



Sirya v Chandugu & 2 others (Environment & Land Case E132 of 2024) [2025] KEELC 3548 (KLR) (30 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E132 OF 2024
FM NJOROGE, J
APRIL 30, 2025**

BETWEEN

KAHINDI JEFA SIRYA PLAINTIFF

AND

KAZUNGU NGALA CHANDUGU 1ST DEFENDANT

SETTLEMENT FUNDS TRUSTEE, KILIFI 2ND DEFENDANT

LAND REGISTRAR, KILIFI 3RD DEFENDANT

RULING

1. The Plaintiff²s instituted this suit by way of a Plaint dated 17/12/2024 seeking orders inter alia that the registration of change of ownership over the suit property, pursuant to the declaration and orders given in the judgment and decree of 21/6/2023 in Kilifi SPM ELC No. 69 of 2019 be cancelled and the ownership of the suit property to revert to one James Kamore and the name of James Kamore be restored to the title deed, and also that the 3rd Defendant be compelled to cancel the title issued to the 1st Defendant. Alongside the Plaint was a Notice of Motion application evenly dated, which is the subject of this ruling. The Plaintiff sought the following orders: -

1.Spent;
2.Spent;
3. That pending the hearing and determination of this suit, the 1st Respondent whether by themselves, their servants, agents, employees and/or anyone acting on their authority be restrained from evicting the Applicant from the subject suit property known as Plot No. Kilifi/Kijipwa/160 measuring approximately 0.938Ha located within Kilifi County;
4. Spent;



5. That pending the hearing and determination of this suit, the Respondents whether by themselves, their agents, employees and/or anyone acting on their authority be restrained from subdividing, leasing, selling, transferring, charging, developing, threatening (sic) or dealing with suit property known as Plot No. Kilifi/Kijipwa/160 measuring approximately 0.938Ha located within Kilifi County, in any manner whatsoever that may see the title change ownership;
 6. That the Honourable court be pleased to undertake a site visit on the suit property to ascertain the actual physical occupants of the suit property;
 7. That the OCS Kijipwa Police Station be directed to ensure compliance with the orders sought herein;
 8. That the costs of this application be in the cause.
2. The application was premised on the grounds numbered at the foot of the motion and supported by an affidavit sworn by the Plaintiff on even date. The Plaintiff's case is that he is a lawful occupant of the land known as Plot No. Kilifi/Kijipwa/160 (the suit property) having resided thereon with his family for over 20 years, under the permission of one James Kamore. According to the Plaintiff, he became aware of a judgment delivered on 21/6/2023 in favour of the 1st Defendant in Kilifi SPM, ELC Case No. 69 of 2019 when he was served with a demand letter dated 4/3/2024 demanding that he ceases construction on the suit property.
 3. The Plaintiff's grievance was that the said judgment was obtained fraudulently by the 1st Defendant whom he claims misled the court. He averred that the 1st Defendant failed to inform the lower court that while his late father was originally allocated the suit property, he sold the same to one Peter Kamau Nganga who eventually sold the same to the said James Kamore Njomo, and a title deed issued on 26/8/1993; that vide a letter dated 27/3/2008, the said James allowed the plaintiff's family, through Mama Riziki Jefwa Sirya, to use the suit property. The Plaintiff further averred that despite the 1st Defendant's knowledge of the above, he filed the suit to the Plaintiff's exclusion so as to unjustly enrich himself.
 4. In response, the 1st Defendant filed a replying affidavit which he swore on 16/1/2025 stating that the Plaintiff is litigating on behalf of a third party who is a stranger to the present proceedings. He added that judgment was indeed delivered in his favour regarding ownership of the suit property, and that the Plaintiff had unsuccessfully sought to set aside the said judgment and be joined to the proceedings therein.
 5. In rebuttal, the Plaintiff filed another affidavit, which he swore on 21/1/2025 exhibiting a copy of letter dated 12/3/2024 by the Land Registrar establishing the details of the extracted green card of the suit property.
 6. In response to that affidavit and with the leave of the Court, the 1st Defendant filed another affidavit he swore on 27/1/2025, stating that the Plaintiff's allegations are not backed up with any evidence, that there is no agreement that his late father sold the suit property. The 1st Defendant also added that the Plaintiff has no locus standi to institute the suit in the first place and that the court lacks jurisdiction to hear the suit as it is a fresh suit seeking to overturn a judgment of another competent court.
 7. For the 2nd and 3rd Defendants, Mr. Ojwang, State Counsel, filed grounds of opposition dated 20/1/2025, framed as below: -



1. The Applicant lacks the locus standi to enable him to institute the proceedings and move the court to grant the orders sought as he is not the registered owner of the suit property;
 2. The issues raised in the suit and the application are res judicata and contra Section 7 of the Civil Procedure Act having been litigated in Kilifi CMELC 60 of 2019 and ruling on the issues delivered on 10th December 2024. The said Ruling involved same parties as herein, the same were litigated on merit and were before a court of competent jurisdiction;
 3. The suit herein has thus been filed as a disguised appeal seeking setting aside of a valid court judgment and resultant decree and orders through the back door;
 4. That the size of the suit property hence its monetary value falls under the jurisdiction of the magistrate's court and this matter was rightly litigated before the magistrate's court and surprisingly the Plaintiff has resurfaced again before a superior court knowing very well he does not have original jurisdiction to handle the suit herein pursuant to Section 11 of the Civil Procedure Act;
 5. The Verifying Affidavit to the Plaint is false and ripe for striking out for having concealed and lying on oath that there have been no previous proceedings on the same subject matter and this would lead to striking out of the Plaint for having contravened Order 4 Rule 1 (2) and this court has been empowered by Order 4 Rule 1(6) to strike a suit contravening the former provision.
8. The application was canvassed by way of written submissions.

Plaintiff's Submissions

9. Counsel for the Plaintiff listed 3 issues for determination- whether the Plaintiff is deserving of orders of temporary injunction; whether this court should visit the locus in quo; whether this court should issue orders compelling the OCS Kijipwa Police Station to ensure compliance with the orders sought in the instant application.
10. In relation to the first issue, counsel rightly submitted that the law governing grant of orders of temporary injunction was settled in the case of *Giella v Cassman Brown & Co Limited* [1973] 1 EA 358 -that first, a prima facie case as was defined in *Mrao Limited v First American Bank of Kenya & 2 Others* [2003] KLR 125, must be established. Counsel argued that the Plaintiff has established a prima facie case by showing that he has lived on the suit property for over 20 years and by exhibiting the land records from the registry. He submitted that by dint of Section 35 of the Land Registration Act, the records provided by the 3rd Defendant should be taken as conclusive evidence of ownership. He added that the evidence of permission to reside on the suit property bolsters the Plaintiff's case.
11. On the limb whether the Plaintiff shall suffer irreparable harm, counsel relied on the definition given in the case of *JM v SMK & 4 others* [2022] eKLR. He reiterated that the Plaintiff has lived on the suit property for over 20 years and should the orders sought not be granted, they would be thrust at the mercy of nature and lose touch with their deceased family members buried on the suit property. To counsel, this would be harm that cannot be compensated by an award of damages. Further, relying on the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* [2018] eKLR, counsel argued that the Plaintiff stands to suffer greater loss compared to the 1st Respondent, since he and his family would be evicted from their home.
12. In relation to the second issue, counsel argued that the 1st Defendant is trying to assert a non-existent right on the suit property yet the Plaintiff enjoys beneficial interest thereof having been authorized to



occupy the suit property. It was counsel's argument that the court should thus visit the suit property to ascertain the veracity of the Plaintiff's assertions. To support this relief, counsel cited Order 18 Rule 11 of the *Civil Procedure Rules* and the case of *Masha Birya Dena v Francis Kabindi Kalume* [2021] eKLR where the court cited with approval the case of *E. Kangye v E. Bwana HCCC (Kampala) No. 38 of 1989*.

13. On whether the OCS, Kijipwa should be compelled to ensure compliance of the orders sought in the application, counsel argued that since the 1st Defendant has executed the judgment in the lower court, the Plaintiff is seen as a trespasser, therefore, should an injunction be granted, it is imperative that the OCS ensures compliance thereof. To this end, he relied on the case of *Econet Wireless Kenya Limited v Minister for Information and Communication Authority of Kenya* [2005] eKLR.

1st Defendant's Submissions

14. Counsel for the 1st Defendant filed two sets of submissions dated 16/1/2025 and 27/1/2025 respectively. Relying on the case of *Giella v Casman Brown* [supra], counsel submitted that the Plaintiff's intention in this suit is to have the suit property registered in the name of a third party and not himself, meaning that he has no valid claim on his own. To her, the Plaintiff therefore has no case with a high probability of success to warrant the grant of an injunction. On whether the Plaintiff shall suffer irreparable injury, it was counsel's submission that the Plaintiff has been trespassing on the 1st Defendant's land and that they have their rightly allocated land, being Kilifi/Kijipwa/122, where they can relocate to. To her therefore, no harm shall befall the Plaintiff should the application be dismissed.
15. On the issue of locus standi, counsel submitted that the Plaintiff has no locus standi to file the suit as he does not have any legitimate interest over the suit property; neither was he a party in the suit before the subordinate court. Counsel argued that the orders of a court cannot be challenged by filing a fresh suit to a higher court, instead, the Plaintiff should have sought a judicial review or appeal. Counsel relied on the case of *Florence Nyaboke Machani v Mogere Amosi Ombui & 2 Others* [2015] eKLR; *Telcom Kenya Limited v John Ochanda* [2014] eKLR; and *Nancy Wangeci Komu v The Principal Magistrate's Court Kerugoya & 2 Others*.

2nd & 3rd Defendants' Submissions

16. In his submissions dated 24/2/2025, Mr. Ojwang, State Counsel, enumerated 3 issues for determination- whether the court has jurisdiction to handle this matter; whether the Plaintiff has locus standi to institute the suit; and whether the present matter is res judicata.
17. Counsel submitted that jurisdiction is everything and without it a court has no power to make any further step. This he stated was the position held in *Owners of Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR. It was Counsel's submission that under Section 11 of the Civil Procedure Act, the law mandates that every suit shall be instituted in the court of the lowest grade competent to try it, to ensure efficient administration of justice and prevent overburdening higher courts with matters that can be adequately resolved by lower courts. Counsel argued that the subject matter herein in terms of its nature and pecuniary value falls squarely within the jurisdiction of the magistrate's court. To counsel, the decision to file the suit before this court is therefore in contravention of Section 11 CPA and an abuse of the court process. Counsel added that the suit should thus be dismissed as it cannot be transferred to a lower court by virtue of having been heard and determined by a lower court. To this end, counsel cited the case of *Nairobi Imaging Centre Limited V Kenya Medical Association & 2 others* [2013] eKLR.



18. Counsel further submitted that the Plaintiff's claim is not grounded in any legal or proprietary interest that would confer upon him the right to bring the suit; that his interest is derivative and entirely dependent on the permission granted by the said James Kamore Njomo. Counsel's argument was that in the circumstances, the Plaintiff does not have locus standi. He added that locus standi is a fundamental principle of law that goes to the root of a party's right to be heard in court. He stated that the principle was well articulated in the case of *Law Society of Kenya v Commissioner of Lands & Others* [2001] eKLR.
19. On the issue of res judicata, counsel submitted that Section 7 of the *Civil Procedure Act* provides that 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, litigating under the same title, in a court competent to try such subsequent suit. To explain the doctrine of re judicata, Mr. Ojwang relied on the case of *E.T. v. Attorney-General & Another* (2012) eKLR and stated that the Court under paragraph 57 of the decision in that case emphasized the importance of vigilance in guarding against attempts by litigants to evade the doctrine of res judicata by introducing new causes of action to seek the same remedy.
20. He further relied in the case of *George Omondi v. National Bank of Kenya Limited & Others* (2001) EA 177, where the Court cited Kuloba J. in *Njangu v. Wambugu & Another*, Nairobi HCCC No. 2340 of 1991 (unreported), where it was observed that if parties were allowed to litigate endlessly over the same issues with the same opponents before courts of competent jurisdiction merely by giving their case a cosmetic facelift on each occasion, the doctrine of res judicata would be rendered nugatory.
21. Counsel submitted that the present suit and the accompanying application are an attempt to relitigate the lower court matter on issues that have already been conclusively determined by a court of competent jurisdiction. He added that the instant suit is a classic example of an attempt to dress up a matter that has already been conclusively determined in a new guise, with the hope of obtaining a different outcome. To counsel, the issues raised herein are identical to those that were litigated and determined in *Kilifi CMELC No. 60 of 2019*; that the parties in the present suit save for Mr. James Kamore Njomo are the same and the subject matter is the same, and the reliefs sought are substantially the same.
22. Mr. Ojwang further submitted that by falsely asserting that there have been no previous proceedings on the same subject matter, the Plaintiff has contravened the express provisions of Order 4 Rule 1(2); that this contravention is not a mere technicality but a fundamental flaw that goes to the root of the Plaintiff's case. He argued that a plaint founded on a false affidavit cannot be allowed to stand, as it undermines the very foundation of the judicial process. He urged the Court to uphold the sanctity of the doctrine of res judicata and dismisses the present suit entirely.

Analysis And Determination

23. I have considered the application, supporting affidavits, replying affidavits, grounds of opposition, submissions and authorities presented before this Court. The following issues thus arise for determination: -
 - i. Whether the present suit is res judicata;
 - ii. Whether the Plaintiff has locus standi to institute this suit;
 - iii. Whether the Plaintiff is entitled to an order of interlocutory injunction pending the hearing and determination of the suit;



- iv. Whether the notice of motion dated 17/12/2024 is merited.
24. Res judicata is a matter properly to be addressed in limine as it goes to the root of a court's jurisdiction to entertain a matter. The substantive law on res judicata is found in Section 7 of the [Civil Procedure Act](#) Cap 21 which provides that:
- “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.”
25. [The Black's law Dictionary 10th Edition](#) defines “res judicata” as:
- “An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties...”
26. Thus, as it was explained by the Court of Appeal in [John Florence Maritime Services Limited & another v Cabinet Secretary for Transport and Infrastructure & 3 others](#) [2015] eKLR, for the bar of res judicata to be effectively raised and upheld on account of a former suit, “the ingredients of res judicata must be given a wider interpretation; the issue in dispute in the two cases 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.”
27. I have perused the issues raised in the Complaint, there is no doubt that they are directly and substantially in issue in the former suit, that is the issue of ownership of the suit property. The issue was undoubtedly heard and finally determined by a competent court. The big question is, are the parties in this suit, same to the parties in the former suit or parties under whom they or any of them claim?
28. The Parties in Kilifi CMC Land Case No. 60 of 2019, were Kazungu Ngala Chandungu v James Kamore Njomo, Settlement Funds Trustee, Kilifi, Land Registrar, Kilifi, and the Attorney General; those parties, save for James Kamore, are parties in the present suit. The Plaintiff was also not a party in the former suit, although it is evident that he sought to join that suit post judgment, but his application was denied by the learned magistrate.
29. Be that as it may, it is trite that the doctrine of res judicata extends not only to the original parties but also to those in privity with them, that is, parties whose legal interests are closely aligned with a party from the original or former case. In my view, privity encompasses relationships such as successors in interest, beneficiaries, licences or others whose rights are derived from a party involved in the prior litigation. The Plaintiff's claim as framed is clearly derived from the said James Kamore, who was the 1st Defendant in the former suit. In fact, the reliefs sought in this suit seek to have the said James re-registered as the owner of the suit property. Two things are certain from this - firstly, that the suit is res judicata and that the Plaintiff has no locus standi to institute a claim on behalf of the said James Kamore.



30. In *Patel (Suing as the Executor of the Estate of Natverbhai Prabbudas Vallabhai Patel) v Patel & 3 others* [2023] KEELC 16116 (KLR) the court cited Law Society of Kenya -v- Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000 where it was held as follows: -

“Locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law.”

31. Further in *Bestlines Express (K) Ltd v China Road & Bridge Corporation(K) Ltd. t/a China Road and Bridge Corporation; Kenya Revenue Authority (Interested Party)* [2021] KEHC 360 (KLR) the court cited Alfred Njau and Others -Vs- City Council of Nairobi [1982] KAR 229 where the Court also held that: -

“...the term “locus standi” means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings”.

32. The import of the above is that locus standi refers to a person’s right to appear before and be heard in a court of law and without which, even when a party has a meritorious case, they cannot be heard because of that. Locus standi is so important that in its absence, party has no basis to claim anything before the Court.

33. Having already established that the doctrine of res judicata and locus standi boil down to the issue of whether the court is possessed of jurisdiction, and having found that the suit is res judicata, and the plaintiff is bereft of locus standi, I hereby strike out the plaint dated 17th/12/2024. For avoidance of doubt, the Application dated 17/12/2024 too, is struck out with costs to the defendants.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 30TH DAY OF APRIL 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI.

