



**Madialo v Cabinet Secretary, Ministry of Finance and Economic
Planning & 4 others (Petition E015 of 2025) [2025] KEHC 7624 (KLR)
(Constitutional and Human Rights) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7624 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CONSTITUTIONAL AND HUMAN RIGHTS**

PETITION E015 OF 2025

J NGAAH, J

MAY 30, 2025

BETWEEN

JACKTONE MADIALO PETITIONER

AND

**CABINET SECRETARY, MINISTRY OF FINANCE AND ECONOMIC
PLANNING 1ST RESPONDENT**

SPEAKER OF THE NATIONAL ASSEMBLY OF KENYA 2ND RESPONDENT

CLERK OF THE NATIONAL ASSEMBLY 3RD RESPONDENT

**CHAIRPERSON, JUSTICE AND LEGAL AFFAIRS COMMITTEE 4TH
RESPONDENT**

ATTORNEY GENERAL 5TH RESPONDENT

RULING

1. Before court is the 3rd respondent's motion dated 6 May 2025 in which the applicant seeks orders to the effect:

- “1. That this application be certified urgent and heard at the first instance.
2. That this Honourable Court be pleased to remove and transfer this matter to the High Court of Kenya at Nairobi, Milimani Law Courts, for hearing and determination.
3. That this Court be pleased to make any further directions as it may deem fit so as to meet the interests of justice of this matter.



4. That the costs of this application be in the cause.”
2. The application is expressed to be filed under section 1A, 1B, 3A and 15 of the *Civil Procedure Act*, cap. 2, orders 11 rule 3(1) and 51 rule 1 of the Civil Procedure Rules; and rule 8 of *the Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules. It is supported by the affidavit of Jeremiah Ndombi, who has introduced himself in the affidavit as the deputy clerk of the National Assembly.
3. According to Ndombi, he has been advised by his counsel, which advice he verily believes to be true, that the instant petition raises similar issues as four other petitions filed in this Honourable Court at Nairobi. Like this petition, those petitions in Nairobi are said to be challenging the Constitutionality of *the Constitution* of Kenya (Amendment Bill), 2025 and that they have all been brought against the Speaker of the National Assembly, the Attorney- General and the Cabinet Secretary, the National Treasury, the Senate and the Council of Governors.
4. Ndombi verily believes to be true, the advice from his counsel, that section 15 of the *Civil Procedure Act* provides that suits should be instituted within the locality of the respondents’ principal offices. The 3rd respondent’s “sole office” is located at Nairobi as are the offices for the rest of the respondents in this matter. Accordingly, this suit ought to have been instituted at the High Court at Nairobi.
5. Thus, the transfer of this matter to the Nairobi High Court, where the respondents’ principal offices are located and where other similar cases are pending hearing and determination, will reduce the risk of different judicial officers reaching conflicting conclusions and judgments based on the same facts. Conflicting decisions over the same subject would result to embarrassment of the Honourable Court.
6. The petitioner has opposed the motion and an affidavit to this effect has been sworn by the petitioner. The crux of the petitioner’s opposition to the motion is that, first, the petition before this Honourable court is a matter of national interest, and the respondents in this petition are all public bodies representing all citizens of our country.
7. The respondents’ reasons for seeking to have all the matters exclusively handled in Nairobi defeat the very spirit of Article 10 (2) of *the Constitution*. In any event, the Judiciary under the “Social Transformation through Access to Justice (STAJ)” program, has put in place infrastructure to enable courts to be conducted from all corners of the country on virtual platforms.
8. Second, it is the petitioner’s position that the instant petition was filed first in time and, therefore, petitions filed subsequently cannot take precedence over the petitioner’s petition.
9. According to Madialo, he is a resident of Mombasa County, serving as a Member of County Assembly in Mombasa. He understands that this Honourable court, before which the matter has been placed, is capable of handling any matter that is of national interest.
10. The 3rd respondent made brief oral submissions on the motion and reiterated that four petitions, similar to the one before court, have been filed in Nairobi and that since all the respondents’ “principal officers” have their offices in Nairobi, this matter should be transferred to Nairobi. Nonetheless, Mr. Kiilu, the learned counsel for the 3rd respondent conceded that all the four petitions in Nairobi were filed after the instant petition had been filed.
11. No submissions were made on behalf of the petitioner.
12. Since it is not in dispute that the instant petition was filed first in time, the question whether this Honourable Court should “be pleased to remove and transfer this matter to the High Court of Kenya



at Nairobi, Milimani Law Courts, for hearing and determination” merely because subsequent suits over the same subject have been filed in Nairobi need not arise.

13. Again, if there is any reason for stay of any of the petitions on the grounds set forth in the 3rd respondent’s motion, it is the petitions that were filed later in time that would be stayed, if the principle of sub judice is given its proper place in the determination of the instant application. The law on this issue has been elaborately urged by none other than the learned counsel for the 3rd respondent in submissions filed in support of a preliminary objection he has filed against the hearing of this petition.
14. According to the 3rd respondent’s submissions, the petition raises questions on the constitutionality of *the Constitution* of Kenya (Amendment) Bill, 2025 which is the same issue for consideration before the High Court in Nairobi High Court Constitutional Petition No. E234 of 2025, Katiba Institute & Others v the Attorney-General & Others.
15. To this end, it has been demonstrated how the two petitions are similar, and urged, rightly in my view, that the principle of sub-judice is a principle of law which is aimed at protecting the integrity of judicial proceedings by, ensuring that two or more courts do not consider the same matter involving the same parties at the same time.
16. The 3rd respondent has further urged, Section 6 of the *Civil Procedure Act* cap. 21, entrenches this principle in law. This provision provides:

“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 the 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.”

17. Counsel for the 3rd respondent has gone further to cite several court decisions where this principle has been applied. In *David Ndi & Others Vs AG & Others* (2021) eKLR, for instance, the Court held that:

“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 issues, that question or issue should be determined in only one of those Courts...”

18. And in *Republic vs Paul Kihara Kariuki, Attorney General & 2 Others ex parte Law Society of Kenya* [2020] eKLR, Mativo, J. (as he then was) held:

“...there exists the concept of sub-judice which in Latin means “under judgment.” 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.”

19. The 3rd respondent has also relied on *Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties)* [2020] eKLR where the Supreme Court held:

“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 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 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.

20. According to the 3rd respondent, the key words in applying the sub-judice rule is that the matter in issue is directly and substantially in issue in the previous suit. Further, the 3rd respondent has demonstrated that the subject matter in issue is substantially the same as that in the Katiba Institute Case and that the two suits are against the same parties. Furthermore, both suits are still pending before this Honourable Court.
21. In conclusion, it has been urged on behalf of the 3rd respondent that in view of the foregoing, this Honourable Court ought to stay the instant petition, so as to avoid duplicity of proceedings and the risk of issuing conflicting determinations on the same subject matter.
22. One thing that is clear from section 6 of the [Civil Procedure Act](#) and the decisions cited by the 3rd respondent is that, under the principle of sub judice, a court cannot 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. The courts are clear that the suits filed subsequently must give way to the suit filed first in time.
23. For emphasis, Mativo J. noted, in [Republic vs Paul Kihara Kariuki, Attorney General & 2 Others \(supra\)](#) 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...” This, of course, is consistent with the Supreme Court in [Kenya National Commission on Human Rights vs Attorney General; Independent Electoral & Boundaries Commission & 16 Others \(supra\)](#) where it held “...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.”
24. It follows that if, amongst all the petitions filed on the subject at hand, the instant petition was filed first in time, there is no legal basis of staying it or seeking for its transfer to a station where other similar petitions have been filed. It is not sufficient that such a station is Nairobi or that more of those petitions have been filed in that particular station.
25. More importantly, the 3rd respondent’s quest to have the instant petition stayed or “transferred to Nairobi” is inconsistent with his own exposition of the law on the principle of sub judice.
26. If I may add, the respondents in the petitions filed in Nairobi, which are said to be over the same matter that is in issue in this petition, have the obligation to inform the courts before whom those petitions have been placed, of the existence of the instant petition. Failure to do so would be acting in bad faith because, going by the grounds upon which the instant motion has been filed, those petitions risk being invalidated on the ground that they are contrary to the mandatory provisions of section 6 of the [Civil Procedure Act](#) and the principle of sub judice.



27. In the final analysis, I find no merit in the applicant's application. It is hereby dismissed. Costs shall abide by the outcome of the petition. It is so ordered.

SIGNED, DATED AND DELIVERED ON 30 MAY 2025

NGAAH JAIRUS

JUDGE

