



**Yator & 8 others v Kimorok Farm Limited & 3 others (Environment & Land
Case E044 of 2022) [2023] KEELC 16887 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 16887 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E044 OF 2022**

**EO OBAGA, J
APRIL 20, 2023**

BETWEEN

**SPETEPHEN C. YATOR 1ST PLAINTIFF
CHEPTOO ARAP CHEBOROR 2ND PLAINTIFF
EZEKIEL KIPCHUMBA KOMEN 3RD PLAINTIFF
FRANCIS KIMURAI CHEMWENO 4TH PLAINTIFF
JAMES KIYENG 5TH PLAINTIFF
DANIEL KIPSANG KIBWARE 6TH PLAINTIFF
KIBET KIPLAGAT 7TH PLAINTIFF
KIPKORIR KOSGEI SONGIO 8TH PLAINTIFF
SAMUEL CHEPKIYENG 9TH PLAINTIFF**

AND

**KIMOROK FARM LIMITED 1ST DEFENDANT
THE COUNTY SURVEYOR, UASIN GISHU 2ND DEFENDANT
LAND REGISTRAR, UASIN GISHU COUNTY 3RD DEFENDANT
HON. ATTORNEY GENERAL 4TH DEFENDANT**

RULING

1. The Plaintiffs filed a suit against the Defendants in which they sought the following reliefs:-
 - a) An order of permanent injunction be issued restraining the 1st, 2nd and 3rd Defendants from implementing surveyors report issued on 28th September, 2021.



- b) An order be issued compelling the 1st, 2nd and 3rd Defendants to implement the task force report made on 9th May, 2011.
 - c) An order be issued compelling the directors of the 1st Defendant to update its original list of 170 members, by removing, and replacing the deceased shareholders with their legal representation and to remove the shareholders who sold their portion, and be substituted with the purchasers.
 - d) An order be issued directing the 4th Defendant to oversee and guide the 2nd and 3rd Defendants on the implementation of the decree/order of this Honourable court.
 - e) Costs and interest of the suit.
 - f) Any other relief this honourable court deems fit and just to grant.
2. The Plaintiffs contemporaneously filed a notice of motion dated 12/8/2022 in which they sought the following reliefs: -
- a) This Honorable court be pleased to certify this application extremely urgent, in the 1st instance.
 - b) This Honourable court be pleased to stop the 3rd Defendant herein from issuing and/or further, preparing and issuing Title deeds in respect of the suit land known as LR. 1866/4 also known as Kimorok Farm, measuring approximately 1936 acres pending the hearing and determination of this application inter-parties.
 - c) This Honorable court be pleased to order all the Defendant herein jointly and severally to stop all activities regarding the subdivision and transfer of the title deeds of land parcel No. L.R 1866/4 also known as Kimorok Farm, measuring approximately 1936 acres pending the hearing and determination of this application inter-parties.
 - d) This Honorable court be pleased to stay the implementation of the court order issued in Eldoret ELC No. 943 of 2012 on 7th February, 2020 pending the hearing and determination of this application inter-parties.
 - e) This Honourable court be pleased to issue an order of temporary injunction restraining the 1st, 2nd and 3rd Defendants jointly and severally through their agents, servants, employees from subdividing and causing transfer, and or issuing title deeds of the land parcel No. LR 1866/4 also known as Kimorok Farm, measuring approximately 1936 acres, and/or doing anything that will affect ownership and occupation of the said property pending the hearing and determination of this main suit herein.
 - f) That cost of this application be borne by the Defendants.
3. Before the notice of motion could be heard, the 1st Defendant raised a notice of preliminary objection on the following grounds: -
- 1) That the entire suit against the 1st Defendant is based on orders of a suit in Eldoret ELC 943 of 2012 Jeremiah Busienei & 2 others v Farm Limited & Philip Serem.
 - 2) That this suit is *res judicata*, the matters before court have been substantially dealt in case Eldoret ELC 943 of 2012 Jeremiah Busienei & 2 others Vs Farm Limited & others in a ruling delivered on November 18, 2021 by E O Obaga -Judge.
 - 3) That shareholding and distribution of shares is a factor of Company Law and the jurisdiction vests in the High Court and not the Environment and Land Court.



- 4) That this court lacks jurisdiction to entertain this suit and should be struck out with costs.
4. The parties were directed to file written submission in respect of the preliminary objection. The 1st Defendant filed its submissions on September 12, 2022. The Plaintiffs filed their submissions on February 15, 2023.
 5. In brief, some two Plaintiffs filed Eldoret ELC 943 of 2012 against Kimorok Farm Limited and another in respect of subdivision of Kimorok Farm which is about 1936 acres. This suit was comprised by way of consent which was to the effect that the farm was supposed to be subdivided in accordance with the shares held by each shareholder. The only issue which remained was determination whether the 2nd Defendant was properly sued in that case. The issue has since been determined whereby the court found that the 2nd Defendant was improperly sued and was entitled to costs.
 6. Some of the Plaintiffs in this suit applied to be joined as interested parties in Eldoret ELC 943 of 2012 but their application was dismissed as their presence in that suit could not assist the court to determine the issues between the Plaintiffs and the 2nd Defendant. It is the unsuccessful parties who had sought to be joined in ELC 943 of 2012 who have brought this suit together with others who had not applied to be joined in that case.
 7. The only issue for determination is whether this suit is res judicata. The principle of res judicata is predicated on section 7 of the Civil Procedure Act which provides as follows: -

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”
 8. In the instant case, the plaintiffs are seeking to stop subdivision of Kimorok Farm which is about 1936 acres. The issues being raised are that the land is being subdivided using a list which is not genuine; that the shares are being given to deceased shareholders rather than their representatives and that the directors of Kimorok arm Limited are giving themselves more land than they deserve.
 9. The issues revolving around the shareholding and subdivision of Kimorok Farm were solved in ELC 943 of 2012. The issues which were solved in ELC 943 of 2012 are the same issues which are being raised here. The Plaintiffs herein had attempted to raise the same issues by seeking to join ELC 943 of 2012. This application was dismissed.
 10. In the case of John Florence Maritime Services Limited & another & another v Cabinet Secretary for Transport and Infrastructure & 3 others [2015] eKLR, the Court of Appeal stated as follows: -

“...the ingredients of *res judicata* must be given a wider interpretation; the issues in dispute in the two case must be the same or substantially the same as in the previous case, parties to the two suits should be the same or parties under whom they or any of them is claiming or litigating under the same title and lastly, the earlier claim must have been determined by a competent court.”
 11. The principle of *res judicata* was meant to ensure that a defendant is not vexed again where a matter in issue has been substantively been dealt with in a previous suit. It has also been held that addition of new parties to a subsequent suit cannot help one to escape the consequences of res judicata.



12. In the instant suit, the Plaintiffs are raising the issue of subdivision of Kimorok Farm. This issue was dealt with in ELC 943 of 2012. The Plaintiffs cannot be heard to argue that some of the Plaintiffs were not parties in ELC 943 of 2012. Those who were litigating in ELC 943 of 2012 were shareholders of Kimorok Farm Limited. Even if the Plaintiffs in this suit were not parties in ELC 943 of 2012, the two plaintiffs in that suit were litigating on their behalf as they were fighting the same cause which the present plaintiffs are attempting to fight.
13. It is therefore clear that this suit is not only *res judicata* but an abuse of the process of court whereby the plaintiffs are seeking to stop a legal process which was sanctioned in ELC 943 of 2012 using a different suit. I uphold the preliminary objection on ground of *res judicata* and proceed to struck out the entire suit with costs to the 1st Defendant.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF APRIL, 2023.

E O OBAGA

JUDGE

In the virtual presence of;

Ms Rotich for Mr Maritim for 1st Defendant

Ms Rop for Mr Tarigo for Plaintiff

Ms Jepkemei for 2nd, 3rd and 4th Defendants.

Court Assistant –Laban

E O OBAGA

JUDGE

20th APRIL, 2023

