



Ngina v Mwangi & 2 others (Environmental and Land Originating Summons E036 of 2022) [2025] KEELC 3409 (KLR) (28 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3409 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E036 OF 2022**

JA MOGENI, J

APRIL 28, 2025

**IN THE MATTER OF CLAIM FOR TITLE TO LAND BY ADVERSE POSSESSION
OVER THE PARCELS OF LAND KNOWN AS RUIRU KIU & RUIRU KIU
BLOCK 2/24640, RUIRU KIU & RUIRU KIU BLOCK 2/24641, RUIRU KIU &
RUIRU KIU BLOCK 2/246402 AND RUIRU KIU & RUIRU KIU BLOCK 2/24643**

BETWEEN

MICHEAL GERALD MBUGUA NGINA PLAINTIFF

AND

JOHN NDUNGU MWANGI 1ST DEFENDANT

LAND REGISTRAR RUIRU 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

RULING

1. The instant Application by way of Notice of Motion dated 20/02/2023, was brought under Certificate of Urgency pursuant to Section 7, *Civil Procedure Act*, Chapter 21 Laws of Kenya and all other enabling provisions of the Law. The Applicant/1st Defendant namely John Ndungu Kimani is seeking the following orders;
 - a. This Honorable Court be pleased to dismiss this suit in its entirety for being res judicata.
 - b. The costs of the suit and this Application be borne by the Plaintiff.
2. The Application is premised on the grounds of it and the Replying Affidavit sworn by John Ndungu Kimani on 20/02/2023 together with annexed documents namely:
 - a. Copies of pleadings and judgment of Thika CMCC No.157 of 2011 David Chege Kariuki vs John Ndungu Mwangi involving Ruiru/Kiu block 2 (Githunguri) 4155. Marked as JM1.



- b. Judgment by the Court of Appeal. The Court of Appeal confirmed that John Ndungu Mwangi as the proprietor of Ruiru/Kiu block 2 (Githunguri) 4155. Marked as JM 3.
 - c. Ruiru MCE & L Suit No. E058 of 2021 Mary Wangui Njora & 11 Others -Vs- John Ndungu Mwangi. In a Ruling delivered on the 23rd July , 2021, the Court dismissed the Plaintiffs' suit as being Res Judicata, since the issue of ownership of Title Number Ruiru/Kiu block 2 (Githunguri) 4155 had been determined with finality in Nairobi ELC Appeal No. 16 of 2016 John Ndungu Mwangi –Vs- David Chege Kariuki. Marked as JM 4.
 - d. THIKA Misc. Civil Application No. E037 of 2021. An appeal against the Ruling of 23rd July, 2021 wherein they sought for leave of the Court to file the appeal out of time. In a Ruling delivered on 17/1/2022, the Superior Court dismissed the Plaintiffs' Application with costs. Marked as JM5.
 - e. A copy of the Notice of Appeal is annexed hereto and marked as JNM-6. Which is an appeal filed by the Plaintiff after being dissatisfied with the Ruling of the Superior Court. The Plaintiffs appealed at the Court of Appeal. The Appeal is pending since the Plaintiffs are yet to file the Record of Appeal.
3. In a Replying Affidavit of 21 paragraphs sworn on 14/03/2023, the Plaintiff / 1st Respondent claims that the claim herein is about adverse possession in relation to the suit properties and not one related to ownership of title. That adverse possession claims are not about what is seen on the title but a fact to be observed on the ground.
 4. She opposes the Notice of Motion. She further claims that she lawfully and procedurally obtained ex-parte orders restraining the Defendants / Applicants and that they will not be prejudiced by the hearing and determination of the suit, among others.
 5. It is his contention that the suit filed in Thika CMCC No. 157 of 2011 and the appeal at Nairobi Appeal No. 16 of 2016 was not between the Plaintiff and the Defendants as the suit was between the 1st Defendant and one David Chege Kariuki. That parties in the aforementioned suits are different from the parties in this suit.
 6. The 1st Respondent contends that the issue of adverse possession has not been litigated before any Court, further that this suit cannot be res judicata since the parcel of Land known as Ruiru/Kiu block 2(Githunguri)4155 was subdivided in the year 2021 and to support this contention he attached a mutation form marked as annexure 'MGWN-2'. Further that the suit properties were not in existence during all the previous proceedings and/or suits and therefore the parties would not have adjudicated on something that was non-existent.
 7. Further that in the Ruling delivered in Ruiru MCEL Suit No. E058 of 2021, dated 23rd July, 2021 between Mary Wangui Njora & 11 Others v John Ndungu Mwangi, paragraph 4 of 7 of the said Ruling stated that whereas the Plaintiffs in that matter brought out the aspect of adverse possession in their submissions, the Trial Magistrate would not award them because the orders on adverse possession were not sought for in the Plaint. (Attached is a copy of the Ruling dated 23/07/2021 marked as annexure 'MGWN-1'.
 8. He further averred that the Defendant/Applicant in this suit never counter-claimed the Plaintiff in Thika CMCC No. 157 of 2011 against the Plaintiff for his eviction and all other third parties in possession of Ruiru Kiu block 2 (Githunguri) 4155 nor did he seek to have him restrained from occupation and use of the land.



9. That the Applicant's claim in all previous suits, was that he was seeking for a nullification of the Sale of Land Agreement between him and one, David Chege Kariuki in regard to all that parcel of land known as Ruiru/Kiu block 2 (Githunguri) 4155. Thus that the Applicant never sought for eviction orders or restraint of occupation by the Plaintiff on the suit properties. Yet according to the 1st Respondent an assertion of a right occurs when the owner takes legal proceedings against the occupant or makes effective entry into the land.
10. It is the Plaintiff/1st Defendant's contention that the Plaintiff has been in occupation of the suit property with quiet possession for a period of over 12 years and without disruption for a continuous period. He therefore prays for dismissal of the Application.
11. The Court gave directions on mentioning this matter alongside ELCOS 39 of 2022 where similar matters were litigated and a Ruling delivered on 28/02/2024 and the suit was struck out.
12. The current Application was canvassed by way of written submissions. The Applicant/1st Defendant's submissions are dated 25/04/2023 and the Plaintiff/1st Respondent's submissions are dated 25/04/2023. I am sure that both parties have mixed up their dates because the Court had not issued directions on filing of written submissions 2/11/2023 I therefore take it that the dates reflected on the submissions must be 25/04/2025.
13. The 2nd and 3rd Defendant/Respondents did not file any response to the Application.

Analysis and Determination

14. From my reading of the Application and its annexures the only issue for determination is whether the Application dated 20/02/2023 is merited.
15. Now, Section 7 of the *Civil Procedure Act* 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.”
16. It is clear from the above therefore, that before a plea of res – judicata can be successfully invoked as a bar to a suit, the following conditions must be met: -
 1. The issue in dispute in the former suit between the parties must be directly and substantially in dispute in the suit where the doctrine of res – judicata is pleaded.
 2. The former suit must have been between the same parties or those under whom they or any of them claim litigating under the same title.
 3. The former suit must have been heard and finally decided.
 4. The Court or Tribunal which heard the former suit must have been competent.
17. In urging the Court to find that this case is res – judicata, the Applicant averred that the cases referred to in paragraph 2 above relate to the same parties and the same suit property. The Plaintiff/1st Respondent avers however that the issue is not the same since the issue in the suits referenced at paragraph 2 was about ownership and right to property whereas the issue in the instant suit is about adverse possession.



18. It is the Applicant's contention that in the current / instant suit the claim is for ownership of parcels of land known as Ruiru Kiu block 2/24640, Ruiru Kiu block 2/24641, Ruiru Kiu block 2/24642 and Ruiru Kiu block 2/24643 which are a resultant sub-divisions of Ruiru/Kiu/block 2 (Githunguri) 4155. Infact he avers that in Ruiru MCE&L No. E058 of 2021 was that of ownership of Ruiru/Kiu/block 2(Githunguri) 4155 where parties' interests in the suit was ownership of individual parcels of land and that the issue raised in the instant suit is one of adverse possession of Ruiru Kiu block 2/24640, Ruiru Kiu block 2/24641, Ruiru Kiu block 2/24642 and Ruiru Kiu block 2/24643.
19. The Applicant further submits that the issue raised in the instant suit is similar to that raised in MCE & L Suit No. E058 of 2021 and Civil Application No. E037 of 2021 which is the issue of ownership of Ruiru/Kiu/block 2(Githunguri) 4155 and that parties in both suits were the same with the Plaintiff herein being the 10th Plaintiff therein and the Defendant was a Defendant even in the said suit. That infact in Ruiru MCE&L No. E058 of 2021 the Court dismissed the Plaintiff's suit as being Res Judicata since the issue of ownership of Ruiru block 2 (Githunguri) 4155 had been determined with finality in Nairobi ELC Appeal No. 16 of 2016. Thus the issue of ownership was determined and so the Notice of Motion dated 20/02/2023 is meritorious.
20. The Applicant relied on the following cases, Court of Appeal case of Independent and Electoral Boundaries Commission vs Maina Kiai & 5 Others (2017)eKLR, Peter Mbogo Njogu & Another [2005] eKLR, Edwin Thuo vs Attorney General & Another Nairobi Petition No. 212 of 2012 (2012) eKLR, cited with approval in Mwadzaya Wachanda Clan Welfare Registered Trustees & 58 Others vs Petrol Oil Kenya Ltd & 6 Others [2021] eKLR and the case of Diocese of Eldoret Trustees (Registered) vs Attorney General (on behalf of the Principal Secretary Treasury) & Another [2020]eKLR.
21. The 1st Respondent/Plaintiff vide his submissions dated 25/04/2023 stated the Magistrate in making her decision in MCELC No. E058 of 2021 observed that the issue of adverse possession was only introduced in submissions and not pleadings. Further that as for the suit property Ruiru block 2 (Githunguri) 4155 the suit property in contestation only came into being in 2020 and therefore there could not have been litigation about the same before the suit property being there.
22. It was the 1st Respondent's contestation that this suit is grounded on Section 7, 17 and 38 of the Limitation of Actions Act and Order 37 Rule 7 of the Civil Procedure Rules whose claim is about adverse possession in relation to all those parcels of land known as block 2 (Githunguri)/24640,Ruiru Kiu block 2(Githunguri)/24641, Ruiru Kiu block 2(Githunguri)/24642 and Ruiru KJV block 2(Githunguri)/24643(suit properties).
23. That the claim raised in Thika Civil Case No. 157 Of 2011 David Chege Kariuki -Vs- John Ndungu Mwangi, the Appeal in Nairobi ELC Appeal No. 16 of 2016, John Ndung'u Mwangi -Vs- David Chege Kariuki and all other subsequent suits was based on two issues namely;
 - i. The validity of the sale agreement dated 25th May 2004 between the Plaintiff and the Defendant in relation to Title Number Ruiru/Kiu block 2(Githunguri)/4155; and
 - ii. Ownership rights over all the above mentioned parcel of land.
24. At the same time, he avers that in Thika Civil Case No. 157 of 2011, the Applicant herein in his counterclaim sought for the invalidation of the Sale aAgreement between himself and one David Chege Kariuki. Thus, the counterclaim was purely based on ownership rights. He further contends that the Applicant has not produced and/or disclosed any proceedings proving that at any given time the Applicant prayed for eviction of the Respondent from the suit properties. Therefore according to him the claim for adverse possession has not been previously adjudicated on before this Honorable Court



or any other Court of competent jurisdiction and therefore it his submission that this suit does not fall under the doctrine of Res Judicata.

25. The Respondent submits that the whole framework of this suit is premised on the principle that equity aids the vigilant and not the indolent and that despite the Applicant being well aware that the Respondent was in occupation of the suit property did not do anything to evict him. Thus the Respondent contends that the claim in this suit being the Applicant's title has been extinguished by virtue of Section 7, 17 and 38 of the Limitation of Actions Act.
26. According to the Respondent, adverse possession is a fact to be observed on land and not one to be claimed in a title and that the matter at hand is a different set of facts that have not been previously adjudicated on.
27. The key cases relied upon Nancy Mwangi TIA Worthlin Marketers vs Airtel Networks (K) Ltd & others [2014] eKLR, Bernard Mugo Ndegwa vs James Nderitu Githae & 2 Others (2010) eKLR, Maweu vs Liu Ranching & Farming Cooperative Society (1985) eKLR as quoted in Civil Appeal No. 164 Of 2011, Gachuma Gacheru vs Maina Kabuchwa (2016)eKLR, Malindi App No. 56 of 2014, Mtana Lewa vs Kahindi Ngala Mwangandi (2015) eKLR and Kiptoo Arap Chelule vs Settlement Fund Trustees & 3 Others [2016] eKLR.
28. The term res judicata is defined in Black's Law Dictionary 10th Edition as follows: -

“An issue that has been definitively settled by judicial decision. An affirmative defense barring the same parties from litigating a second law suit on the same claim, or any other claim arising from the same transaction or series of transactions that could have been – but was not – raised in the first suit. These essential elements are (1) an earlier decision on the issue, (2) a final Judgment on the merits, and (3) the involvement of the same parties, or parties in privity with the original parties.”
29. The rationale behind the doctrine of res judicata is that litigation must come to an end. Parties who have litigated over a mater in a previous case should not live in fear that a sword of that previous litigation which was heard and determined will continue to hang over them in perpetuity. In James Njuguna Chui vs John Njogu Kimani Civil Appeal No. 322 of 2014 [2017] eKLR, the Court of Appeal described the doctrine in the following terms:-

“The rationale behind the rule is simple, there has to be an end to litigation and a person who has had his dispute decided must learn to live with it. It is not open to him to relitigate or reargue the issue before the same or another forum in the hope of getting an improved or a better result. It is a pragmatic rule designed to stop vexatious litigants from pestering those with whom they have disputes and so it protects the other party from the specter of endlessly repetitive litigation hanging over their heads like the sword of Damocles. It also protects the Court system from abuse such as would bring the administration of justice into disrepute not only by having the same decision pronounced over and over by the same or similarly situated Courts but, worse, by having contradictory decisions emanating from he Court or Courts over the same issue, Courtesy of the repeat litigation.”
30. In the case of PIL Kenya Limited -vs-Oppong (2009) KLR 442 at 494, it was held, inter alia;

“...The Court's view is that all the issues which the superior Court was being asked to adjudicate upon in HCC No. 446 of 2001 were directly in issue in HCCC 260 of 2000. It is also clear that the issues were between the same parties or parties litigating under the same



title. Consequently HCCC No. 446 of 2001 was clearly res judicata. Alternatively HCCC No. 446 of 2001 was in my view caught by judicial estoppel even if the issues raised were not the same, all the issues in the subsequent suit namely HCCC No. 446 of 2001 could have been raised in the earlier suit HCC No. 260 of 2000, and if not raised they were deemed to have been raised under the doctrine of judicial estoppel or issue estoppel, because the earlier case is deemed to have dealt with all the critical issues. The suit, the subject matter of this appeal was therefore not sustainable in law and ought to have been dismissed on this ground as well ...” (emphasis provided)

31. From my perusal of the Court record I am of the view that the Court in Ruiru MCE&L Suit No. E058 of 2021 Mary Wangui Njora & 11 Others vs John Ndungu Mwangi addressed the issue of ownership of Ruiru/Kiu block 2 (Githunguri) 4155 and their resultant subdivisions. This being the position and like my brother Olola held with regard to a situation where multiple suits were filed by different Plaintiffs in the case of Mwadzaya Mwachanda Clan Welfare Registered Trustees & 58 Others vs Petrol Kenya Limited & 6 Others (supra) that:

“As it were the primary issue raised in this suit is whether or not the Plaintiffs are entitled to the property known as Kilifi/Madizimbani/Mitagoni/834, 841,842, 843, 851 & 852. Arising from the foregoing analogy it is evident that the same issues have been raised and have been substantially addressed by the Courts and tribunals: that: have handled the numerous cases-filed herein.”
32. It follows that there has been a previous suit namely Ruiru MCE & L Suit No. E058 of 2021, involving the same parties, the same subject matter and it was heard and determined by a competent Court as judicially recognized in Uhuru Highway Development Ltd case (supra).
33. It is this Court’s position that determination of the claim on the issue of ownership of land, can extinguish a claim for adverse possession. Once ownership is established, the claim for adverse possession, which is based on the original owner’s failure to claim their land for a specific period, is no longer relevant. Therefore I find that the same matter involving the same parties has already been heard and case determined. Be that as it may, the circumstances and interest of justice dictate that I find the case Res Judicata.
34. The issues raised in the suit and the Applicant’s submission reveal that the same dispute involving the same parties and the suit land, has been litigated and determined by Courts of competent jurisdiction. Therefore, this suit is an abuse of the process of the Court as litigation cannot be endless.
35. It is a cardinal principle that litigation has to come to an end; see Halsbury’s Laws of England 4th Edition Volume 22 page 273.
36. In conclusion, it is the considered view of this Court that the suit is res judicata as noted in Black’s Law Dictionary and Section 7 of the Civil Procedure Act (both supra). I proceed with the Notice of Motion Application dated 20/02/2023.
37. I am therefore in agreement with the Applicant that this suit touches on issues that have been litigated before a competent Court by the same parties. This suit run afoul of Section 7 of the Civil Procedure Act. The Applicant’s prayer that this Court finds that this suit is res judicata is allowed. This suit is struck out with costs to the Applicant / 1st Defendant.
38. It is so ordered.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28TH DAY OF APRIL 2025
VIA MICROSOFT TEAMS.**

.....

MOGENI J

JUDGE

In the presence of: -

Mr. Ochieng holding brief for Ms. Njeri for the Applicant

Mr. Muturi holding brief for Wanjohi for the 1st Respondent

Ms. Mochage holding brief for Ms. Wanjohi for 2nd and 3rd Respondents

Melita - Court Assistant

