



Pareiyo & another (Acting as the legal representative of the Estate of Late Senet Ole Pareiyo) v Ntaiya & 5 others (Environment and Land Appeal E004 of 2023) [2024] KEELC 5707 (KLR) (25 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5707 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL E004 OF 2023**

**CG MBOGO, J
JULY 25, 2024**

BETWEEN

**KONANA OLE PAREIYO 1ST APPELLANT
BENEDICT TIANITA PAREIYO 2ND APPELLANT
ACTING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF LATE
SENET OLE PAREIYO**

AND

**LETE OLE NTAIYA 1ST RESPONDENT
SIMINTEI OLE KISHAMPILI 2ND RESPONDENT
PEMBA OLE RATIA (SUED IN THEIR OWN CAPACITIES AS CHAIRMAN,
SECRETARY AND TREASURER RESPECTIVELY OF RATIA GROUP
RANCH) 3RD RESPONDENT
COUNTY SURVEYOR, NAROK 4TH RESPONDENT
DISTRICT LAND REGISTRAR, NAROK 5TH RESPONDENT
HON ATTORNEY GENERAL 6TH RESPONDENT**

(Being an appeal from the ruling of the Hon. A.N. Sisenda SRM delivered on 17th April, 2023 in Narok Chief Magistrates Court Case No. E064 of 2022)

JUDGMENT

(Being an appeal from the ruling of the Hon. A.N. Sisenda SRM delivered on 17th April, 2023 in Narok Chief Magistrates Court Case No. E064 of 2022)



1. The appellants herein, being dissatisfied by the ruling of Hon. A.N. Sisenda SRM delivered on 17th April, 2023, in CMELC no. E064 of 2022, have appealed against the said ruling vide the memorandum of appeal dated 12th May, 2023 on the following grounds: -
 1. That the learned magistrate erred in law and fact in deciding that Narok Chief Magistrate's Land Case No. E064 of 2022 was sub judice.
 2. That the learned magistrate erred in law and fact in failing to consider the established elements of the principle of sub judice.
 3. That the learned magistrate erred in law and in fact in determining that the orders to be granted in Narok Environmental and Land Court Case No. 137 of 2017 will directly affect Narok Chief Magistrate's Land Case No. E064 of 2022.
 4. That the learned trial court erred in law in striking out case Narok Chief Magistrate's Land Case No. E064 of 2022 without considering alternative options.
 5. That the learned magistrate misdirected herself in finding merit in the notice of preliminary objection of the 1st to 3rd defendants and striking out Narok Chief Magistrate's Land Case No. E064 of 2022.
2. The appellants seek orders that: -
 - a. That the learned trial magistrate's ruling of 17th April, 2023 be set aside and appeal be allowed.
 - b. Narok Chief Magistrate Case No. E064 of 2022 be reinstated.
 - c. Costs of the appeal be awarded to the appellants.
3. The grounds of appeal were canvassed by way of written submissions. The appellants filed their written submissions dated 18th June, 2024 where they raised three issues for determination as listed below: -
 - a. Whether the learned magistrate erred in law and fact in finding that Narok Chief Magistrates' Court Land Case No. E064 of 2022 was sub judice.
 - b. Whether the learned trial court erred in law and fact in striking out Narok Chief Magistrate's Court Land Case No. E064 of 2022 without considering the alternative options.
 - c. What prayers should be granted.
4. On the first issue, the appellants submitted that the subject matter in Narok ELC Case No. 137 of 2017 were described as respective portions of the appellants' land in parcel no. 21A Ratia Group Ranch, and it is clear that when filing ELC Case No. 137 of 2017, individual titles had not been issued. That in the present case, the subject matter is with respect to land parcels; Cis-Mara/Olchoro/ 1968 and 1969 which are not similar. Further, it was submitted that the parties are also not similar since the 4th and 5th respondents in the present suit are not parties in the former suit. It was further submitted that the cause of action in both suits are not directly and substantially related, and the reliefs sought are not the similar. The appellants relied on the cases of Kenya National Commission on *Human Rights versus 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), Abdulkadir A. Khalif versus Principal Secretary Ministry of Lands & Physical Planning & 4 Others; National Land Commission & Anor (Interested Parties) [2020] eKLR, and *Hussein versus Odiambo & 2 Others, Misc ELC E016 of 2021*.



5. On the second issue, the appellants submitted that the trial court went ahead and struck out the suit, and if at all the court rightfully found the suit to be sub judice, the suit should be stayed as required under Section 6 of the *Civil Procedure Act*. The appellants relied on the case of Daniel Kipkemoi Bett & Another versus Joseph Rono [2022] eKLR.
6. In conclusion and on the third issue, the appellants submitted that the elements provided under Section 6 of the *Civil Procedure Act* were not met and the suit, the subject of this appeal is not sub judice.
7. The 1st respondent filed his written submissions dated 17th July, 2024 where he raised three issues for determination as listed below: -
 - a. Whether the learned magistrate erred in law and fact in deciding that Narok Chief Magistrates' Land Case No. E064 of 2022 was sub judice.
 - b. Whether the learned magistrate erred in law in striking out Narok Chief Magistrate's Land Case No. E064 of 2022 without considering alternative options.
 - c. Who shall bear the costs of the appeal.
8. On the first issue, and particularly on existence of two or more suits filed consecutively, the 1st respondent submitted that it is not disputed that there are two matters filed consecutively i.e. the Narok CMCC ELC Case No. E064 of 2022 and ELC Case No. 137 of 2017. Further, he submitted that the issues in both matters are the same to the extent that Cis-Mara/Olchoro/1968 and 1969 emanate from the allocation, subdivision, and survey of parcel no. 21A Ratia Group Ranch which is the subject matter in Narok ELC Case No. 137 of 2017. The 1st respondent urged this court to evaluate the substance of both suits which shows that the subject matter in both suits is land allegedly owned by the appellants. The 1st respondent relied on the case of Republic versus Paul Kihara Kariuki, Attorney General & 2 Others, Ex-parte Law Society of Kenya [2020] eKLR.
9. On whether the same parties are litigating under the same title, the 1st respondent submitted that the parties are litigating under the same title and the only difference is the addition of the District Land Adjudication Officer, County Surveyor and the Land Registrar, Narok.
10. On the second and third issues, the 1st respondent submitted that as per the provisions of Section 6 of the *Civil Procedure Act*, there is a clear direction that the court shall not proceed with trying the latter suit hence there is no purpose of staying a suit which the law precludes from proceeding. Further, he submitted that if such suits are not struck out, nothing stops the parties from continuously filing several suits for purposes of vexing parties. In conclusion, the respondent submitted that the appeal ought to be dismissed with costs.
11. I have considered the grounds of appeal, and the written submissions filed by the appellant and the 1st respondent. In my view, the issue for determination is whether the appeal has merit.
12. This is a first appeal and the law is that this court is entitled to revisit the evidence on record, evaluate it and arrive at its own conclusion. Often times, an appellate court will not interfere with the findings of fact by the trial court unless they were based on no evidence at all, or were arrived at on a misapprehension of it or the trial court is shown to have acted on wrong principles in arriving at those findings as it was held in Mwanasokoni versus Kenya Bus Service Ltd 1982 – 88 I KAR 278.
13. The 1st, 2nd and 3rd respondents filed a notice of preliminary objection dated 6th September, 2022, challenging the suit on the following grounds: -



1. That the said suit is ‘sub judice’ the same matter is pending before the Environment and Land Court at Narok before Justice Mbogo in ELC No. 137 of 2017 (Formerly ELC No. 175 of 2015 Nakuru)
 2. That consequently, the plaintiff’s suit dated 6th September, 2022, is incompetent and ought to be dismissed with costs.
14. The preliminary objection was triggered by the institution of the pleadings vide the plaint dated 6th September, 2022 wherein the appellants were seeking the following prayers: -
- a. Declaration that the sub division and registration of Ratia family as the proprietor of the land parcels Cis-Mara/ Olchoro/ 1968 and Cis-Mara/ Olchoro/ 1969 was done unprocedurally and illegally and thus a nullity.
 - b. Cancellation and/or revocation of the register and title deeds in the name of Ratia family as the proprietor of the land parcels Cis-Mara/ Olchoro/ 1968 and Cis-Mara/ Olchoro/ 1969.
 - c. Declaration that the suit land parcel being; Cis-Mara/ Olchoro/ 1968 and Cis-Mara/ Olchoro/ 1969 belong to the 1st plaintiff and the estate of the late Senet Ole Pareiyo.
 - d. An order compelling the Land Registrar, Narok to have the 1st plaintiff and the Estate of the late Senet Ole Pareiyo jointly registered as the proprietors of the suit land parcels and certificates of title deed issued in their names.
 - e. Costs of the suit.
15. The 1st, 2nd and 3rd respondents filed their statement of defence and counterclaim dated 21st October, 2022. In response to the contents of the plaint, the 1st, 2nd and 3rd respondents pleaded under paragraph 16 of their statement of defence the existence of a suit pending before this court between the same parties and the same subject matter.
16. According to Black Law Dictionary 9th edition, sub judice means- “before a court for determination...”
17. The provisions of Section 6 of the Civil Procedure Act defines the above principle or 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.”
18. 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 the previously instituted suit between the same parties pending before same or another court with jurisdiction to determine it.
19. The appellants acknowledge the existence of the Narok ELC Case No. 137 of 2017, whose subject matter is the parcel of land no. 21A, that is pending before this court but disputed that the issues are not similar, as the latter matter deals with parcels Cis-Mara/Olchoro/ 1968 and Cis-Mara/ Olchoro/ 1969. On the other hand, the 1st respondent submitted that the court should evaluate the substance as opposed to the form in determining the suit is sub judice. He submitted that the fact that there are additional parties in the latter suit, that does not negate the fact that there is a similar matter before this court touching on the same subject matter.



20. Having carefully analysed the submissions of the appellants in the matter before the magistrates' court in ELC Case No. E064 of 2022, and upon further consideration of the written submissions filed by the appellants and the 1st respondent herein, I am satisfied that the matter is sub judice for the reason that in ELC Case No. 137 of 2017, the subject matter is the parcel no. 21A, which issue is directly and substantially in issue in the matter before the trial court.
21. In *Republic versus Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya* [2020] eKLR, the court pronounced itself as follows;
- “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.”
22. Whereas I find the suit before the trial court as sub judice, I disagree with the position of the lower court in striking out the suit. The 1st, 2nd and 3rd respondents also filed their counterclaim as well. With the counterclaim on record, that would mean that the 1st, 2nd and 3rd respondents equally had a claim as against the appellants and would have wanted to obtain justice through a just determination of the case. The orders that would have served the interest of both parties would be stay of the proceedings in the latter file as opposed to striking out the same.
23. As such, the appeal dated 12th May, 2023, partially succeeds to the extent that I substitute the order for striking out and replace the same with the orders of stay of proceedings in Narok Chief Magistrates' ELC Case No. E064 of 2022 pending the determination of the matter in ELC Case No. 137 of 2017. Each party shall bear its own costs. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 25TH DAY OF JULY, 2024.

HON. MBOGO C.G.

JUDGE

25/07/2024.

In the presence of: -

Mr. Meyoki Pere – C.A

