



**Taisir v County Government of Mombasa & 2 others (Environment & Land
Case E015 of 2024) [2024] KEELC 4697 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4697 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E015 OF 2024**

**NA MATHEKA, J
JUNE 12, 2024**

BETWEEN

HAJI MBARAK TAISIR PLAINTIFF

AND

COUNTY GOVERNMENT OF MOMBASA 1ST DEFENDANT

NATIONAL CONSTRUCTION AUTHORITY 2ND DEFENDANT

NATIONAL BUILDING INSPECTORATE 3RD DEFENDANT

RULING

1. The application is dated 6th March 2024 and is brought under Order 40 Rules 1,2,3 (3) and 4 of the [Civil Procedure Rules, 2010](#) Section IA, 1B, 3A and 63 (e) of the [Civil Procedure Rules Act](#) Cap 21 laws of Kenya seeking the following orders;
 1. That this matter be certified urgent and service of this application in the 1st instance be dispensed with.
 2. That an order of temporary injunction be issued restraining the Defendants by themselves, their servants and or authorized agents from harassing, interfering with, demolishing, evacuating and or in any manner interfering with the occupants therein, with the property known as Mombasa/Mwembelegeza/1417 pending the hearing and determination of this Application.
 3. That an order of temporary injunction be issued restraining the Defendants by themselves, their servants and or authorized agents from harassing, interfering with, demolishing, evacuating and or in any manner interfering with the occupants therein, with the property known as Mombasa/Mwembelegeza/1417 pending the hearing and determination of this Suit.
 4. That cost of the application be provided for.



2. It is grounded upon the affidavit of Haji Mbarak Taisir following grounds that the Applicant is the proprietor of the parcel of land known as Mombasa/Mwembelegeza/1417. That the applicant has built a house in the premises which house is partly occupied. That the applicant obtained all the requisite authorisation and has complied with all the requisite regulation. That the Applicant and the Defendants have been sued in ELC Pet No. E001 of 2024. That the Defendant in an attempt to influence the outcome of Petition has issued a notice threatening demolition and threatening occupants with the eviction. That the Defendant gave only 3 days for eviction on 4th March 2024 which shall expire on 7th March, 2024. That the Applicant stands to suffer irreparably unless the Status quo is maintained.

3. This court has considered the application and submissions therein and the preliminary issue to be determined is whether or not this matter is *sub judice*. The Plaintiff informed this court that the Defendants have been sued in ELC Pet No. E001 of 2024. That the Defendant in an attempt to influence the outcome of Petition has issued a notice threatening demolition and threatening occupants with the eviction. Section 6 of the [Civil Procedure Act](#) provides that;

“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 are 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.”

4. I am not persuaded by the Respondent’s counsel that the suits are distinct and different. They are similar. A determination of either of them, will obviously render the other spent and of no further use. In the case of [Kenya Bankers Association versus Kenya Revenue Authority](#), 2019 eKLR the court had this to say on the issue of *res sub judice*;

“in addition, it is clear that the matters in issue in the suits or proceedings are directly and substantially the same. The parties in the suits or proceedings are the same. The ex parte applicant herein, is litigating on behalf of its 47 members, some of whom are parties in the existing suits. The suits are pending in the High Court which has jurisdiction to grant the relief claimed.”

5. 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. [In Re the Matter of the Interim Independent Electoral Commission](#), the Supreme Court cited with approval the Australian decision where it was held: -

“... we do not think that the word “matter” ...means a legal proceeding, but rather the subject matter for determination in a legal proceeding. In our opinion there can be no matter... unless there is some right, duty or liability to be established by the determination of the court...”

6. The rationale behind sub-judice rule is to prevent situation of having conflicting orders emanating from the same subject matter. In the case of [David Ndi & others vs Attorney General & Others](#) 2021 eKLR, a bench of five Judges *inter alia* stated;

“The rationale behind this provision (Section 6 of the [Civil Procedure Act](#)) is that it is vexatious and oppressive for a claimant to sue concurrently in two courts. Where there are



two courts faced with substantially the same question or issue, that question or issue should be determined in only one of those courts, and the court will....”

7. That Applicant stated that he is the proprietor of the parcel of land known as Mombasa/Mwembelegeza/1417. He has constructed a building on the premises and there are no encumbrances against his title. That he obtained all the requisite authorization in constructing the building and he annexed as a bundle the certificate and correspondences marked "HVIT". That the building has reached the 5th floor and is occupied. That the building has not been completed and final touches have not been made because an NGO called Center for litigation on Environment and Governance (CLEG) has written complaints in regard to the building. That the NGO filed a Suit namely ELC Pet No. E00I of 2024 and annexed herewith a copy of the pleadings marked 'HMT-2'. That the Petition is scheduled to come before the Honourable Judge on 11th March, 2024 for directions. That out of the blue the 1st Defendant claiming to be acting in conjunction with the 2nd and 3rd Defendant issued notices to occupants of the building requiring eviction within 3 days by a letter dated 4th April 2024. That unless the status quo is maintained, he stands to suffer irreparably. This court finds no reason at all why the Plaintiff in particular, cannot finalize or pursue to conclusion the suits filed by the NGO in ELC Pet No. E00I of 2024 which is also before this court touching on similar parties and the same subject matter. I find this matter is *sub judice* and is struck off with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 12TH DAY OF JUNE 2024.

N. A. MATHEKA

JUDGE

