



Waro (Suing as the Legal Representative and Administrator of the Estate of Mumba Chome Waro (Deceased)) v Juba & 3 others (Environment & Land Case 49 of 2023) [2025] KEELC 1002 (KLR) (27 February 2025) (Ruling)

Neutral citation: [2025] KEELC 1002 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 49 OF 2023
EK MAKORI, J
FEBRUARY 27, 2025**

BETWEEN

**NYEVU MUMBA WARO PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE
ESTATE OF MUMBA CHOME WARO (DECEASED)**

AND

**JERRYSON TAURA JUBA 1ST DEFENDANT
RAFIKI MICROFINANCE BANK 2ND DEFENDANT
TROPHY AUCTIONEERS 3RD DEFENDANT
LAND REGISTRAR, KILIFI 4TH DEFENDANT**

RULING

1. The application dated 19th September 2024 seeks a stay of proceedings in this matter, and/or be struck out for offending the doctrine of sub judice, with the attendant costs.
2. The annexed affidavit deposed by Brady Wanja, learned counsel for the applicant (2nd defendant in this matter) on September 19, 2024, supports this.
3. I did not see a response from the other parties to this suit.
4. The court directed that the application be canvassed through written submissions. The applicant /2nd defendant complied, but the other parties did not.
5. From the materials presented, I frame the issues for this court to determine - whether the current suit is sub judice and whether to stay the same or strike it out with the attendant costs.



6. Ms. Wanja contends that this suit is congruent with Kilifi MELC No. 49 of 2020 involving the same subject matter that is Kilifi/Roka/794 and that the trial court had declined to issue an injunction restraining the 2nd and 3rd respondents from advertising for sale and selling the said suit property in the exercise of the 2nd respondent's Statutory Power of sale since the property had been charged as security by third parties (not sued here or at Kilifi Magistrates Court) to secure a loan, which they had defaulted and that the 1st respondent who was the registered owner had consented to it being placed as collateral. She further avers that this suit offends the sub judice rule by dint of Section 6 of the Civil Procedure Act.
7. She states that this suit represents an abuse of the court process and, at best, a forum shopping exercise, and thus, it should be struck out.
8. Ms. Wanja cites several authorities to support her contention significantly (on sub judice)- Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR) (Constitutional and Human Rights) (7 February 2020) (Ruling, Remmy Mwanzo Mwandzomari v Rishard Hela Mkuva & 4 others [2021] KEHC 9085 (KLR), Business Partners International Kenya (II) Limited v Otundo & another [2025] KEHC 507 (KLR).
9. In Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) (Advisory Opinion Reference 1 of 2017) [2020] KESC 54 (KLR) (Constitutional and Human Rights) (7 February 2020) (Ruling), the Supreme Court held as follows:

The term 'sub-judice' is defined in Black's Law Dictionary 9th Edition as:

“Before the Court or Judge for determination.” 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.”

10. I fully align with those submissions and the Supreme Court's opinion on the doctrine of sub judice. This alignment ensures the legality and correctness of the decision.
11. Turning to abuse of the court process, Ms. Wanja cites the decision in Shitanda v County Speaker of Kajiado County & 2 others [2023] KEHC 17822 (KLR), the Court held:

“Thus, the multiplicity of actions on the same matter between the same parties even where there exists a right to bring action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right peruse. The abuse consists of intention, purpose and aim of the person exercising the right to harass, irritate and annoy the adversary and interfere with the administration justice.”



12. I also concur with those submissions and the holding in the cited judicial authority. This concurrence reaffirms the decision's alignment with established legal principles.
13. The issues raised in the current application were discussed at length in the application for an injunction brought by the plaintiff and the preliminary objection raised by the 2nd defendant in the ruling by this court dated 23rd of May 2024, this is what the court said:

“We have the Kilifi case. The ownership of land parcels Kilifi/Roka/794 is substantially in issue and under consideration by that Court. An application for an injunction was made. It was declined. Because of that, the 2nd respondent proceeded to commence legal procedure in exercising its Statutory Power of Sale of the suit property. The applicant became aware of that process and moved this Court for an injunction. Effectively, it means the injunction will act as a stoppage of the proceedings in the Kilifi case.

Whereas the applicant in this matter is not a party in the Kilifi one, the suit property is. All conditions for sub judice could not have been met in this matter (on the same parties litigating). But, if the two suits are allowed to proceed without one being stayed, it may lead to conflicting outcomes over the same subject matter. One has to go first. The applicant has an avenue of applying to be joined as a party and, in the Kilifi action, ventilate the issues raised in this suit or apply to stay the Kilifi cause to give way for this one to proceed. This Court has not been moved to stay the Kilifi proceedings. It has not been moved in its appellate jurisdiction to consider the injunction, which was denied. The applicant has not shown the intention to protect her interest in the Kilifi proceedings before invoking the jurisdiction of this Court.

Whereas this Court has jurisdiction to entertain the matter, it cannot issue an injunction to affect a matter pending before another competent Court. As I have said, the Court has not been asked to stay the Kilifi matter, nor has its appellate jurisdiction been invoked.

With warring interests over the suit property, it will be up to the applicant to find a way to address the pending suit in Kilifi vis a-vis the progression of this one. This will bring sanity in addressing all the issues raised by the applicant in the suit filed herein and that at Kilifi to avoid the proliferation of suits and the issuance of incongruent outcomes.”

14. This means that the parties in this matter are not the same as those in the Kilifi matter—at least, the plaintiff is not, which is why she filed this matter. The issues here and in the Kilifi matter are not necessarily the same, with an issue of succession brought in this suit, not in the Kilifi matter.
15. The plaintiff has applied to be joined in the Kilifi case, which is at the pretrial stage.
16. To void what I have termed - incongruent outcomes, the justice of this matter—which I had implored the parties to undertake—is to have the two suits consolidated so that all issues and all parties are heard on merit to avoid back-and-forth.
17. This further means that in exercising the powers conferred to this court by section 18 of the *Civil Procedure Act*, which provides:

“On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court may at any stage-



- a. Transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
- b. Withdraw any suit or other proceeding pending in any court subordinate to it, and thereafter-
 - i. Try or dispose of the same; or
 - ii. Transfer the same for trial or disposal to any court subordinate to it and competent to try or dispose of the same; or
 - iii. Retransfer the same for trial or disposal to the court from which it was withdrawn.

Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn”

18. This principle was enunciated in *Julius Lekuruito & Another v Nottingham Mwangi & Another* [2018] eKLR where the court held:

“Under Section 17 and 18 of the Act, upon an application by a party, or on its own motion, the High Court may transfer the suit to another subordinate court with territorial jurisdiction, when justice of the case demands such action.”

19. I hereby order that this matter be transferred to the Kilifi Court to be consolidated and heard with Kilifi MELC No. 49 of 2020.
20. Thus, the current application is declined, but this ruling will reconcile the issues raised concerning the pendency of the two files.
21. Costs will abide by the decision in the Kilifi matter.
22. It is so ordered.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY THIS 27TH DAY OF FEBRUARY 2025.

E. K. MAKORI

JUDGE

In the presence of:

Ms. KameneH/B for Ms. Wanja, for the 2nd Defendant

Clerk: Happy

In the Absence of:

The Plaintiff (in person)

Mangaro, for 1st Defendant

Mr. Ojwang, for the 4th Defendant

