



REPUBLIC OF KENYA



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**Kamiri v Nairobi City County & another (Environment & Land Case  
E404 of 2024) [2025] KEELC 4371 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4371 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E404 OF 2024**

**TW MURIGI, J  
MAY 23, 2025**

**BETWEEN**

**GODFREY GITHINJI KAMIRI ..... PLAINTIFF**

**AND**

**NAIROBI CITY COUNTY ..... 1<sup>ST</sup> DEFENDANT**

**AFRICA REIT LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me for determination are two applications. The first application is dated 1<sup>st</sup> October 2024 in which the Plaintiff/Applicant seeks the following orders:-
  - a. Spent.
  - b. Spent.
  - c. Spent.
  - d. That the Court be pleased to issue a temporary injunction restraining the Defendants, their agents, kin, servants and/or employees from evicting the Plaintiff, demolishing houses, structures, trespassing, executing any Joint Venture Agreement or in any other manner interfering with the Plaintiff's quiet possession and utilization of property Land Reference Number 209/13539/79 (Bungalow 15) situated at Woodley/Joseph Kangethe Estate within Nairobi County (hereinafter the 'suit property') pending the hearing and determination of this suit.
  - e. That Costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Godfrey Githinji Kamiri sworn on even date.



### **The Applicant's Case**

3. The Applicant averred that he is the bona fide owner of L.R No. 209/13539/79(Bungalow 15 situated at Woodley/Joseph Kangethe Estate having purchased the same in the year 2002. He averred that the 1<sup>st</sup> Defendant's predecessor efforts to nullify his registration were thwarted by a judgement delivered by the High Court on 15<sup>th</sup> October 2010 which affirmed that he is the legal owner of the suit property.
4. He further averred that on 19<sup>th</sup> September 2024 the 1<sup>st</sup> Defendant issued a 90 day notice to a non-existent Kitoto Daniel as a way to circumvent the Court's decree and evict him from the suit property so as to pave way for an affordable housing venture with the 2<sup>nd</sup> Defendant.
5. The Applicant contends that the Defendants have not complied with the legal procedure for compulsory acquisition of the suit property but have instead resorted to using bullying and force.
6. He further contended that unless the Court grants the orders sought, he will suffer irreparable harm as the Defendants will demolish the suit property.

### **The 2<sup>nd</sup> Defendant's Case**

7. The 2<sup>nd</sup> Defendant filed grounds of opposition dated 25<sup>th</sup> November 2024 whose gravamen was that the issues raised in the Notice of Motion dated 1<sup>st</sup> October 2024 have been determined by Courts of competent jurisdiction.
8. It was contended that the 1<sup>st</sup> Defendant and not the Plaintiff is the bona fide owner of the suit property and is therefore likely to suffer irreparable harm if the orders sought by the Plaintiff are granted.
9. The second application is dated 5<sup>th</sup> November 2024 in which the 2<sup>nd</sup> Defendant/Applicant seeks the following orders: -
  - a. Spent.
  - b. Spent.
  - c. That the Honourable Court be pleased to discharge the ex-parte orders issued by Hon. Justice Mogeni on 9<sup>th</sup> October 2024.
  - d. That the Honourable Court be pleased to strike out the Plaintiff's Notice of Motion and Plaint dated 1<sup>st</sup> October 2024 for being res judicata and an abuse of the Court process.
  - e. That the Honourable Court does grant any further orders as it may deem fit.
  - f. That Costs of this application be provided for.
10. The application is premised on the grounds appearing on its face together with the supporting affidavit of Joyce Wanjiru the 2<sup>nd</sup> Defendant's Operations Director sworn on even date.

### **The Applicant's Case**

11. The deponent averred that the Plaintiff purchased the suit property from one John Njenga Muigai who had allegedly been allocated a leasehold interest by the 1<sup>st</sup> Defendant. She further averred that on 17<sup>th</sup> July 2017, the Plaintiff's title was revoked by the National Land Commission for the reason that it was an illegal allocation of public land reserved for County Government Housing. That being aggrieved by the decision of the NLC, the Plaintiff instituted ELC Petition No. 18 of 2018 which was dismissed vide a judgement delivered on 24<sup>th</sup> October 2019. The deponent contends that the Plaintiff's



title consequently stands revoked - a material fact that was concealed when the ex-parte orders for status quo were issued.

12. She further averred that on 7<sup>th</sup> October 2024 this Court struck out ELC Petition 1 of 2024 - Woodley Residents Welfare Association and 4 Others vs the County Government of Nairobi, Africa Reit Limited and Others for being res judicata as the issue of validity of titles in Woodley Estate had been determined in Nairobi ELC Suit No. 2054 of 2007 Kenya Anti-Corruption Commission v Paul Moses Ngetha and Woodley Residents Welfare Society. That in the latter case, the Court found that the subject land belonged to the 1<sup>st</sup> Defendant and that all titles issued to private persons were a nullity.
13. The deponent contends that the ex parte orders issued by the Court should be discharged as the Plaintiff concealed the existence of the previous suits when seeking the said orders. She further contended that the Defendants complied with the due process before commencing the project including compensating the 1<sup>st</sup> Defendant's bona fide tenants.
14. According to the deponent, the project was being delayed by orders that were obtained based on the concealment of material facts.
15. In conclusion, the deponent averred that the Plaintiff has no locus standi to institute the instant suit since he is neither the proprietor of the suit property nor a tenant thereof.

#### **The Plaintiff/respondent's Case**

16. The Plaintiff opposed the application through his replying affidavit dated 12<sup>th</sup> November 2024. He averred that the purported revocation by the National Land Commission (NLC) never crystallized. He further averred that after the NLC realized that he had a decree declaring him the bona fide owner of the suit property, it consequently wrote to his advocates on 19<sup>th</sup> October 2019 requesting to adhere to the judgement.
17. The Plaintiff contends that ELC Petition 18 of 2018 was challenging the gazette notice issued on 17<sup>th</sup> October 2017 and had nothing to do with the eviction notices issued by the 1<sup>st</sup> Defendant nor the ownership of the suit property. He further contended that a recent search not only confirmed that he is the owner of the suit property but also noted that a copy of the decree issued by the Court (and which was not appealed by the 1<sup>st</sup> Defendant) is noted in the register.
18. With regards to ELCC 2054 of 2007, the Plaintiff averred that he was not party to the proceedings which has no bearing to the illegal notice issued by the 1<sup>st</sup> Defendant.
19. The Plaintiff contends that the impugned orders should not be set aside because he has demonstrated that the instant suit relates to the illegal notices issued by the 1<sup>st</sup> Defendant and has no bearing to the previous suits.
20. He further contended that the doctrine of res judicata is not applicable as there is no similarity in cause of action, parties nor determined issues between the previous suits and the instant suit.

#### **THE RESPONSE**

21. The 2<sup>nd</sup> Defendant filed a supplementary affidavit sworn by Joyce Wanjiru in response to the Plaintiff's replying affidavit. The deponent averred that the Gazette Notice bearing the revocation of titles by the NLC was never quashed by the Court. She further averred that the letter by NLC had no authority in law and could not override the decision of the Court in ELC Petition No. 18 of 2018.



22. The deponent noted that the parent title of the suit property was L.R No. 209/13539 and it therefore follows that all suits that determined the issue of ownership of that piece of land applied to the suit property. The deponent stated that in ELC Petition No. E093 of 2024 the Court found that the Notices to vacate issued were valid.
23. The deponent contends that in the High Court case, the court did not have an opportunity to interrogate the root of title while in ELC Petition No. 18 of 2018 the Court did and found that it was illegally acquired.

#### **The 1<sup>st</sup> Defendant's Case**

24. The 1<sup>st</sup> Defendant filed a replying affidavit of Elizabeth Jepleting Advocate dated 11<sup>th</sup> December 2024 in response to both applications.
25. The deponent associated herself with the 2<sup>nd</sup> Defendant's position to the effect that the Plaintiff has no locus standi to institute the suit as he is not the owner of suit property and that the suit is res judicata as the issue of ownership were sufficiently decided by the NLC and Courts of competent jurisdiction.
26. Both applications were canvassed by way of written submissions.

#### **The 2<sup>nd</sup> Defendant's Submissions**

27. The 2<sup>nd</sup> Defendant filed its submissions dated 25<sup>th</sup> November 2024. On behalf of the 2<sup>nd</sup> Respondent, Counsel outlined the following issues for the court's determination: -
  - a) Whether the suit as conceived offends the doctrine of res judicata.
  - b) Whether the Plaintiff lacks locus standi to institute this suit.
  - c) Whether the Plaintiff is entitled to the interim orders sought.
28. On the first issue, Counsel submitted that the instant suit seeks to re-litigate issues that were conclusively determined in previous suits.
29. Counsel further submitted that the doctrine of res judicata applies to claims where a different party bases their claim on the same title as the parties in the earlier suit. To buttress this argument, Counsel relied on Section 7 of the *Civil Procedure Act* and on the cases of Gladys Nduku Nthuki v Letsheng Kenya Ltd (2022) eKLR and John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others [2021] KESC 39 (KLR).
30. With regards to the second issue, Counsel submitted that the Plaintiff has no locus standi to institute the instant suit as he is neither owner of the suit property nor the tenant thereof. Counsel further submitted that the Plaintiff had been found to have illegally acquired the suit property in ELC Petition No. 18 of 2018 in addition to being gazetted as such by the NLC.
31. It was submitted that the Plaintiff does not appear in the 1<sup>st</sup> Defendant's records as the tenant for the suit property is listed as Adel Kitoto who was issued with a notice to vacate. To buttress this argument, Counsel relied on the case of Alfred Njau & Others v City Council of Niarobi (1982-88) 1KAR-229.
32. On the third issue, Counsel submitted that the Plaintiff is not entitled to the orders sought as he lacks locus standi to institute this suit which in any event is res judicata. Counsel further submitted that the government (in this case the 1<sup>st</sup> Defendant) cannot be restricted by way of an injunction in land that belongs to it. To buttress this point, Counsel relied on the case of Ochuodho & 9 others (Suing on Their Behalf and on Behalf of other 355 Residents of Jogoo Road Phase II Government Estate)



v Cabinet Secretary, Ministry of Lands, Public Works, Housing and Urban Development & 2 others [2024] KEELC 3615 (KLR).

33. Concluding his submissions, Counsel submitted that the Plaintiff has not demonstrated that he will suffer irreparable loss whereas the Defendants will suffer significant financial harm if the project is stalled. To buttress this point, Counsel relied on the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR).

### **The Plaintiff's Submissions**

34. The Plaintiff filed his submissions dated 3<sup>rd</sup> December 2024.
35. On his behalf, Counsel submitted that the Plaintiff has established a prima facie case by proving ownership vide an annexed grant of lease and the Court decree issued in High Court Case No. 173 of 2003. Counsel further submitted that the 1<sup>st</sup> Defendant has not shown that it had lawfully acquired the suit property from the Plaintiff.
36. Counsel submitted that the Plaintiff will suffer irreparable loss if the Defendants go ahead with their project as he will have lost the suit property entirely and without recourse. Counsel further submitted that the Defendants have not exhibited proof of the 1<sup>st</sup> Defendants ownership of the suit property nor of any variation or setting aside of the High Court decision.
37. On the issue of res judicata, Counsel submitted that the instant suit is not res judicata as it raises different issues from the suits relied on by the Defendants.
38. With regards to ELC 2054 of 2007 Counsel submitted that the Plaintiff and Defendants were not parties in that suit which related to L.R No. 209/13539/154 Grant No. 80454 and not the suit property.
39. Concerning ELC Petition No. 1 of 2024, Counsel submitted that the Plaintiff is not a member of the Residents Association that filed the suit. Counsel further submitted that the notice that supports the cause of action in this suit had not been issued when that suit was filed.
40. Concerning ELC Petition No. 18 of 2018, Counsel submitted that it related to different matters and in any event the National Land Commission eventually acknowledged the Plaintiff's ownership of the suit property.

### **The 1<sup>st</sup> Defendant's Submissions**

41. The 1<sup>st</sup> Defendant filed its submissions dated 13<sup>th</sup> December 2024.
42. On its behalf, Counsel submitted that the court must address the issue of ownership before it can issue the injunction sought by the Plaintiff. It was submitted that the issue of ownership was conclusively addressed by the National Land Commission, the ELC and the Court of Appeal.
43. Counsel submitted that the Court in ELC 2054 of 2007 found that the sale of 100 houses in Joseph Kangethe, Woodley Estate was illegal and the titles issued were a nullity.
44. Counsel further submitted that in ELC Petition E093 of 2024 the Plaintiffs did not establish any ownership in the suit property.
45. It was submitted that in ELC Petition No. 1 of 2024 and ELC Petition No. E093 of 2024 the issue of ownership was deemed res judicata.



46. Counsel further submitted that the issue of notices had been dealt with in ELC Petition No. E093 of 2024. To buttress his submissions, Counsel relied on Section 7 of the *Civil Procedure Act* and on the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] KECA 477 (KLR).
47. In conclusion, Counsel submitted that the Plaintiff has not met the conditions for the grant of an injunction set out in the case of Giela v Cassman Brown Co. Ltd 1973 EA 538.

### **Analysis And Determination**

48. Having considered the application, the respective affidavits and the rival submissions the following issues fall for determination:-
- a) Whether the Applicant has met the threshold for the grant of an injunction
  - b) Whether the Plaintiff's suit should be struck out.
49. The principles for the grant of an injunction were laid down in the celebrated case of Giella –vs- Cassman Brown & Co Ltd 1973 EA 358 as follows:-
1. First the Applicant must show a prima facie case with a probability of success.
  2. Secondly an interlocutory injunction will not normally be granted unless the Applicant might otherwise suffer irreparable harm which would not be adequately compensated by an award of damages.
  3. Thirdly, if the court is in doubt, it will decide an application on a balance of convenience.
50. The first issue for determination is whether the Applicant has established a prima facie case with a probability of success.
51. In *Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others* [2003] eKLR the Court of Appeal defined a prima facie case as follows:-
- “a prima facie case in a civil application includes but is not confined to a genuine and arguable case”. It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”
52. The Applicant exhibited a Grant of Lease and a Transfer in support of his claim of ownership. The Defendants denied the existence of such right claiming that the Plaintiff's title had been revoked and that he was not a tenant on the suit property. The dispute between the parties herein revolves around ownership of the suit property.
53. At this stage, the court is not required to determine the issues which will be canvassed at the trial. The court is aware that at the interlocutory stage, it is not required to make any definitive conclusion on the matters that are in controversy.



54. In the case of *Mbuthia vs Jimba Credit Corporation Ltd (1988) KLR* the court held that;
- “In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the parties cases.”
55. Similarly, in the case of *Edwin Kamau Muniu Vs Barclays Bank of Kenya Ltd NBI HCCC NO 1118 of 2002*, the court held that;
- “In an interlocutory application, the court is not required to determine the very issues which will be canvassed at the trial with finality. All the court is entitled at this stage is whether the Applicant is entitled to an injunction sought on the usual criteria.”
56. Based on the evidence placed before me, this court finds and holds that the Applicant has not established a prima facie case with a probability of success.
57. The conditions set out in the *Giella vs Cassman Brown Case (Supra)* are to be considered sequentially.
58. In so finding I am persuaded by the holding in the case of *Nguruman Limited vs Jan Bonde Nielsen & 2 Others [2014] eKLR* where the Court of Appeal stated as follows: -
- “...these are the three pillars on which rest the foundation of any order of injunction, interlocutory or permanent. It is established that all the above three conditions and stages are to be applied as separate, distinct and logical hurdles which the applicant is expected to surmount sequentially... if the applicant establishes a prima facie case that alone is not sufficient basis to grant an interlocutory injunction, the court must further be satisfied that the injury the respondent will suffer, in the event the injunction is not granted will be irreparable. In other words, if damages recoverable in law are an adequate remedy and the respondent is capable of paying, no interlocutory order of injunction should normally be granted, however strong the applicant’s claim may appear at that stage. If prima facie case is not established, then irreparable injury and balance of convenience need no consideration”.
59. Having found that the Applicant has not established a prima facie case with a probability of success, it will be immaterial to delve into the other limbs that are to be considered for a grant of a temporary injunction.
60. In the case of *Commercial Finance Co. Ltd vs Afraha Education Society & Others C A Civil Appeal No. 142 of 1999* the court held that:-
- “.....the judge should address himself sequentially on the conditions for granting an injunction instead of proceeding straight away to address himself on the third condition because where the Applicant has no registered interest in the land comprised in the title dispute and thereof has not demonstrated that it has a prima facie case with a probability of success no interlocutory injunction would be available.”
61. In the end I find that the application dated 1<sup>st</sup> October, 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondents.
62. With regards to the second application, the Applicant argued that the ex-parte orders were issued based on a concealment of material facts specifically the existence of ELC Petition 18 of 2018 and the decision



of the NLC which in the view of the Defendants revoked the Plaintiff's ownership of the suit property. In view of the ruling delivered on 13<sup>th</sup> March, 2025 I find that the prayer sought is overtaken by events.

63. The Defendants argued that the instant suit and application are res judicata as they raise issues that were conclusively determined by Courts of competent jurisdiction.

64. Section 7 of the *Civil Procedure Act* provides:

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.

62. In the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others [2017] KECA 477 (KLR) the Court stated as follows concerning the applicability of the doctrine of res judicata:

Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all be satisfied, as they are rendered not in disjunctive, but conjunctive terms;

- (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.

62. The Defendants contend that the issue of ownership of the suit property was determined in ELC Petition 18 of 2018, ELCC 2054 OF 2007 and by the gazettment of a revocation by the NLC. They further contended that the Court in ELC Petition 1 of 2024 and ELC Petition E093 of 2024 noted that both suits were res judicata on account of ELCC 2054 of 2007. The Plaintiff argued that the instant suit is not res judicata as it relates to eviction notices issued in August 2024 - a matter that was not canvassed in any of the cases referenced by the Defendants.

63. The 1<sup>st</sup> Defendant argued that while the instant suit and application deal with the issue of eviction notices, the Court cannot deliberate on that matter without going into the issue of ownership which was conclusively decided by Courts of competent jurisdiction.

64. Having looked at the documents on record, I am persuaded that the issue of eviction is inextricably linked to the issue of ownership of the suit property. I will therefore consider the issue of ownership in looking at the claim of res judicata.

65. I have perused the judgement in ELC Petition 18 of 2018. While the Plaintiff and 1<sup>st</sup> Defendant were parties in that suit, the 2<sup>nd</sup> Defendant was not a party to the suit. In that suit the Plaintiff was seeking to have the decision of the National Land Commission concerning the ownership of the suit property quashed and to have his name entered into the 1<sup>st</sup> Defendant's ownership register. His claim was dismissed.



66. The Court in that case noted that the Plaintiff ought to have conducted due diligence before purchasing the suit property. It also noted that one of the affidavits exhibited by the 3<sup>rd</sup> Respondent in that case noted that the allotment of the suit property was fraudulent. It did not make a finding on the import of those issues on the Plaintiff's title.
67. I have also perused the judgement in ELCC 2054 of 2007 as well as the resultant appeal which upheld the said judgement. It related to L.R No. 209/13539/154 which was hived off L.R No. 209/13539 which belongs to the 1<sup>st</sup> Defendant. In that case the Court found that the title issued from the sub-division was a nullity as the procedures relating to the sub-division of the parent property which was government land were not followed.
68. It is my finding that the existence of that suit does not raise a claim of res judicata in the instant suit for the following reasons: Firstly, the Plaintiff was not a party in that suit. He also noted that he was not a member of Woodley Residents Welfare Society which was an Interested Party in that case. The Defendants have not led evidence to show that the Plaintiff is a member of the said society. Secondly, the issue of ownership as determined in that suit was that the Defendant and Interested Party in that case were bona fide purchasers as the 1<sup>st</sup> Defendant in this suit had followed the requisite process (a resolution passed by the 1<sup>st</sup> Defendant's council on 4<sup>th</sup> August 1992) in allocating the land.
69. In the instant suit the Plaintiff is claiming ownership on account of having purchased the suit property for consideration and having that transaction upheld by the High Court. The Plaintiff has not brought up the issue of the 1<sup>st</sup> Defendant's processes which was substantially in issue in ELCC 2054 of 2007.
70. ELC Petition 1 of 2024 and ELC Petition E093 of 2024 were declared res judicata by the Courts. It is my considered view that they were similar to ELCC 2054 of 2007 in a way that the instant suit is not. In both cases the judges noted that the Petitioners were seeking to rely on the impugned resolution of 4<sup>th</sup> August 1992 to regularize their ownership and they consequently upheld the claim of res judicata. That resolution has not been brought up by Plaintiff in the instant suit/application. Additionally, the two suits were brought by Resident Associations which the Plaintiff claimed he was not a part of. This position was not rebutted by the Defendants.
71. In view of the foregoing, I find that while the suit property was hived from the same parent title as other titles in the cases mentioned above, the Defendants did not lead sufficient evidence to show that the similarities between those cases and the instant case were such as to leave this Court with no option but to find that the doctrine of res judicata applies.
72. The Defendants failed to sufficiently locate the Plaintiff and the issues he raises in the instant suit/application in the cases they were relying upon. In the end, I find that the application dated 5<sup>th</sup> November 2024 is devoid of merit and the same is hereby dismissed with costs to the Respondent.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF MAY, 2025.**

.....

**HON. T. MURIGI**

**JUDGE**

In the presence of: -

Karwanda for the Plaintiff

Warutumo for the 2<sup>nd</sup> Defendant

Court assistant – Ahmed

