



Kemboi v Mutai & 3 others; Bor & 5 others (Interested Parties) (Employment and Labour Relations Petition E007 of 2023) [2024] KEELRC 532 (KLR) (7 March 2024) (Ruling)

Neutral citation: [2024] KEELRC 532 (KLR)

**REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT AT KERICHO
EMPLOYMENT AND LABOUR RELATIONS PETITION E007 OF 2023**

**HS WASILWA, J
MARCH 7, 2024**

BETWEEN

BRIAN KEMBOI PETITIONER

AND

**H.E DR. ERICK KIPKOECH MUTAI, GOVERNOR KERICHO
COUNTY 1ST RESPONDENT**

**COUNTY ATTORNEY, KERICHO COUNTY GOVERNMENT 2ND
RESPONDENT**

THE COUNTY ASSEMBLY OF KERICHO 3RD RESPONDENT

**HON. DR. PATRICK MUTAI, THE SPEAKER, COUNTY ASSEMBLY OF
KERICHO 4TH RESPONDENT**

AND

**DR. WESLEY BOR, THE COUNTY SECRETARY AND HEAD
OF COUNTY PUBLIC SERVICE BOARD, KERICHO COUNTY
GOVERNMENT INTERESTED PARTY**

**BRENDA BILL BII, CECM FOR HEALTH SERVICES, KERICHO COUNTY
GOVERNMENT INTERESTED PARTY**

**MR. LEONARD NGETICH, CECM, FOR FINANCE AND ECONOMIC
PLANNING, KERICHO COUNTY GOVERNMENT INTERESTED PARTY**

**MR. ALPHONSE ROTICH, THE COUNTY CHIEF OFFICER IN THE
EXECUTIVE OFFICE OF THE GOVERNOR INTERESTED PARTY**

**MR. GILBERT BII, THE COUNTY CHIEF OFFICER OF FINANCE AND THE
ACTING CHIEF OFFICER ECONOMIC PLANNING, KERICHO COUNTY
GOVERNMENT INTERESTED PARTY**



**MS. BETSY CHEBET, THE COUNTY CHIEF OFFICER OF LAND,
HOUSING & PHYSICAL PLANNING AND ACTING CHIEF OFFICE SERVICE
MANAGEMENT INTERESTED PARTY**

RULING

1. The petitioner herein instituted this suit by a petition dated 22nd August, 2023, alongside a Notice of Motion of even date, expressed under Articles 3, 22(1), 23(1), 159 and 258 of *the Constitution* and Rules 3 and 4 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and procedure Rules, 2013, seeking for the following Orders; -
 1. Spent.
 2. That this Honourable court be pleased to issue temporary order to compel the interested parties herein to step aside from their respective offices they hold at the county Government of Kericho to give room/time to the 1st respondent herein, H.E the Governor of Kericho county to implement the recommendations contained in the investigation report of the select Ad Hoc committee of the county assembly of Kericho in respect to the Londiani Victims Fundraising held on 14th July 2023, which recommended that the interested parties herein be removed from office, for a smooth transition, pending hearing and determination of the application interpartes.
 3. That this Honourable court be pleased to issue an order to compel, HE the Governor of Kericho county to comply and implement the recommendations contained in the investigation report of the select Ad Hoc committee of the county assembly of Kericho in respect to the Londiani Victims Fundraising held on 14 July 2023, which recommended that the interested party herein who hold high ranking positions in the county be removed from office, by initiating the process of their removal within the next 14 days to avoid confrontations and crisis by the two important departments of the County which is the Executive office of the Governor and The Kericho County Assembly .
 4. That costs of this Application be borne by the Respondent.
2. The Application is premised on the grounds that the 3rd and 4th Respondents on the 11th August 2023, Recommended to H.E the Governor Dr. Eric Mutai the 1st Respondent herein for removal from office of the interested parties herein, who hold high ranking positions in the county, following the investigation report of the select Ad Hoc committee which was formed to investigate the allegations of Mismanagement of funds of the Londiani victims fundraising held on 4th July 2023.
3. He avers that the Governor has refused, failed or/is adamant to implement the report which failure is likely to trigger a crisis in the county because of the weighty allegations levelled against the interested parties.
4. The Petitioner states that the interested parties were found guilty for gross violations of various sections of the law and *the constitution*, as they have conducted themselves in a manner inconsistent with the requirement of the high-ranking office they hold as provided for under chapter six of *the constitution* of Kenya and thus they are unfit to hold such office.
5. He stated that the interested parties herein are favorite appointees by the Governor and the chances by the Governor to implement the recommendation by the county assembly-ad hoc committee, to



remove them from office are minimal hence the need for these proceedings and court intervention to protect the rule of law and constitution.

6. He contends that the public and especially the residents of Kericho have lost trust with the interested parties herein who were found guilty of stealing the Victims' fundraising funds and hence the officers continuing holding office and the governor protecting them may trigger crisis in the county because the residents are planning to hold demonstrations to force the officers to vacate their offices.
7. He stated that the interested parties lack integrity and its therefore illegal and unconstitutional for them to continue holding public office. Therefore that the end of justice is better served if the Application herein is allowed.
8. The Application is opposed by the 1st and 2nd Respondent who raised a Notice of Preliminary Objection dated 24th November, 2023 based on the following grounds; -
 1. That the Application as is, offends the doctrine of sub judice as espoused under Section 6 of the [Civil Procedure Act](#) since a similar matter with substantively similar Respondents and prayers is pending determination by this Honourable Court at Kericho in Kericho ELRC Petition No. E006 OF 2023: Wesley Bor & 5 Others V The Kericho County Assembly & 4 Others.
 2. That the Petition does not disclose any constitutional questions for the determination by this Court neither does it meet the principles on pleadings in constitutional petitions as enunciated in Anarita Karimi Njeru v Republic [1979] 1KLR 154 and augmented in Mumo Matema Vs Trusted Society of Human Rights Alliance [2013] eklr.
 3. That the Application is frivolous, vexatious and an abuse of the scarce resources of this Honourable Court and the same ought to be struck out at once.
9. Direction were taken for the Preliminary Objection to be heard first via written submissions, with the Petitioner filling on 4th January, 2024, 1st and 2nd Respondents filling on 9th January, 2024, while the 3rd and 4th respondent filed on 22nd February, 2024.

Petitioner's Submissions

10. The Petitioner submitted on three issues; whether the preliminary objection meets the threshold, whether the the instant petition offends the doctrine of subjudice as espoused under section 6 of the [Civil Procedure Act](#) and who bears costs.
11. On the first issue, it was submitted that preliminary objection is based on pure points of law, with the parameters on what amounts to preliminary objection well laid out in the case of Mukisa Biscuits Manufacturing Company Limited V West End Distributors Ltd (1969) E. A 696 and reiterated by the Court in the case of Attorney General & Another V Andrew Mwaura Githinji & Another [2016] eklr.
12. TO Buttress Its argument, the Petitioner cited the case of Attorney General & Another -Versus - Andrew Mwaura Githinji & another [2016] eklr, where the Court explicitly extrapolates in a more concise and surgical precision what tantamount to the scope, nature and meaning of a Preliminary Objection inter alta: -
 - i. A preliminary objection raised a pure point of law which is argued on the assumptions that all facts pleaded by the other side are correct.
 - ii. A preliminary objection cannot be raised if any fact held to be ascertained or if what is sought is the exercise of judicial discretion; and



- iii. The improper raise of points by way of preliminary objection does nothing but unnecessary increase of costs and on occasion confuse issues in dispute”
13. On that basis, it was submitted that though the element of subjudice ordinarily forms an issue on pure points of law, in instances where there is need for proof to ascertain existence of any element of Subjudice, that cannot be said to be purely a point of law since issues of fact will have to be considered.
14. Similarly, that in this case, there is need to produce evidence to prove existence of a nexus between the parties in the instant suit and the previous suit. He added, the contents and the parties in the previous and the current suit and/ or petition are not the same in nature of approach. Therefore, that the threshold for the Objection raised has not been met and thus the objection ought to be struck out. To support this, the Petitioner relied on the case of Pius Wanjala Vs Cleophas Mailu & 4 others [2016] eklr where the Court held that; -
- “ Ordinarily, a preliminary objection should be based on the presumption that the pleadings are correct. It may be based on agreed facts. It, however, cannot be entertained where there is a dispute as the facts for example where it is alleged by the defendant and denied by the plaintiff that a condition precedent to their filing of the suit such as the giving of a statutory notice was not complied with, unless the fact of non giving of the notice is admitted so that the only question remaining for determination is the legal consequence thereof. It may also be entertained in cases where the Court has discretion whether or not to grant the orders sought for the simple reason that an exercise of judicial discretion depended largely on the facts of each particular case which facts must be established before a Court may exercise the discretion. In this case both parties have adopted the unusual mode of arguing the preliminary objection by filing affidavits in support and in position thereof respectively. Accordingly, part of the Court’s task would be to determine what are the agreed facts contained therein whether expressly or by legal implication.”
15. A similar view was upheld in the case of Oraro Vs Mbaja [2015]eklr , where Ojwang J expressed himself as follows;
- “ Any assertion which claims to be a preliminary objection, yet it bears factual aspects calling for proof, or seeks to adduce evidence for its authentication is not a matter of legal proof, or seeks to adduce evidence for its authentication is not as a matter of legal principle, a true preliminary objection which the court should allow to proceed. Where a court needs to investigate facts, a matter cannot be raised as a preliminary point..... Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”
16. Accordingly, it was submitted that the facts of the instant petition/application is a reprimand upon the Governor to implement on the issues raised by the County Assembly. Therefore, that the two existing matters are totally in different approach hence the preliminary objection should be dismissed for want of threshold.
17. The Petitioner submitted that Black’s Law Dictionary define Sub Judice as
- “subjudice is a matter or case that is before a Judge for determination.”



18. Section 6 of the *Civil Procedure Act*, Chapter 21 of the Laws of Kenya, elaborates it further that;

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly or substantially in issue in a preliminary instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigation 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.”

19. Accordingly, that the matter in issue herein does not involve the parties directly as in the other matter. That the instant matter herein is directly brought against the 1st and 2nd Respondents in order to compel them to implement the recommendation made to them by the County Assembly upon investigation carried out by the Ad Hoc Committee and removal of the interested parties on allegation of misappropriation of funds of the Londiani Victim Fundraising held on 4th July 2023.

20. In Conclusion, the Petitioner urged this Court to be considerate of the drastic nature of striking out of suits because it has the effect of driving a party away from the seat of justice. In this he relied on the case of Crescent Construction Company Limited Vs Delphis Bank Limited [2007] eKLR where the Court of Appeal stated that: -

“One thing remains clear and that is that the power to strike out a pleading is a discretionary one. It is to be exercised with the greatest care and caution. This comes from the realization that the rule of natural justice requires that the Court must not drive away any litigant, however weak his case may be from the seat of justice. This is a time honored principle. At the same time, it is unfair to drag a person to the seat of justice when the case purportedly brought against him is a non-starter.”

1st and 2nd Respondent’s Submissions.

21. The Respondent submitted on three issues; whether the Application and petition offends the doctrine of Sub Judice, whether the Application and the Petition meets threshold for Constitutional Petitions and who should bear costs of this Application.

22. On the first issue, it was submitted that the Application and Petition offend the doctrine of sub judice as defined under Section 6 of the *Civil Procedure Act*, which proscribes any court from proceeding with 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 or any other court having jurisdiction in Kenya to grant the relief claimed. In deed that a similar matter with substantively similar Respondents and prayers is pending determination before this Honourable Court in Kericho ELRC Petition No. E006 OF 2023: Wesley Bor & 5 Others V The Kericho County Assembly & 4 Others.

23. To support its argument, the Respondent relied on the Supreme Court of Kenya case of Law Society of Kenya Vs The Centre for Human Rights and Democracy Petition No. 14 of 2013 which held regarding the sub judice rule 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 are pending before courts of competent jurisdiction and lastly, that the suits are between the same parties or their representatives. In the above context, it cannot be denied that the issues and prayers sought by the Petitioner in the two Constitutional Petitions generally call for the interpretation and application of provisions of Chapter Six of *the Constitution*. The issues and orders in the two Constitutional Petitions substantially ascend from the criteria for the implementation of the provisions of Chapter Six of *the Constitution*. In Constitutional Petition No. 142 of 2017, the Petitioner challenges the constitutionality of the Working Group as well as the criteria on the implementation of the provisions of Chapter Six of *the Constitution* as established by the Working Group. The High Court has therefore been tasked to examine the constitutionality or otherwise of the criteria so established by the Working Group. In Constitutional Petition No. 68 of 2017 the Petitioner therein challenges requirement for clearance by the state and private organs on grounds that it threatens and violates the provisions of *the Constitution*. For the High Court to determine the constitutionality of the requirement for clearance challenged by the Petitioner in Constitutional Petition No. 68 of 2017 or the Working Group criteria as well as the ‘Resolution on Complimentary Framework of Collaboration by Agencies to Ensure Compliance with Leadership and Integrity Requirements in August 2017 General Elections’ and ‘Compliance with Leadership and Integrity Requirements in the 2017 General Elections’ challenged in Constitutional Petition No. 142 of 2017, it has to examine, interpret and apply the provisions of Chapter Six of *the Constitution*. In so doing, the High Court shall be compelled, to determine whether a Constitutional test is set up in Chapter Six of *the Constitution*, whether the set test (if any) is fit and proper, objective or subjective, the scope of application of the test, the implementing organs and bodies. These are substantially the same issues subject of the Advisory Opinion sought by the Applicant comprised at pages 13 to 19 of the Reference before this Court. We therefore find that this Reference, as framed, mainly raises issues of constitutional interpretation. These issues are also substantially in issue before the High Court in Constitutional Petition No. 68 of 2017 and Constitutional Petition No. 142 of 2017. In view of Article 165 of *the Constitution*, the High Court is the Court of first instance with regard to jurisdiction for interpretation and application of *the Constitution* and that Court has already been moved. Guided therefore by these principles, and in exercise of our discretion, we decline to exercise our jurisdiction under Article 163(6) of *the Constitution*. This Reference is subjudice and this Court will not usurp the High Court’s jurisdiction under Article 165 (3).”

24. The Respondent also relied on the decision by Mativo J. (as he then was) in the case of held in the case of Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] Eklr, which he stated as follows:-

“The sub judice rule like other maxims of law has a salutary purpose. The basic purpose and the underlying object of sub judice is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two parallel litigations in respect of same cause of action, same subject matter and the same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by two courts



in respect of the same relief and is aimed to prevent multiplicity of proceedings. In a fairly recent decision of this court, namely JR No. 146 of 2020, which incidentally involved the Law Society of Kenya, I stated that the words "directly and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue." Therefore, sub judice would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical. 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."

25. Accordingly, that a similar matter being Kericho ELRC Petition No. E006 OF 2023: Wesley Bor & 5 Others V The Kericho County Assembly & 4 Others, is before this Court. Hence, dealing with the matter at this stage would be tantamount to rendering section 6 of the *Civil Procedure Act* in operational. Furthermore, that the matter in issue in the said suit is substantially the same with the one in the instant Application and Petition because the parties who are likely to be affected by the prayers sought are the same and should this Honourable Court proceed with the instant suit, there is a possibility of delivery of conflicting decisions and in the event the aforesaid matter is concluded irrespective of the nature of the outcome, the instant Application and Petition shall be rendered res judicata. Therefore, that the instant Application and suit offend the sub judice rule and ought to be dismissed at once.
26. On whether the Application and Petition meet threshold for Constitutional Petitions. It was submitted that the Application and Petition at hand do not meet the threshold of a constitutional petition as enunciated in the case of Anarita Karimi Njeru v Republic [1979] 1 KLR 154 and augmented in Mumo Matemu v Trusted Society of Human Rights Alliance [2013] eKLR.
27. Based on the above, it was submitted that the Petitioner/Applicant has not in any way set out with a degree of precision his complaint, the constitutional provisions infringed and the manner in which such provisions are infringed and to that effect the instant Petition does not meet the threshold of a constitutional petition as postulated by the foregoing authorities. Therefore, that the petition and should be struck out.
28. It was submitted that the 3rd Respondent acted beyond scope hence infringing on the powers and functions of the office of the 1st Respondent as provided for under Article 176 of *the Constitution* and Parts II, III and V of the County Government Act. Thus, the 3rd Respondent is in blatant violation of the doctrine of separation of powers and the impugned report tabled before the 1st and 2nd Respondents ought to be struck out. In any event, that the 3rd Respondent does not have any power to control or usurp the powers of either the 1st or 2nd Respondent herein. Furthermore, that it is trite law that he who alleges must prove, a burden that the Petitioner has not discharged the requisite standard of proof for the Application and Petition to be successful.
29. On costs of the Application, it was submitted that, the general rule concerning costs is that costs follow the event as stated under Section 27(1) of the *Civil Procedure Act*, which states that awarding of costs shall be at the discretion of the Court or Judge who has the power to determine to whom the costs will be awarded, out of what property and to what extent such costs are to be paid. This was further clarified in the case of Peter Muriuki Ngure v Equity Bank (K) Ltd [2018] Eklr.
30. In conclusion, the Respondent urged this Court to dismiss the Petitioner's Application in its entirety.



3rd and 4th Respondent's Submissions.

31. The Respondents herein submitted that the Preliminary Objection does not raise clear points of law fit for consideration as a preliminary objection. He argued that what amounts to preliminary objection was defined by Sir Charles Newbold in the celebrated case of Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd [1969]EA 696 at page 700 paragraphs D-F Law JA as he then was had this to say:

“....A Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration...A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”

32. Accordingly, that some of the issues that raise pure points of law include; jurisdiction of the Court, questions of the plea of limitation and questions of a party's locus standi to institute a suit. Therefore, that to discern a point of law, the court has to satisfy itself that there is no contest as to facts on record and hence a preliminary objection should not be raised when there are contested fact as is the case in this matter. On that basis, it was submitted that the Preliminary Objection raised does not meet the threshold set out in Mukisa Biscuits case above.

33. In support of their arguments, the Respondents relied on the Court of Appeal case of Kakuta Maimai Hamisi Vs Peris Pesi Tobiko & 2 Others [2013] eKLR, where the court held that:-

“So central and determinative is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. It is a threshold question and best taken at inception. It is definitive and determinative and prompt pronouncement on it, once it appears to be in issue, is a desideratum imposed on courts out of a decent respect for economy and efficiency and a necessary eschewing of a polite but ultimately futile undertaking of proceedings that will end in barren cul de sac. Courts, like nature, must not act and must not sit in vain.”

34. The above holding was reiterated by the supreme Court in the case of Samuel Kamau Macharia & Another V Kenya Commercial Bank Limited & Others [2012] eKLR and the Court of Appeal decision of Orange Democratic Movement V Yusuf Ali Mohamed & 5 Others [2018] eKLR.

35. On that basis, the Respondents submitted that the Preliminary Objection is frivolous and aimed at attempting to diminish the value of litigation brought to protect *the constitution*, therefore that this Court must not allow its jurisdiction to be trivialized by objections such as the one filed by the 1st and 2nd Respondents.

36. On whether the case herein is subjudice, the Respondents define what is subjudice by relying on the supreme Court Advisory Opinion reference No. 1 of 2017 Kenya National Commission on Human



Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 others (Interested Parties) [2020] Eklr, where the Court held that;-

“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.”

37. Accordingly, that the Preliminary Objection has not satisfied the test required to oust a court’s jurisdiction.

38. On whether the Petition discloses any constitutional questions for determination by the Court, the Respondents cited the case of RC Vs KKR [2021] Eklr where the Court held that;-

“constitutional matters must include disputes as to whether any law or conduct is inconsistent with *the Constitution*, as well as issues concerning the status, powers and functions of an organ of State.... the interpretation, application and upholding of *the Constitution* are also constitutional issues. So too is the question of the interpretation of any legislation or the development of the common law promotes the spirit, purport and object of the Bill of Rights? If regard is had to this and to the wide scope and application of the Bill of Rights, and to the other detailed provisions of *the Constitution*, such as the allocation of powers to various legislatures and structures of government, the jurisdiction vested in the Constitutional Court to determine constitutional matters and issues connected with decisions on constitutional matters is clearly on extensive jurisdiction...”

39. Similarly, that the petition herein confronts various protections laid out in *the Constitution* and therefore it raises constitutional issues, hence its rightfully before this Court. The Respondents then urged this Court to dismiss the Preliminary Objection dated 25th November, 2023 and uphold its jurisdiction to hear and determine both the Petition and the Application herein.

40. I have examined the submissions and averments of the parties herein. The applicants raised a preliminary objection on the ground that a similar matter is pending before this court being KCO ELPC Pet No 6/2023 Wesley Bor & 5 Others Versus The Kericho County Assembly & Others.

41. The applicants submitted that this being the case, this matter is subjudice and should not proceed as provided for under Section 6 of the CPA.

42. The respondents opposed this application submitting that the preliminary objection is not purely on a point of law and therefore should be disregarded.

43. Section 6 of the *Civil Procedure Act* states as follows:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly or substantially in issue in a preliminary instituted suit or proceeding between



the same parties, or between parties under whom they or any of them claim, litigation 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.”

44. It is true that this court is seized of KCO ELRC Petition 6 of 2023 where the issues in question relate to the removal from office of the Interested Parties herein. The main petition is yet to be resolved.
45. The current petition relates to the same Interested Parties whom the applicants want the 1st Respondent to remove from office.
46. In this court’s view the Petition 6 of 2023 and Petition 7 of 2023 relate to the issues which are similar or substantially similar and therefore it is true that the current petition 7 of 2023 is subjudice to petition 6 of 2023 and so should not be allowed to proceed.
47. I find the application is therefore merited and I accordingly proceed to strike out this petition with costs for being an abuse of the court process.

RULING DELIVERED VIRTUALLY THIS 7TH DAY OF MARCH, 2024.

HON. LADY JUSTICE HELLEN WASILWA

JUDGE

