



**Mwangi v Maina & 4 others (All Sued as Trustees (Office Holders) of Rivers of Joy Ministries)
(Environment & Land Case E128 of 2024) [2025] KEELC 3111 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3111 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E128 OF 2024**

**TW MURIGI, J
MARCH 28, 2025**

BETWEEN

JULIUS KAMURU MWANGI PLAINTIFF

AND

BISHOP PAUL MBUGUA MAINA 1ST DEFENDANT

PASTOR ELIUD MAINA NGUITUI 2ND DEFENDANT

EDWARD MUSYOKA MUOKI 3RD DEFENDANT

ROSE WANGUI GITONGA 4TH DEFENDANT

JOHN GITONGA KING'ORI 5TH DEFENDANT

**ALL SUED AS TRUSTEES (OFFICE HOLDERS) OF RIVERS OF JOY
MINISTRIES**

RULING

1. This ruling is in respect of the Notice of Motion application dated 6th October 2024 in which the Applicants seek the following orders:-
 - a. This Honourable court do stay proceedings in this matter pending the hearing and determination of ELCLA No.037 of 2024.
 - b. Costs of the application be borne by the Plaintiff/Respondent.

The application is premised on the grounds appearing on its face together with the supporting affidavit of Bishop Paul Mbugua sworn on even date.



The Applicants Case

2. The deponent averred that the Respondent instituted this suit vide a Plaint dated 28th March 2024, eight days after their suit in the lower court was struck out for want of jurisdiction. He further averred that the Respondent had filed a preliminary objection in MCELC No. E342 of 2023 challenging the pecuniary jurisdiction of the Magistrate's court to hear and determine the suit. That the court upheld the preliminary objection vide its ruling delivered on 8th March 2024 and struck out the Applicants suit with costs.
3. He further averred that the Applicants have appealed against the said ruling and added that the Appeal raises arguable grounds which will be rendered nugatory if the orders sought are not granted.
4. He further contended that the Respondent will not suffer any prejudice if the orders sought are granted.

The Respondent's Case

5. In response, the Respondent a Notice of Preliminary Objection dated 4th December 2024 raising the following grounds:-
 - a. The application offends Section 6 of the [Civil Procedure Act](#) and Order 43 Rule (1) of the [Civil Procedure Rules](#) and should be struck out.
 - b. That the learned Magistrate held that she lacks jurisdiction to determine this dispute.
 - c. That the application is an abuse of the court process and an afterthought since the Applicant has filed a defence.
 - d. No suit is in existence for the Applicant to cite the principle of sub judice.

Both the preliminary objection and the application were canvassed by way of written submissions.

The Plaintiff/respondent's Submissions

The Plaintiff's filed his submissions dated 25th February 2025.

6. On his behalf, Counsel submitted that the appeal cannot breathe life to the suit since it has already been struck out. Counsel further submitted that where a court lacks jurisdiction, parties cannot seek refuge under the oxygen principle or under Article 159 of the [Constitution](#). Counsel further submitted that an appeal does not lie as of right where a suit has been dismissed for want of jurisdiction. It was submitted that the appeal is a non-starter because the Applicants did not seek leave to appeal in accordance with Order 43 (1) of the [Civil Procedure Rules](#).
7. It was further submitted that there is nothing to be stayed since the Applicants suit was struck out for want of jurisdiction. Counsel contended that the Defendants' application is an afterthought as the Defendants have already filed a defence to the suit.

The Defendants/applicants Submissions

8. The Applicants filed their submissions dated 21st February 2024.
9. On their behalf, Counsel outlined the following issues for the court's determination:-
 - i. Whether the preliminary objection is merited?
 - ii. Whether the matter is sub judice?



- iii. Whether this Honourable court ought to stay proceedings in this matter?
10. Counsel submitted that the issue of sub judice requires ascertainment of facts and a preliminary objection cannot be raised in disputed facts. To buttress this argument, Counsel relied on the case of *Kamau v Mburu* [2022] eKLR and in the case of *Cyrus Mucebiu Irungu v Martha Wanjiru Irungu & another* [2022] eKLR
11. On the issue of whether the appeal has complied with the provisions of Order 43(1) of the *Civil Procedure Rules*, Counsel submitted that the issue can only be determined by the appellate court and not by this court. Counsel further submitted that the instant suit should be struck out/stayed for being sub judice to ELC Land Appeal No. 037 of 2024.
12. Counsel contended that there is a likelihood of conflicting decisions being issued over the same subject matter if this suit proceeds for trial. To buttress this point, Counsel relied on the case of *Olow v Arale & another* [2024] eKLR, *Kuria v Wanjobi; Chief Land Registrar* [2024] eKLR and on the case of *MFI Document Solutions Ltd v Parretto Printing Works Limited* [2021] eKLR.
13. Counsel argued that the Applicants will be prevented from prosecuting their appeal if the application herein is disallowed.
14. Concluding his submissions, Counsel urged the court to allow the application as prayed.

Analysis And Determination

15. Having considered the preliminary objection together with the application and the rival submissions, the following issues fall for determination:-
 - a. Whether the preliminary objection is merited; and
 - b. Whether this suit should be stayed pending the hearing and determination of ELCLA No.037 of 2024.
16. The law on preliminary objection is well settled. A preliminary objection must be on a pure point of law. In *Mukisa Biscuits Manufacturing Company Ltd Vs West End Distributors Ltd* (1969) EA696, Law JA stated;

“So far as I’m aware, a preliminary objection consists of point of law which have 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.”
17. In *Oraro Vs Mbaja* 2005 eKLR Ojwang J (as he then was) described it as follows: -

“I think the principle is abundantly clear. A Preliminary Objection” correctly understood is now well identified as, and declared to be a point of law which must not be blurred with factual details liable to be contested and in any event, to be proved through the process of evidence. An assertion which claims to be a Preliminary Objection and yet it hears factual aspects calling for 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.”
18. The Respondent contends that the instant application offends the provisions of Section 6 of the *Civil Procedure Act*.



Section 6 of the [Civil Procedure Act](#) provides 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 or other court having jurisdiction in Kenya to grant the relief claimed.”

19. From the foregoing, it is clear that the Respondent will require to demonstrate by way of evidence that the application herein is sub judice. The fact that the court would require to probe evidence and ascertain facts removes the Preliminary objection from the purview of a preliminary objection.

20. The Respondent contended that the application offends the provisions of Order 43 Rule 1 of the [Civil Procedure Rules](#). Order 43 of the [Civil Procedure Rules](#) provides as follows:-

“An Appeal shall lie as of right from the following orders under the provisions of Section 75 1(h) of the Act”

2. An appeal shall lie with leave of the court from any other order made under these rules.
3. An application for leave to appeal under section 75 of this Act shall in the first instance be made to the court making the order sought to be appealed from either orally at the time when the order is made or within 14 days from the date of such order.
4. Save where otherwise expressly provided in this rule, “order” includes both an order granting the relief applied for and an order refusing such relief.”

21. The Respondent argued that the Appeal is improperly before the court because the Applicants did not seek leave to appeal against the ruling dated 8th March 2024. As rightly submitted by the Applicants the issue of whether or not the Applicants have complied with the legal requirements can only be determined by the appellate court.

22. The Respondent contended that the application herein is premised on a suit that does not exist and as such, the proceedings herein cannot be stayed. According to the Applicants, the suit herein is sub judice to the appeal as both suits relate to the same parties and to the same subject matter.

23. The principles for stay of proceedings pending appeal were set out in the case of [Kenya Power and Lighting Company Limited v Esther Wanjiru Wokabi](#) where the court cited with approval the case of [Global Tours and Travels Limited](#): Winding up Cause No. 43 of 2000 as follows:-

- a. Whether the Applicant has established that he/she has a prima facie arguable appeal;
- b. Whether the application was filed expeditiously; and
- c. Whether the Applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.

24. The Applicants must demonstrate that there are exceptional circumstances which would warrant stay of the proceedings given the serious and grave consequences attendant to such orders.



25. The Applicants contended that this suit is sub judice to ELCLA No. 037 of 2024. The Sub-Judice rule only applies where another suit or proceeding is pending in another Court involving the same parties or their privies over the same subject matter.
26. It is not in dispute that the Applicants appealed against the ruling of the subordinate court striking out their suit in MCELC No. E342 of 2023 for want of jurisdiction.
27. The Applicants contended that the suit in the lower court was struck out for want of jurisdiction. The suit ceased to exist the moment it was struck out. That is the position unless there is an order staying the ruling that struck out the suit. It has not been demonstrated that there is an order of stay or that the order has been overturned on appeal. From the foregoing, I am not persuaded that conflicting decisions will emanate from the two courts.
28. In the premises, the Respondent's preliminary objection partially succeeds to the extent that there is no suit in existence for the Applicants to cite the principle of sub judice. The Applicants have not met the threshold for stay of proceedings.
29. The upshot of the foregoing is that the application dated 6th October 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondent.

RULING SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 28TH DAY OF MARCH, 2025.

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HON. T. MURIGI

JUDGE

IN THE PRESENCE OF

Ms Amwamba holding brief for

Kiprop for the Defendants/Applicants

Hilda – Court Assistant

