



Logoransamari & 599 others v Jennings & another (Sued in their capacity as the executors of the will of Richard Francis Jennings (Deceased)) (Environment & Land Case E010 of 2022) [2023] KEELC 17876 (KLR) (18 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17876 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE E010 OF 2022**

AK BOR, J

APRIL 18, 2023

BETWEEN

ESIBICHO LOGORANNSAMARI & 599 OTHERS PLAINTIFF

AND

HARRY GEORGE JENNINGS 1ST DEFENDANT

SUSAN SARAH KABALI 2ND DEFENDANT

**SUED IN THEIR CAPACITY AS THE EXECUTORS OF THE WILL OF
RICHARD FRANCIS JENNINGS (DECEASED)**

RULING

1. This ruling is in respect of the issue whether this suit is res judicata. The Plaintiffs had initially filed Nyeri ELC Case No E001 of 2021 (OS), which was transferred to Nanyuki and given ELC Case No 53 of 2021. The Plaintiffs withdrew ELC Case No 53 of 2021 which they had filed against Irene Arda Norman vide the Notice of Withdrawal dated November 3, 2022 after it was established that Irene Arda Norman died in 1959 and was not the registered owner of the land in Laikipia County which the Plaintiffs claim to occupy and to be entitled to through adverse possession.
2. In the instant suit filed on November 18, 2022, the Plaintiffs seek a declaration that the title held by the Defendants over land reference number (LR No) 2426 based on deep plan number 6118 under File number 14128 ('the suit land') had been extinguished by the Plaintiffs who have been on the Defendants' land for more than twelve years. The Plaintiffs claim that they have become entitled to adverse possession of the suit land and they therefore seek to be registered as the owners of the suit land. They also seek a permanent injunction to restrain the Defendants from dealing with the suit land or interfering with their peaceful enjoyment of the land. Further, they seek to have the Land Registrar and Surveyor in charge of Laikipia County to visit the suit land to ascertain the area occupied by the Plaintiffs and file a report in court to assist the court issue appropriate orders in the matter.



3. The grounds on which the suit was brought was that the Plaintiffs had openly, peacefully and continuously occupied the suit land for over 20 years since 1992 and have been farming, keeping animals and grazing them on the suit land. That they deserve and are entitled to the protection of their rights in the suit land against unlawful eviction or any form of interference with their right to enjoy and be registered as proprietors of the suit land or part of it through adverse possession.
4. In the supporting affidavit sworn by Josphat K Leskei, he deponed that the Plaintiffs were allocated the land and entered it in 1992 under the orders made by the late President His Excellency Daniel Toroitich Arap Moi. The land measures 2188 acres with 4 acres set aside for road reserve. Mr Leskei deponed that their occupation of the suit land had been peaceful, continuous and uninterrupted for over 20 years. He added that the Defendants had not been seen on the suit land since 1992 when they occupied it and relied on Sections 37 and 38 of the *Limitation of Actions Act* in support of their claim to the land.
5. Harry George Jennings swore the replying affidavit in opposition to the suit and deponed that the suit land comprised the Estate of Richard Francis Jennings. He explained that the suit land was transferred by Irene Arda Norman to William Robert Sands who in turn transferred it to Richard Francis Jennings. He averred that the suit land was adjacent to LR No 5197 which also forms part of the Estate of Richard Francis Jennings. He deponed that the Jennings family had been in possession, occupation and use of the two parcels of land which are collectively referred to as the Jennings Ranch since 1961 but in recent years the land was invaded or encroached upon by pastoralists in an attempt to unlawfully detain the land and claim ownership of it. He added that this suit was an attempt at claiming ownership and defeating the eviction orders issued on February 2, 2022.
6. The pastoralists community filed Nanyuki Chief Magistrates ELC Case No 47 of 2018 – Kisiriri Community v Harry George Jennings & 2 Others seeking to be declared the owners of the land along River Ewaso Narok and the Pesi River. They sought a permanent injunction to restrain the Defendants from encroaching onto the land, evicting them or interfering with their quiet possession and use of the land. They also sought damages and compensation for the destruction of the houses and structures belonging to them. He explained that that case was heard and determined in the Magistrates Court, who found that the Plaintiffs did not own the land between the Jennings Farm and Rivers Ewaso Narok and Pesi. The court issued an injunction restraining the Plaintiffs from trespassing, entering, remaining, invading, grazing livestock or otherwise interfering with the Defendants' occupation of the Jennings Farm. The appeal which the Plaintiffs lodged against the decision of the Learned Magistrate was heard and determined by this court.
7. He stated that the Plaintiffs were denied stay of execution and that they were currently occupying the Jennings Farm illegally and in disregard of court orders. In Mr Jennings' view, this suit was a reincarnation of the appeal and the suit already decided by the Chief Magistrate. He averred that the Plaintiffs have been filing many suits in a bid to justify their unlawful encroachment of the Defendants' land. He added that the Plaintiffs have posed a security risk and have forced the Defendants to employ armed police reservists to provide them with security against the Plaintiffs. He added that the Plaintiffs who keep large herds of livestock which cannot be sustained by natural vegetation have been overgrazing the ranch and are degrading the environment. Further, that the Defendants cannot engage in any meaningful farming due to the presence of Plaintiffs on their ranch.
8. He deponed that a microscopic inspection of the register shows that some of the Plaintiffs in this suit also appear in the list of the pastoralist communities named Kisiriri and that it was one and the same group of invaders who continue to trespass and encroach on their ranch. He maintained that the Jennings had never parted with possession of the suit land.



9. Josphat K Leskei swore the further affidavit where he clarified that their interest lay in LR No 2426. He emphasised that Nanyuki Chief Magistrates ELC Case No 47 of 2018 did not have any nexus to this suit in which the Plaintiffs seek to be declared owners through adverse possession of the portions they currently occupy. He maintained that the prayers sought in the two suits were different and that they were not seeking compensation for houses which were destroyed. He was emphatic that the issue of adverse possession had never been raised in any suit and that pursuant to Section 7 of the [Civil Procedure Act](#), this suit was not affected by the doctrine of res judicata as the Defendants contend. He denied they were illegal grazers and maintained that they had lawfully and openly occupied the suit land and that they had built schools, churches and homes on the suit land for over 20 years.
10. Parties filed submissions which the court has considered. The Plaintiffs submitted that there was no nexus between this suit and Nanyuki Chief Magistrate ELC Case No 47 of 2018 or with ELC Appeal No 8 of 2021. They maintained that they have never litigated as Kisiriri community and submitted that the parties and subject matter were different. They maintained that the issue of adverse possession had not been determined by any court and that the doctrine of res judicata was inapplicable to the circumstances of this suit. They relied on [Independent Electoral and Boundaries Commission v Maina Kiai and 5 others \(2017\) eKLR](#).
11. The Defendants submitted that the doctrine of res judicata set out in Section 7 of the of the [Civil Procedure Act](#) ousted the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction involving the same parties or parties litigating under the same title. They adverted to the orders which Kisiriri Community sought in the suit before the Chief Magistrate which included a declaration that the Plaintiffs were the rightful owners of part of the land along river Ewaso Narok and the Pesi River.
12. They referred to the judgment delivered on August 19, 2020 where the court found that the Plaintiff's did not own the land between the Jennings Farm and the two rivers. The Defendants urged that ELC Case No 53 of 2021 was a reincarnation of the suit filed before the Chief Magistrates Court and the appeal that was subsequently filed and dismissed by this court.
13. The Defendants maintained that the persons whose names appear in this suit were also in the list of the pastoralist communities named Kisiriri and that they were therefore the same group of invaders who continue to trespass on the Defendants ranch. They referred to the IEBC case where the court analysed the prerequisites for the doctrine of res judicata.
14. The Defendants submitted that from the pleadings and the submissions it was clear that the subject matter in the previous litigation was the same in this suit. The Defendant referred to the decision in *ETV v Attorney General & Another [2012] eKLR* which unfortunately they failed to furnish to the court. They also referred to *Gurbachan v Yowani Ekori (1958) EA 450* in which the court stated that the plea of res judicata did not only apply to points which the court was required by the parties to pronounce a judgment on but it applied to every point which property belonged to the subject of litigation and which the parties exercising reasonable diligence might have brought forward at the time. The Defendants contended that the Plaintiffs were seeking to open issues which were raised or should have been raised in the previous proceedings since they were relevant to the issues that were decided by the court in those cases.
15. The issue for determination is whether this suit is res judicata. To succeed on a claim that a suit is res judicata one is required pursuant to Section 7 of the [Civil Procedure Act](#), to demonstrate that the issues raised in the new suit were directly and substantially in issue in the former suit between the same parties or parties under whom they or any of them claim; that those parties were litigating under the same



title and lastly that the issue in question was heard and finally determined by a court of competent jurisdiction in the former suit.

16. In the judgment delivered in ELC Appeal No 8 of 2021, which was formerly Nyeri ELC Appeal No 25 of 2020 – Kisiriri Community (suing through its officials) v Harry George Jennings and 3 Others the court noted that the Plaintiffs in that case claimed that they had been allowed to occupy the disputed land by the late retired President Daniel Moi in 1992. They argued that they had built schools, churches and other permanent structures on the suit land. The Plaintiffs make the same assertion in this suit. In the appeal, this court addressed the issue of environmental protection of the wetland and dismissed the Plaintiffs claim to entitlement to portions of the Jennings Farm.
17. The Defendants contended that some of Plaintiffs in this suit are some of the persons who filed the suit before the Chief Magistrates Court as the Kisiriri Community and being dissatisfied with the decision of the Learned Magistrate, they lodged an appeal which this court heard and determined.
18. The Defendants exhibited a handwritten summary of the names of the Plaintiffs in this suit who were also parties to the suit before the Chief Magistrates Court. The court notes that that issue was not controverted by the Plaintiffs, which points to the fact that some of the Plaintiffs in this suit were parties to the previous suit. There are 600 claimants in this case while the Kisiriri Community case that was heard by the Chief Magistrate had 2,000 claimants.
19. It is not in dispute that the previous suit related to ownership of part of the Jennings Ranch and the Plaintiffs in that suit as the ones in this one do, laid claim to the land and sought to be declared the owners of the land and to have the Defendants restrained from interfering with their possession of the suit land.
20. While it is true that the specific claim for adverse possession was not made in the suit filed before the Chief Magistrate, it is noteworthy that the court observed in the Gurbachan case that res judicata applies to every point which properly belonged to the subject of litigation which the parties might have brought forward at the time had they exercised reasonable diligence. Where a matter becomes the subject of litigation and adjudication by a court, the parties in the case are required to bring forward their whole case and the court will only permit in special circumstances the same parties to open the same subject of litigation on a matter which ought to have been brought forward as part of the dispute. The Plaintiffs in this case who were parties in the previous case could have raised the issue of adverse possession in the previous suit had they exercised reasonable diligence so that their claim to the Jennings land could be determined by the court once and for all.
21. Section 7 of the *Civil Procedure Act* bars any court from proceeding with the trial of any suit or proceeding which is res judicata.
22. The court finds that this suit is res judicata. It is dismissed with costs to the Defendants.

DELIVERED VIRTUALLY AT NANYUKI THIS 18TH DAY OF APRIL 2023.

KOSSY BOR

JUDGE

In the presence of:

Mr. J. Okemwa holding brief for Mr. J. Abwuor for the Plaintiffs

Ms. Wangechi Wangare for the Defendants

Ms. Stella Gakii- Court Assistant

