



Gori Investment Limited v Apostolic Faith Church & another (Environment & Land Case E004 of 2022) [2025] KEELC 3074 (KLR) (2 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3074 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E004 OF 2022**

A NYUKURI, J

APRIL 2, 2025

BETWEEN

GORI INVESTMENT LIMITED PLAINTIFF

AND

APOSTOLIC FAITH CHURCH 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

RULING

1. Before court is a Notice of Motion dated 3rd January, 2025 filed by the plaintiff seeking orders that the plaintiff be granted leave to re-open its case for purposes of recalling PW1 so as to produce documents marked during his testimony.
2. The application is supported by the affidavit of Kevin Michuki, Advocate for the plaintiff. The applicant's case is that in the course of preparing submissions, the applicant noted that through an oversight of its advocate, it never produced its documents during PW1's testimony. That the production of the documents will enable the court fully resolve the dispute and that the applicant is the proprietor of the parcel of land known as Kakamega/Municipality/Block 11/42. It further stated that no prejudice will be suffered by the defendants and that an error of counsel should not be visited on the plaintiff.
3. The application was opposed. The 1st defendant filed a replying affidavit sworn on 10th February, 2025 by James Macharia Gitu, the 1st defendant's official. The deponent stated that the application was made in bad faith and that the same is an incessant abuse of the court process as a similar application dated 6th March 2023 had been filed by the plaintiff. He stated that the 1st defendant stands to suffer prejudice if the application is allowed as defence case was closed on 24th September, 2024 and the court directed parties to file written submissions, which the 1st defendant complied with.



4. That the plaintiff has not complied and that that the plaintiff is not keen on prosecuting this case. That the trial court exercised its discretion in allowing the initial application dated 6th March 2023 and that the instant application is mischievous. That no sufficient reasons have been advanced for the application.
5. The application was canvassed by way of written submissions. On record are the applicant's submissions dated 20th March 2025 and the 1st defendant's submissions dated 24th February 2025, both of which the court has duly considered.

Analysis and determination

6. This court has carefully considered the application, response and submissions filed. Two issues arise for the court's determination, namely;
 - a. Whether the application dated 3rd January 2025 is res judicata; and
 - b. Whether there is sufficient and good cause for the court to reopen the plaintiff's case as sought.
7. The doctrine of Res judicata is anchored on 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.

Explanation. (1)—The expression “former suit” means a suit which has been decided before the suit in question whether or not it was instituted before it.

Explanation.(2)—For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.

Explanation. (3)—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation.(4)—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation. (5)—Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.

Explanation. (6)—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

8. The doctrine of res judicata bars a court from trying a suit or an issue that was directly and substantially in issue between the same parties or their privies in a former suit, where a competent court has with finality and on merit determined such suit or issue.
9. The elements of res judicata are as follows;
 - a. The suit or issue was directly and substantially in issue in the former suit.



- b. That the 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 issue in which the issue is raised.
10. The purpose of the doctrine of res judicata was stated in the case of *The Independent Electoral and Boundaries Commission v. Maina Kiai & 5 Others* [2017] eKLR where the Court of Appeal stated as follows;

The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed as a pragmatic and commonsensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by multiplicity of suits and, to obtain at last outcomes favourable to themselves. Without it there would be no end to litigation, and the judicial process would be rendered noisome nuisance and brought to disrepute or calumny. The foundations of res judicata this rest in the public interest for swift, sure and certain justice.

11. A bar of res judicata is effective against a party who, if they had exercised reasonable due diligence, ought to have raised an issue but failed to do so in the former suit, so that such party is not allowed to file a fresh suit on an issue which he or she failed to raise in the former suit by mistake, inadvertence, negligence or otherwise. In the case of *John Florence Maritime Services Limited & Another v. Cabinet Secretary Transport & Infrastructure & 3 Others* (Petition 17 of 2015) [2021] KESC 39 KLR (CIV) (6 August 2021) Judgment, the Supreme Court of Kenya cited with approval the case of *Hinderson v. Henderson* [1843] 3 Hare 100 at page 115, where it was held as follows;

Where a given matter becomes the subject of adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon the court was actually required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time....

12. In the instant case, the 1st defendant argues that the application herein is res judicata in view of this court's decision regarding the application dated 6th March 2023. I have perused the ruling dated 17th October 2023 which is in regard to the application dated 6th March 2023. In that ruling, the plaintiff had sought to reopen its case so as to call the Land Registrar to produce all documents in the parcel file for the suit property. In its decision dated 17th October 2023, this court found that the plaintiff's prayer to reopen its case when the Land registrar was in the middle of cross examination put the court and the respondents in an awkward position. The court went further and stated as follows; "to guard against



throwing the case open, I will not reopen the plaintiff's case, but will order that DW1's evidence in chief is reopened to enable him produce contents of the parcel file".

13. It is therefore clear that the question of reopening the plaintiff's case was raised in the application dated 6th March 2023 and that question was determined on merit with finality by this court in its ruling of 17th October 2023. That decision has not been stayed, reviewed or set aside. The plaintiff cannot evade the import of the doctrine of res judicata merely because in the former application, he sought to reopen the plaintiff's case for purposes of recalling the Land Registrar and in the instant application he seeks to reopen the plaintiff's case for purposes of recalling PW1 to produce documents. Had the plaintiff exercised reasonable due diligence, it should have sought the orders sought in the instant application within the former application since both applications sought the reopening the plaintiff's case.
14. This court will not entertain an application similar to the application dated 6th March 2023 just because of the plaintiff's mistake, negligence or inadvertence in failing to include the prayer for recalling PW1.
15. In the premises, I find and hold that the application dated 3rd January 2025 is res judicata, which I proceed to dismiss with costs to the 1st defendant.
16. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA VIRTUALLY THIS 2ND DAY OF APRIL, 2025 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of;

Mr. Michuki for the plaintiff

Mr. Abok for the 1st defendant

Mr. Tarus for the 2nd defendant

Court Assistant: M. Nguyai

