be heard simultaneously by this court and Kapsabet Chief Magistrate's court; see the Court of Appeal decision in the case of Judicial Commission of Inquiry into the Goldenberg Affair & 3 others-vs- Job Kilach (2003) eKLR.
17. It is therefore, the finding of this court that the preliminary objection dated 26th March 2025 is loaded with merit. It is sustainable.
18. Accordingly, the application dated 24th February 2025, is hereby struck out with no orders as to costs.
19. It is so ordered

DATED AND DELIVERED AT KAPSABET THIS 22ND DAY OF JULY 2025.

G .M A ONGONDO

JUDGE

Present;

Mr Kiplating learned counsel for the applicant

Mr Rotich learned counsel for the respondents

Mr Walter Kipkorir, court assistant

