



REPUBLIC OF KENYA



**Chelule v Settlement Fund Trustees & 8 others (Environment & Land
Petition 1 of 2021) [2022] KEELC 3004 (KLR) (16 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3004 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND PETITION 1 OF 2021**

MN MWANYALE, J

JUNE 16, 2022

BETWEEN

KIPTOO ARAP CHELULE PETITIONER

AND

SETTLEMENT FUND TRUSTEES 1ST RESPONDENT

LAND REGISTRAR, NANDI COUNTY 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

JOHN KIPKEMEI CHEPTAREI 4TH RESPONDENT

SAMUEL KIPLIMO BETT 5TH RESPONDENT

RUTH JEPKOECH NGETICH 6TH RESPONDENT

ESTATE OF CHRISTOPHER KIPKERING BETT 7TH RESPONDENT

ESTATE OF TAPRANDICH NGETICH 8TH RESPONDENT

SALLY JEPKIRONG NGETICH 9TH RESPONDENT

JUDGMENT

1. In his Petition dated 6th November 2020, the Petitioner Kiptoo Arap Chelule petitions this Court to find that his fundamental rights to property and justice with regard to LR No. Nandi/lessos/35 have been contravened.
2. The Petition further on its title makes Reference to Kilibwoni Land Disputes Tribunal case No. 16/1997 and the subsequent decree thereof issued by the Kapsabet Magistrate's Court in LDT Case No. 81/1997 on 30th April 1998 as well as parcels No. Nandi/lessos/658.659.660.661, 662 and 663 all formally known as (Nandi/lessos 351).



3. In his humble petition before the Court the Petitioner prays for orders that;
 - a) Declaration do issue that the Petitioners Right to be heard and Proprietary Rights were violated severally and jointly by the Respondents.
 - b) Declaration do issue that the Land Dispute Tribunal lacked jurisdiction to entertain the disputes touching on the Petitioners land number Nandi/lessos/351 (now number Nandi Lessos/658,659,660, 661 and 663.
 - c) A declaration do issue that the Kilibwoni Land Dispute Tribunal awards was ultra vires, null and void thus judgment entered by Kapsabet Magistrates Court vide case No. 81/1997 be set aside and quashed and its subsequent decree dated 30th April 1998 issued on 15th June 1998 is null and void.
 - d) An order directing to 2nd Respondent to cancel all titles issued in Respect of Land Registration numbers Nandi/lessos 658,659,660,661,662 and 663 and the same be reverted back to original parcel LR Nandi/lessos/351 and title issued to the owner.
 - e) General damages
 - f) Costs of the petition and its interest
 - g) Any other relief that the Honourable Court may deem fit in the circumstance.
4. Simultaneous with the filing of the petition, the Petitioner filed a Notice of Motion application dated 6th November, 2020, seeking injunctive orders.
5. On 2nd December 2020, the Notice of Motion application was allowed pending the hearing determination of this petition.
6. In opposition to the Petition, the 1st, 2nd and 3rd Respondents filed a Replying Affidavit on 31st January 2021 through Grace K. Ondiga a Land Adjudication and Settlement Officer; while John Kipkemei Cheptarei the 4th Respondent, filed a Replying Affidavit on 31st March 2022. The 5th to 9th Respondents did not file any Responses.
7. The Petitioner was granted leave to file further affidavit's in respect of the Replying Affidavits of Grace K. Ondiga and John Kipkemei Cheptarei and accordingly the Petitioner filed on Reply to 1st, 2nd and 3rd Respondents Replying Affidavit deponed on 12th May 2021 and a further Affidavit dated 19th May 2022.
8. It is to be noted that the Petitioner the 4th, 5th and 9th Respondents were siblings while the 7th and 9th Respondents are the Estate of the Petitioner's late brother and Estate of the Petitioner's late mother.
9. Upon transfer of the petition to this Court at Kapsabet the Court observed the existence of a similar suit between the some of the Respondents herein as Plaintiffs and the Petitioner as the Defendant. That suit, to wit, Kapsabet ELC No. 78/2021 was vide a Ruling delivered on 17th March, 2022 stayed pending determination of this petition.
10. Upon issuance of stay of proceedings orders in Kapsabet ELC No. 78/2021 parties herein took directions as to the hearing of this petition where the Court directed the petition to be disposed by way of written submissions.
11. Timelines for the filing of submissions were given. At the time of writing the judgement the Petitioner and the 4th and 6th Respondent had filed their submissions. The 1st to 3rd Respondent represented by



the AG's Office had not filed their submissions and the Court did not therefore have the benefit to look into their submissions.

Petitioner's Case

12. It is the Petitioner's case that:-

- a) He purchased land parcel No. Nandi/lessos/351 reallocated to by 1st Respondent (Settlement Fund Trustees) STF in 1965 when one Kipkemei Arap Kaila failed to comply with the settlement scheme conditions.
- b) The 1st Respondent changed its records to reflect the Petitioner's name and granted him a charge with 30 years redemption from 1965.
- c) He faithfully serviced the charge using milk sale proceeds by issuance of a standing order at Kenya Co-operative Creameries in favour of the 1st Respondent, his crop produce and a loan from Agricultural Finance Co-operation.
- d) In the year 1997, the Petitioner was summoned by Lands Dispute Tribunal over a complaint that his parcel of land Lessos/351 has dispute and ought to be subdivided. He protested the Authority of the Land Dispute Tribunal to handle the matter since the land belonged to the settlement Fund Trustees who had no idea of the dispute in the charged land.
- e) The Petitioner avers that upon raising objection before Kilibwoni Land Dispute Tribunal, they adjourned the meeting and secretly in collaboration with his siblings set another hearing date when they proceeded with hearing dispute exparte.
- f) Since the Petitioner disputed jurisdiction of the Land Dispute Tribunal and without involving Settlement Fund Trustees, the Tribunal proceeded in their absentia and determined that the said land be subdivided among the Petitioner's siblings, curiously leaving out Jerop Taprandich Ngetich (their mother) who was the main complainant before the Tribunal.
- g) The Tribunal sitting without authority proceeded to deliberate on the parcel and gave the impugned award without involving the Settlement Fund Trustee (the charger) and the Petitioner (chargee).
- h) The time of Land Dispute Tribunal hearing in 1997 the Petitioner was still servicing a loan which he cleared on 30/9/2008 and received the discharge of charge in 2009.
- i) That the impugned award of the Tribunal was subsequently adopted by the Kapsabet Magistrate's Court as an order of the Court. Since then Petitioner has been seeking justice before Courts of Law through his Advocates in vain.
- j) As a result of the foregoing, the 2nd Respondent acting with the Government of Kenya proceeded to subdivide the land in 2001 when the land was still registered under Settlement Fund Trustee into portions namely Nandi/lessos/658,659,660,661,662 and 663 based on the impugned void decree of the Court.
- k) At time of the mutation and subdivision in 2001, he was still servicing the loan in favour of the 1st Respondent. He was given the discharge of charge in 2009.
- l) When he discharged the property in the 2nd Respondent as custodian of land document got opportunity to effect the illegal subdivisions/mutations and registered titles to impugned LR No. Nandi/lessos/658,659,660,661,662 and 663.



- m) He was never aware of any mutation being conducted on his parcel of Nandi/lessos/351 by the 2nd Respondent.
- n) The Respondent severally and jointly breached the rule of natural justice and their rude invasion of the Applicant property and registration of the impugned titles was robbery and a kin to mob justice.
- p) That his rights have been infringed upon and/or violated by the Respondents and he has lost part of his life time property to his siblings though he solely purchased.
- q) That there have been several suits and counter suits filed by the parties against each other over the same subject matter but not touching on the current claim and orders sought in the Petition.

On the strength of the grounds 12 (a – q) above the Petitioners thus seeks the orders set out in paragraph 3 (a – g) above.

1st, 2nd and 3rd Respondents Case: -

13. The 1st, 2nd and 3rd Respondent have filed a Replying Affidavit dated 13th January 2021, through Grace K. Ondigo. In the said affidavit, the Respondent indicate, inter alia that;
- a) Petition is a non starter, frivolous, scandalous and devoid of substance and contents of the affidavit in support are full of falsehoods and misrepresentation of facts and law.
 - b) The issues raised in the Petition were finally and conclusively heard and determined on merit in Eldoret HCC No. 200 of 2009, Kiptoo Chelule is District Land Registrar and others, and Eldoret ELC No. 751 of 2012, Kiptoo arap Chelule vs The Attorney General and Others. (copies of the decision were annexed as GKO La and GKO 1 (b).
 - c) As a result the matters raised are Res judicata.
 - d) That while the Petition was still alive the Petitioner had also raised similar issues and against same parties herein, Eldoret O.S No. 118 of 2018, Kiptoo arap Chelule –vs- Hon. Attorney General and others.
 - e) That the Petitioner was accorded a right to be heard at Kilibwoni Land Disputes Tribunal as per the proceedings.
 - f) That the Court lacks jurisdiction to determine the instant matter that challenges the decision of Kilibwoni Land Dispute Tribunal.
 - g) That the Petition does not meet the threshold adumbrated in the celebrated case of Annanita Karima Njeru –vs- Republic and for those reasons the 1st, 2nd, and 3rd Respondents pray that the Petition be dismissed.

4th Respondent's Case: -

14. The 4th Respondent, John Kipkemei Cheptarei, through his affidavit dated 31st March 2022 states his case as follows;
- i) That the Petitioner was his eldest brother
 - ii) their father the late Kibet Arap Ngetich died while they were staying in the white settlers servants quarters as he was a labourer.



- iii) The Petitioner and their mother the late Jerop Taprandich Ngetich commenced to search for land.
- iv) Petitioner secured parcel No Nandi/Lessos/351 from the SFT
- v) Petitioners could not raise the consideration for payment of the land, hence he utilised the dowry that had been paid in respect of their elders sisters to their late mother.
- vi) That Petitioner thus sold 4 cows from the dowry which he paid as deposit before being granted a 30 years redemption.
- vii) In November 2000, the Petitioner received a demand Notice for the property to clear outstanding loan to the STF.
- viii) Of the outstanding loan, the Petitioner only paid kshs 5000 and the rest was paid for by their late mother.
- ix) The Petitioner role was a trustee for the family
- x) That the dispute arose and their mother filed a case at the Land Dispute Tribunal
- xi) The Tribunal award was adopted by the Honourable Court.
- xii) That the Petitioner moved ride Judicial Review Civil Application Number 128/1998 Eldoret, where he was granted leave, and the leave was to operate as a stay and but he did not file substantive application within 21 days as required.
- xiii) That the Petitioner's claim is fraudulent and an abuse of the Court process.

For the above reasons the 4th Respondent prays that the Petition be dismissed.

- 15. The Petitioner filed a Reply to both the Replying Affidavits of the 1st, 2nd and 3rd Respondents as well as the 4th Respondents.
- 16. In petitioner in his Affidavit dated 12th May 2021 in Response to 1st, 2nd and 3rd Respondents Affidavits, stated thus;
 - i) he had withdrawn wholly the Originating Summons No. 118 of 2018, and that case No. 122 of 2018u (Eldoret) now Kapsabet ELC 70 of 2021) has been stayed.
 - ii) That a judgment granted by a Court without jurisdiction cannot operate as resjudcata.
 - iii) That the Tribunal did not have jurisdiction.
 - iv) That he received the discharge of charge dated 11th August 2009, yet subdivision had been made since 12/9/2001. He had annexed annextures KAC 2a, 2b and 2c and KAC 3 in support of these depositions.
- 17. In response to the 4th Respondents Replying Affidavit, the Petitioner with the leave of the Court filed a further Affidavit deponed on 19th May 2022 in the affidavit the Petitioner stepones.
 - i) That he solely entered in agreement with the Settlement Fund Trustees and was given a loan alone which he serviced till the property was discharged.
 - ii) That he never utilised by any sheep, cows on dowry proceeds to pay to STF but gave his won 7 dairy cows.



- iii) The receipts annexed by the Respondents were made in collusion by the Respondents so as to defraud him of his land.
 - iv) The Land Dispute Tribunal did not have jurisdiction over the property and the decision was a nullity
 - iv) That he never appeared before the Land Control Board to give consent for subdivision and transfer.
 - v) That the Kapsabet Magistrate's Court declared the impugned Land Disputes Tribunal a nullity.
18. He thus sought that his Petition be allowed.
19. As noted elsewhere in the judgment, parties were directed to file written submissions on the Petition, the Petitioner 4th and 6th Respondent filed their submissions while the other Respondents did not.

Petitioner's Submission: -

20. In his submission the Petitioner has framed three issues for determination.
- i) whether the Land Dispute Tribunal had jurisdiction over Settlement Fund Trustee property.
 - ii) Whether the petition is bad in law for being Res-judicata
 - iii) whether the 4th to 9th Respondents acquired interest in Nandi/lessos/351 (now Nandi Lessos/658,659,660,662 and 663 and whether the Petitioner held the Land in Trust.
21. On issue 20 (i) the Petitioner submits that jurisdiction of the Land Dispute Tribunal was governed by the repeated *Land Disputes Tribunal Act* of 1990, vide Section 3 thereof.
22. The said section provided;

“ 3

- (i) Subject to this Act, all cases of Civil nature involving dispute as to;
 - a) The subdivision of or the determination of boundaries to land including land held in common.
 - b) a claim to occupy or work land or
 - c) trespass to land
- 2.
- 3.
- (7) the Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognised Customary Law.....”

23. It is Petitioner's submissions that at the time the decision of the Land Dispute Tribunal was passed, the land in question belonged to the Government of Kenya though the STF. In support of this, the Petitioner relies on annexure 6 of his further affidavit dated 19th May 2022, where the Memo authored by a Mr. Tom Nyangau indicated that the Tribunal did not have jurisdiction over STF.



24. The Petitioner submits therefore that since the Tribunal lacked jurisdiction then its decision was a nullity. In this regard the Petition has cited the cases of Sir *Ali Bin Salim –vs- Shariff Mohamed Shatry* Civil Appeal No. 29/1940 as well as *M'marete –vs- Republic* Civil Appeal No. 259/200 (2004) eKLR.
25. That there was nothing to be adopted by the Magistrates Court. In this regard the Petitioner cites the decision in *Macfoy –vs- United Africa Co. Ltd* (1961) 3 E A ER as well as the decision in *Phoenix of E. A. Assurance Company Limited –vs- S. M. Thiga Ha Newspaper Service*.
26. On issue 20 (ii) whether the matter is Resjudicata the Petitioner submits that the test for determining whether a matter is Rejudidcata is spelt out under Section 7 of the *Civil Procedure Act*.
27. The Petitioner cites the element of the doctrine to be invoked as stated in *Independent Electoral and Boundaries Commission –vs- Maina Kiai and 5 others* (2013) eKLR . The element are
 - a) The suit or issue was directly and substantially in issue in the former suit.
 - b) That former suit was between the same parties or parties under whom they or any of them claim,
 - c) Those parties were litigating under the same title
 - d) The issue was heard and finally determined in the former suit.
 - e) The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.
28. It is the Petitioner submissions that since the Tribunal did not have jurisdiction, the award and subsequent judgements premised on it, are all nullities and do not operate as Res judicata.
29. The 1st, 2nd and 3rd Respondents did not file any submissions.

The 4th And 6th Respondents Submissions: -

30. In their submissions, the 4th and 6th Respondents' have raised three issues for determination, to wit;
 - i) Whether the land Dispute Tribunal had jurisdiction over the suit property
 - ii) Whether the entire petition ought to be dismissed for offending the Doctrine and principles of Res Judicata
 - iii) Whether the Applicant deserves the order's sought.
31. The Respondent submit that the dispute before the tribunal was division of the property and the tribunal was therefore clothed with jurisdiction under Section 3 (1) of the Repeated Land Disputes Tribunal Act.
32. Accordingly the decision by the Tribunal was a proper decision which the Petitioner challenged under High Court at Eldoret Miscellaneous application number 112 of 1998 which was a Judicial Review application that was eventually dismissed after the Petitioner failed to file the substantive application within 21 days of the grant of leave.
33. The Respondent submits that the Petitioners has approached the Court 20 years later and is not deserving of the orders sought.



34. The 4th and 6th Respondent submits that the petition is Res judicata pursuant to provision of Section 7 of the *Civil Procedure Act* Cap 21 to this end the Respondent Relieves on the case of IEBC versus Maina Kiai (supra) on the issue of Res Judicata.
35. The 4th and 6th Respondent further submits that the Petitioner is mischievous as he has approached the Court by way of a petition yet two previous applications have been dismissed by two competent Courts.
36. For the above reason, the 4th and 6th Respondent urge the Court to dismiss the petition.

Issues For Determination: -

37. From the submissions of the Petitioners he identified 3 issues as the issues for determination, as framed in paragraph 20 above.
38. The 4th and 6th Respondents equally framed their issues which are similar to the issues by the Petitioner. The 4th and 6th Respondents issues are captured at paragraph 30 above.
39. Although the 1st, 2nd and 3rd Respondent did not file their submission, they challenged the jurisdiction of this Court in the Replying Affidavit of Grace K. Ondiga, in response to that challenge the Petitioner in his Reply to 1st, 2nd and 3rd Respondents Replying Affidavit deponed on 12th May 2021, vide paragraph 12 thereof, has indicated that the Court has jurisdiction under Article 165 of the *Constitution*.
40. It is the Court's view that the issues for determination as submitted by the Petitioner, and the 4th and 6th Respondent shall be the issues for determination, save to add the issue of jurisdiction as raised by the 1st, 2nd and 3rd Respondent in their Replying Affidavit hence the order of the issues shall charge as to determine the issue of jurisdiction first.

1

- a) Does the Court have jurisdiction to determine the issues raised in the petition?

2.

- a) Is the Petition herein Res- judicata
- b) If the answer to 2 (a) is in the affirmative can the determine the issues raised in the petition
- c) If the answer to 2 (a) above is in the negative, did the Kilibwoni Land Dispute Tribunal have jurisdiction in the matter.

3. Is the Petitioner entitled to the reliefs sought?

4. Who bears the costs of the petition?

Analysis and Determination: -

41. Having framed the issued for determination as herein above, the Court proceeds to answer the issues. On whether the Court has jurisdiction.
42. The jurisdiction of this Court, is bestowed under Section 13 of the *Environment and Land Court Act*. The jurisdiction is both an original and appellate jurisdiction to hear and determine dispute relating to the Environment and Land.



43. Black's Law Dictionary defines Original jurisdiction as "A Court's power to hear and decide a matter before any other Court can review the matter while Appellate jurisdiction refers to "the power of a Court to review or revise a lower Court's decision.
44. The dispute before Court from the pleadings involved ownership of Nandi/lessos/351 and the legality of Kilibwoni Dispute Lands Tribunal in ordering the subdivisions of the said parcels.
45. Being a land matter, prima facie the Court has jurisdiction to hear and determine the same, hence in answer to issue number 1, the Court has jurisdiction to hear this matter. Having disposed off issue No. 1, the Court continues to analyse issue No. 2, is the petition herein Res-Judicata?
46. Res-judicata is provided for under Section 7 of the *Civil Procedure Act*. Both the Petitioner and the 4th and 6th Respondent have listed the issue of whether the suit is res-judicata or not as an issue for determination.
47. Both Petitioner and the Respondent have cited the decision in *IEBC -vs- Maina Kiai* (supra) in support of their opposing views on the doctrine of Res - Judicata. In opposition to the issue of Res – Judicata, the Petitioner submits that the Kilibwoni Land District Tribunal did not have the necessary jurisdiction to deal with the claim before it, hence the matter is not Res – judicata.
48. In support of this position the Petitioner has cited the case of Sir Ali Bin Salim –vs- Shariff Mohamed Shatry Civil Appeal No. 29/1940 where the Court observed interalia, " If a Court has jurisdiction over the subject matter of the litigation its judgments and orders however precisely certain and technically correct are mere nullities and not only voidable, but are void and have no effect either as stopped or otherwise and may not only be set aside at by time by the Court in which they were rendered but be declared void by every Court in which they may be presented. It is well established in law that jurisdiction cannot be conferred on a suit by consent of parties and/or waiver on their part cannot make up for the lack of jurisdiction."
49. On the strength of the submissions that the decision made by Kilibwoni Land Dispute Tribunal lacking jurisdiction thereof the Petitioner submits that the elements of Res – Judicata as set out in the *IEBC -vs- Maina Kiai (supra)* case have not been met, and that the petition is not Res – judicata.
50. The Supreme Court in the *IEBC -vs- Maina Kiai* case stated that the elements must be satisfied for a case to be Res- judicata.
 - a) That suit or issue was directly and substantially in issue in the former suit
 - b) That former suit was between the same parties or parties under whom they or any of them claim.
 - c) The parties were litigating under the same title.
 - d) The Court that formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

The rationale for Res – judicata was in the recent Supreme Court decision in *John Florence Maritime Services Ltd and Another -vs- Cabine Secretary for Transport and Infrastructure and 3 others* where the Court held "The rationale behind Res – judicata is based on the public interest that there should be an end to litigation coupled with the interest to protect a party from facing repetitive litigation over the same matter. Re – judicata ensures the economic use of the Court's limited resources and timely termination of cases. Court are already dogged and overwhelmed. They can hardly spare time to repeat themselves on issues already decided upon. It promotes stability of judgements by reducing the possibility of inconsistency in judgement of concurrent Courts. It promotes confidence in the Courts



and predictability which is one of the essential ingredients in maintaining respect for justice and the rule of law without Res – judicata, the very essence of the rule of law would be in danger of unravelling uncontrollably.”

At paragraph 34 of the petition, the Petitioner alludes that they have been other suits find counter suits filed by the parties, the Petitioner has however not disclosed the case numbers.

51. The 1st, 2nd and 3rd Respondent have their credit, quoted the cases, in which they base their clam for Res-judicata as Eldoret HCC No. 200 of 2009 and Eldoret ELC No. 751 of 2012. Copies of the decision have been annexed by the 1st, 2nd and 3rd Defendants.

Prima facie, the Petitioner herein was a party to Eldoret HCC No. 200 of 2009, the Land Registrar, the 2nd Respondent herein was also a party to ELC Eldoret 200/2009. The Petitioner was also a party in Eldoret ELC No. 751/2012 as well the AG the 3rd Respondent, the 1st Respondent and the 2nd Respondent.

52. The Court has perused to establish whether the issues in the two cases above were the same issues herein.

On page 4 of the decision in Eldoret 200/2009, Justice Azangalala observed as follows;

“The issue of Res- judicata is an issue of law admittedly and which if found applicable..... I have already found that this present suit..... is Res judicata subject matter and parties in Ltd 81/1997 and Civil Appeal No. 113 of 2002....”

53. From the above, a new twist that has not been disclosed by parties herein emerges. It appears other than the two previous cases herein, there was another case to with Eldoret High Court Civil Appeal No. 113 of 2002.
54. In dismissing HCCC No. 200 of 2009 Justice Azangalala found the same to have been Res judicata Eldoret High Court Civil Appeal No. 113 of 2002.
55. On perusal of the decision in EL Case No. 751 of 2012 Eldoret at page 5, Justice A. Ombwayo observed.... “ The Plaintiff was aggrieved by the decision of the Tribunal and preferred an Appeal to wit Eldoret HCCA No. 113 of 2002 which Appeal was determined in the favour of the 5th Defendant.....Court found it Res judicata prompting him to file a new suit with addition of parties.”
56. It follows there from that the Kilibwoni Land Dispute Tribunal decision was challenged by way of an Appeal through Eldoret High Court Civil Appeal No. 113 of 2002, which appeal was dismissed thus the decree by the Kapsabet Chief Magistrate’s Court was upheld.
57. This issue is confirmed by the Petitioner’s annexures KAC 3, the letter dated 11th August 2009, authored by Tom Nyangau in the Replying Affidavit deponed on 12th May 2022.
58. The said annexure alluded to an appeal being Eldoret High Court Civil Appeal No. 113 of 2002 which challenged the orders of the Kilibwobi District Land District Tribunal, which was adopted by the Kapsabet Magistrates Court.
59. From the foregoing, the issues in this petition as to whether the Kilibwoni Land District Tribunal had jurisdiction must have been dealt with in the Eldoret High Court Civil Appeal No. 113 of 2022 which the Petitioner conveniently does not mention.



60. Two Courts before me, have held the issues, in his matter to be Res-judicata, and this Court cannot thus re-open the said issues. One other Court in Eldoret Civil Appeal 113 of 2002 determined the issues, hence, the two other Courts found them to be Res-judicata.
61. The issues having been determined previously as being Res – judicata, it follows that his petition even with the addition of new parties is still Res – judicata. On addition of new parties to a matter, In E.T –vs- Attorney General and Another, the Court observed...

“The Court must be vigilant to guard against litigants evading the doctrine of Res – judicata by introducing new caused of action so as to see same remedy before the Court in another way and in a form of a new cause of action which had been resolved by a Court of competent jurisdiction.”

This petition represents the same scenario that the Court in the ET case above warned of.

63. The Court finds that the issues herein were firstly resolved and determined in Eldoret High Court Civil Appeal No. 113 of 2022, as was observed by Justices Azangalala and Ambwayo, and Eldoret High Court was a Court of competent jurisdiction.
64. Having found the issues raised in the petition were held to be Res judicata in other previous suits, it follows that his petition, however sanitised is equally Res- judicata and it is hereby dismissed with costs to the 1st, 2nd, 3rd, 4th and 6th Respondents.
65. Judgement accordingly.

DATED AT KAPSABET THIS 16th DAY OF JUNE, 2022.

HON. JUSTICE M. N. MWANYALE

JUDGE.

In the presence of;

Ms. Bonareri for the 4th and 6th Respondent

Ms Cherop for the Petitioner

Ms Odeyo for the 1st, 2nd and 3rd Respondent

