



**Guracha v Guyo (Environment & Land Case 26 of 2024)
[2024] KEELC 7050 (KLR) (23 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7050 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 26 OF 2024
EK MAKORI, J
OCTOBER 23, 2024**

BETWEEN

SALAD BORU GURACHA APPLICANT

AND

ALI WARIO GUYO RESPONDENT

RULING

1. The Plaintiff's Chamber Summons Application, dated 22nd February 2024 and supported by the annexed affidavit by the Applicant sworn on the even date, seeks the following key orders:
 - a. Spent
 - b. Spent
 - c. Pending the hearing and determination of the suit, this Court be pleased to issue an order of temporary injunction restraining the Respondent by himself, his servants' agents, and any person from dealing with Plot No 3213 Plan No TRC/1355/2016- Tana Delta situated at Minjila measuring 0.0400HA
 - d. An order directed to the OCS Garsen Police Station to ensure compliance with the order issued by this Court
 - e. costs be provided for.
2. The said application is opposed, and in opposition, Defendant filed a Notice of Preliminary Objection dated 5th March 2024 and a Replying Affidavit sworn by Defendant on the even date.
3. The Respondent has raised issues that there is a pending matter before the Garsen Magistrates Court Land Case No E006 of 2023 Ali Wario vs Antonia Dula Abdulahi & Kibusu Agricultural Ranch, involving the current respondent and Kibusu Agricultural Ranch. It is about the 5 acres the Defendant



purchased from that Ranch. It is the same land the Plaintiffs here and in Malindi ELC No 22,24, 25, and 26, all of 2024 claim to have been allotted by the County Government of Tana River. Cumulatively, the said suit property as a whole does not exceed Kshs 700,000/- the disclosed purchase price by the Defendant; hence, this matter ought to be heard in Garsen Principal Magistrates Court.

4. The Plaintiffs here and in the other suits aver that they are not parties in the Garsen matter. However, it is crucial to note that if all the suits are consolidated, the pecuniary jurisdiction will not exceed that of a Magistrate's Court. This consolidation is necessary to ensure a comprehensive and fair hearing of all related matters.
5. Without framing the issues, I need to settle, considering that there is a pending matter in Garsen Principal Magistrates Court - Land Case No E006 of 2023 Ali Wario vs Antonia Dula Abdulahi & Kibusu Agricultural Ranch – involving the same subject matter and that there is nothing to show that this suit and the other suits can exceed the jurisdiction of the Magistrates Court; this matter is transferred to the Subordinate Court to be consolidated or heard simultaneously with the matter mentioned above. This will ensure an orderly manner of disposing of the Court's business by avoiding multiple cases in various forums involving the same subject matter to prevent conflicted decisions. That is what the *sub judice* principle is all about. See [Daniel Kipkemoi Bett & another v Joseph Rono](#) [2022] eKLR, Dr. Iur Nyagaka J. captured the principle in this manner:

“The concept of *sub judice* is one that bars a Court from trying a matter that is in one way or other before another Court of competent jurisdiction by way of a previously instituted suit as long as it is between the same parties canvassing it under the same title. In essence, if both Courts were to proceed with the matters on merit and determine them without deference to the former, they would arrive at similar or different results on the same rights claimed by the same parties, and there would be a duplication of the reliefs or a conflict of them, which would be a recipe for confusion and chaos in the legal system. In the alternative of the scenario immediately above, where one of the Courts determined the matter before it the one still pending would be *res judicata*. Section 6 of the [Civil Procedure Act](#) bars any court from engaging in matters *sub judice* before them. It provides as follows:

“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 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.”

20. In a recent decision, my brother Justice Mativo discussed the concept *sub judice*. This was in [Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya](#) [2020] eKLR where he stated as follows: -

“...there exists the concept of *sub judice* which in Latin means “under Judgement.” It denotes that a matter is being considered by a court or judge. The concept of *sub judice* that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on. In such a situation, order is passed by the subsequent court to stay the proceeding and such order can be made at any stage.”

21. The import of the concept is that as soon as the Court finds a matter *sub judice*, it stays immediately the proceedings until the prior one is heard and determined. On this point, the Supreme Court of Kenya in [Kenya National Commission on Human Rights v Attorney General; Independent Electoral &](#)



Boundaries Commission & 16 others (Interested Parties), stated therein as follows: -

“[67] 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.”

6. The Preliminary Objection and the pending applications are compromised in that manner—there are no orders as to costs.

DATED, SIGNED, AND DELIVERED IN OPEN COURT AT MALINDI ON THE 23RD DAY OF OCTOBER 2024.

E.K. MAKORI

JUDGE

In the Presence of:

Mr. Birir, for the Applicant

Ms.Thuku, for the Respondent

