



**Ciamwonge (Suing as the Legal Representative of the Estate of Mugendi Runguma – Deceased) v Laini & 7 others (Environment and Land Case E008 of 2024) [2025] KEELC 3944 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3944 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT AND LAND CASE E008 OF 2024**

**BM EBOSO, J  
APRIL 24, 2025**

**BETWEEN**

**PENASIA CIAMWONGE ..... PLAINTIFF  
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF MUGENDI  
RUNGUMA – DECEASED**

**AND**

**PETER JAMLICK LAINI ..... 1<sup>ST</sup> DEFENDANT  
SARAH KAARI HERODIAH ..... 2<sup>ND</sup> DEFENDANT  
PATRICK NANUA RAINI ..... 3<sup>RD</sup> DEFENDANT  
IDAH MUTHONI NYAMU ..... 4<sup>TH</sup> DEFENDANT  
JANE GACHUNKU MBUNGU ..... 5<sup>TH</sup> DEFENDANT  
GEOFFREY NJERU SILAS ..... 6<sup>TH</sup> DEFENDANT  
LAND REGISTRAR CHUKA ..... 7<sup>TH</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. The plaintiff initiated this suit on behalf of the estate of the late Mugendi Runguma through a plaint dated 18/6/2024. She seeks:
  - (i) a declaration that the transactions and/or entries entered and/or endorsed in the land register relating to parcel number Ndagani/Karingani/140 (*sic*) as from 7/12/1999 are unlawful, illegal and void;



- (ii) an order decreeing the Land Registrar to rectify the said land register to cancel the impugned entries;
  - (iii) an order decreeing eviction of the defendants from the said land; and
  - (iv) a permanent injunction restraining the defendants against entering, taking possession, trespassing onto, cultivating, developing or interfering with the said land. She also seeks costs of the suit.
2. The case of the plaintiff is that the suit land belongs to the late Mugendi Runguma but has been fraudulently subdivided into parcel numbers Ndagani/Karingani/5059, 5061, 5062, 5063, 8233, 8234, 5063, 7317 and 7318 She contends that the late Mugendi Runguma died on 6/4/1974, adding that the defendants subsequently used fraudulent/fake succession documents to procure conveyance of the suit land from the late Mugendi/Runguma and subsequently subdivided and procured the impugned registrations fraudulently.
3. Upon being served with suit papers, the 6th defendant brought a notice of preliminary objection dated 21/1/2025, inviting the court to strike out the suit on the grounds that:
  - (i) the suit is *res judicata* and offends the provisions of Section 7 of the [Civil Procedure Act](#); and
  - (ii) the plaint is a misadventive and an abuse of the court process.The said preliminary objection is the subject of this ruling.
4. The preliminary objection was canvassed through written submissions dated 5/2/2025, filed by M/s Njeru Ithiga & Co Advocates. Through the written submissions, the objector contends that the plaintiff filed Chuka High Court Miscellaneous Succession Cause No E007 of 2023 in which she named her son, Peter Jamlick Raini (the 1st defendant) as the respondent. The objector contends that the plaintiff sought various orders relating to land parcel number Karingani/Ndagani/140 (*sic*). The objector adds through written submissions that the said miscellaneous application was heard by the High Court (Gitari J) and was dismissed vide a ruling dated 25/1/2024. He states through submissions that the issues in Chuka High Court Miscellaneous Succession Cause No E007 of 2023 were the same as the issues raised in this suit. He urges the court to uphold the preliminary objection.
5. The objector did not canvass the second limb of the preliminary objection.
6. The plaintiff opposed the preliminary objection through written submissions dated 19/2/2025, filed through M/s A M Gitonga & Co Advocates. Counsel for the plaintiff faults the objector for attaching evidential documents to the written submissions, arguing that the said documents ought to have been filed alongside the preliminary objection. Counsel argues that the preliminary objection is defective and “does not disclose *res judicata*.”
7. Counsel further contends that Chuka Miscellaneous Succession Cause No E007 of 2023 was a miscellaneous application, adding that it was not a substantive suit that was heard and determined on merits. Counsel adds that the issues which were in the miscellaneous application were not determined because the applicant lacked locus standi. Counsel urges the court to reject the preliminary objection.
8. The court has considered the preliminary objection together with the rival submissions that were tendered. The court has also considered the relevant legal frameworks and the relevant jurisprudence. The following two key issues fall for determination in this ruling:
  - (i) Whether the notice of preliminary objection dated 21/1/2025 meets the threshold of a preliminary objection; and



- (ii) Whether this suit suffers from the essential elements of res-judicata. I will be brief in my analysis and disposal of the two issues.
9. Does the notice of preliminary objection dated 21/1/2025 meet the threshold of a preliminary objection? The threshold of a preliminary objection was outlined by the Court of Appeal for East Africa in *Mukisa Biscuits Manufacturing Co Ltd v West End Distributors Ltd* (1969) EA 696 as follows:
- “A preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the Jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration.”
10. Sir Charles Newbold, P, rendered himself as follows in the same case:
- “A preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is usually on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion...”
11. The Supreme Court of Kenya, in *Hassan Ali Jobo & another v Suleiman Said Shabbal & 2 others* SCK Petition No 10 of 2013, reiterated the above threshold in the following words:
- “a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which is argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration...a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”
12. The common law doctrine of res-judicata has been enacted as part of Kenya’s statute law under 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.”
13. Kenya’s Parliament has gone a step further to legislate explanatory notes defining the doctrine.
14. It is clear from the substantive framework and from the explanatory notes that a party alleging res judicata has the duty to demonstrate existence of a prior suit raising similar issues in a competent court and a determination of those issues by that competent court. Unless the relevant evidence (in form of pleadings and determinations relating to the previous suit or application), has been placed before court as part of the evidence or pleadings of the offending party, the party invoking the doctrine is required to



bring a formal application supported with an affidavit. Relevant pleadings and determinations relating to the preceding suit or application are supposed to be exhibited as evidential annexures to the affidavit. The court seized of the question of res-judicata is expected to interrogate the pleadings, issues and determinations relating to the preceding suit/application against the pleadings and issues in the suit before it and make a determination on whether or not the essential elements of res judicata exist.

15. The above evidential materials are not before this court. Indeed, on realizing that a notice of preliminary objection was not the proper platform on which to ventilate the issue of res judicata in the circumstances of this case, the objector purported to attach to his written submissions some pleadings and a ruling relating to Chuka High Court Miscellaneous Succession Cause No E007 of 2023. Clearly, the said documents cannot be relied upon as part of evidence that is before this court.
16. The totality of the foregoing is that, in the circumstances of this case at this point, the issue of res judicata is one that requires the platform of a formal notice of motion supported with an affidavit exhibiting relevant prior pleadings, issues and determinations. For this reason, it is the finding of the court that the notice of preliminary objection dated 21/1/2025 does not meet the threshold of a preliminary objection. The same stands to be struck out on the above ground. It is accordingly struck out. The objector will be at liberty to ventilate the issue of res-judicata on the platform of a formal notice of motion.
17. In light of the foregoing, the court will not make a merit pronouncement on the second issue. On costs, there are no special circumstances to warrant a departure from the general principle in Section 27 of the *Civil Procedure Act* – that costs follow the event. Consequently, the 6th defendant will bear costs of the ill-fated preliminary objection.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT CHUKA THIS 24<sup>TH</sup> DAY OF APRIL, 2025.**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:-

Ms. Gitonga for the Plaintiff

Ms. Mugo for the 2nd Defendant

Mr. Njeru Ithiga for the 6th Defendant

Ms. Kendi for 7th and 8th Defendants

Court Assistant – Mr. Mwangi

