



**Mailu & 8 others v Kuria (Environment & Land Case E025 of 2022)  
[2023] KEELC 20034 (KLR) (21 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20034 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E025 OF 2022  
LN MBUGUA, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**ENOCK M MAILU ..... 1<sup>ST</sup> PLAINTIFF  
ZEINAB HODHAN MOHAMED ..... 2<sup>ND</sup> PLAINTIFF  
ABSHIRO HAMID JIMALE ..... 3<sup>RD</sup> PLAINTIFF  
JAMES MUTAHI WANJOHI ..... 4<sup>TH</sup> PLAINTIFF  
ANTONY NJIIRI KIRITU ..... 5<sup>TH</sup> PLAINTIFF  
HALIMA GALGALO KULA ..... 6<sup>TH</sup> PLAINTIFF  
MICHAEL NJIIRI GATETE ..... 7<sup>TH</sup> PLAINTIFF  
FESTUS NGOWA SHAURI ..... 8<sup>TH</sup> PLAINTIFF  
NURTA HASSAN SHIRE ..... 9<sup>TH</sup> PLAINTIFF**

**AND**

**KHADIJA KURIA ..... DEFENDANT**

**RULING**

1. This ruling relates to the Preliminary Objection dated May 22, 2023 brought forth by the defendant who avers that this court is barred by the doctrine of res judicata and by Section 44 of the *Evidence Act* from hearing any claim by the plaintiffs as to the ownership of or entitlement to the suit property in view of the judgment delivered on December 13, 2017 in the case ELC 28 of 2016 *Khadija Kuria v Patrick Wambua & Liban Guyo*.
2. The defendant avers that this court is functus officio and has no jurisdiction to hear the matter.



3. In support of her case, the defendant relies on the case of *Mukhisa Biscuit v West End* [1969] EA 696, *Njiru Michemi Nthiga (suing as a legal representative and Administrator of the estate of the deceased Leorned RI Nthiga) v Governor Tharaka Nithi County Government and of Others* [2019] eKLR, *Samuel Kamau Macharia & Another vs Kenya Commercial Bank Ltd & 2 Others* [2012] eKLR and *Raila Odinga & 2 others v Independence Electoral & Boundaries Commission & 2 others* [2012] eKLR.
4. The plaintiffs have opposed the Preliminary Objection averring that the suit is not Res Judicata to the case ELC 28 of 2016. They contend that the parties are neither similar nor litigating under the same title.
5. The plaintiffs have relied on the cases of *Mukhisa Biscuit (supra)*, *WZO Konjit Tedla & Another v Osborne Ashiamo Mutumira* [2017] eKLR and *John Florence Maritime Services Limited & Another vs Cabinet Secretary Transport and Infrastructure & 3 others* [2021] eKLR.
6. I have considered all the arguments raised herein. The issue for determination is whether this court has jurisdiction to hear this case in light of the decision in ELC 28 of 2016.
7. I find that the rival parties have re-stated the correct position of the law in their submissions as particularly set out in the case of *Mukhisa Biscuit (supra)*.
8. In the case of *William Koross v Hezekiah Kiptoo & 4 Others* [2015] eKLR cited in *Independent Electoral & Boundaries Commission v Maina Kia & 5 Others* [2017] eKLR, the court stated that “the philosophy behind the Principle of res judicata is that there has to be finality. Litigation must come to an end”.
9. I have perused the decision in the case ELC 28/2016, *Khadija Kuria v Patrick Wambaua Ndambuki & Liban Guyo*. I find that the defendant herein was the plaintiff in the aforementioned suit, where her claim was that defendants had trespassed on her land.
10. The plaintiffs in the current suit are claiming the suit land via the doctrine of Adverse Possession. They were not parties in the case 28/2016. In the circumstances, I find that the preliminary objection does not meet the criteria set out in the Mukhisa Biscuit case.
11. In the end, the preliminary objection is here dismissed each and party is to bear their own costs of the preliminary objection.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21ST DAY OF SEPTEMBER, 2023  
THROUGH MICROSOFT TEAMS**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

M/s Mohamed holding brief for Mr. Lakicho for plaintiffs

Wakhisi for Defendant

Court Assistant: Eddel

