



**Rono (Suing as the Executrix of the Estate of the Late David Rono) v
Almer Farm Limited (Environment and Land Miscellaneous Application
E015 of 2024) [2025] KEELC 374 (KLR) (5 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 374 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E015 OF 2024
CK NZILI, J
FEBRUARY 5, 2025**

BETWEEN

BETTY RONO APPLICANT

SUING AS THE EXECUTRIX OF THE ESTATE OF THE LATE DAVID RONO

AND

ALMER FARM LIMITED RESPONDENT

RULING

1. Before the court is the originating Summons dated 7/11/2024 in which the applicant, as the Executrix of the estate of the late David Rono, seeks the court to:
 - a. Adopt the award by the National Land Commission, Historical Land Injustice Committee given on 7/2/2019 and gazetted on 1/3/2019 as an order of the court.
 - b. Order that the Land Registrar and County Surveyor Trans Nzoia County, on behalf of the Chief Land Registrar and Director of Survey, curve out the 400 acres from LR No. 8940 within Cherangany Sub-County.
 - c. The officer in charge of Kitale Central Police Station and or any other police station in whose locality the said land is situated to provide security during the curving out exercise and assist the applicant in taking possession of the said land.
2. The reasons are set out on the face of the application and in the supporting affidavit of Betty Rono of the even date. The applicant deposes that in 2019, she lodged the historical land injustice complaint against the respondent with the National Land Commissioner, whose findings are contained in a committee determination dated 7/2/2019 and gazetted on 1/3/2019, attached as annexure BR'1' and BR'2'.



3. The applicant deposes that, being dissatisfied with the determination, the respondent filed ELC Kitale JR Case No. 4 of 2019, which was struck out on 1/12/2020 as per a decree attached as BR'3'. Thereafter, the applicant avers that an appeal to the Court of Appeal (Civil Appeal Application No. 5 of 2021) against the decree was also dismissed with costs as a ruling dated 9/7/2021 attached as BR'4', meaning that the award stands since it has never set aside or discharged.
4. Despite the foregoing, the applicant avers that she has been unable to take possession of the land or enjoy the fruits of the judgment due to hostility from the respondent's agents or hired individuals out to frustrate her efforts.
5. The applicant deposes that in December 2021, her efforts to excise and take possession of the 400 acres were met with resistance from the hired goons, who prevented her from doing anything on the land, which altercation resulted in criminal charges being preferred against some of the perpetrators as per copy of a charge sheet attached as BR'5'.
6. Given the foregoing, the applicant avers that it is only fair and just that the court intervenes to assist her and the rest of the beneficiaries to get back the subject land, which the respondent has totally refused to hand over peacefully.
7. The application is opposed by the respondent through a notice of preliminary objection dated 13/11/2024. The grounds are that:
 1. The application is res judicata in view of a ruling delivered on 1/10/2024 in Misc. ELC JR No. 4 of 2019.
 2. It is an abuse of the court process for calling upon the court to sit on appeal of its decision alluded to above.
 3. It is bad in law.
 4. The court is functus officio.
8. The applicant relies on written submissions dated 20/11/2024. It was submitted that under Article 159 2(c) and (e) of the Constitution as read together with Section 20(1) of the ELC Act, the court has powers to grant the orders sought. Further, the applicant submits that for peace, law, and order to be maintained, it was important that security be provided during the exercise, in line with Sections 24 and 51(b) of the National Police Service Act.
9. Regarding the preliminary objection, the applicant relied on written submissions dated 5/12/2024 that were not a pure point of law, since the reliefs sought were different and distinct from the ones in the previous application, leading to a ruling dated 1/10/2024, which dismissed the application for want of form. Equally, it was submitted that the issues or the matter was not heard on merits. Reliance was placed on Mukisa Biscuits Manufacturing Co. Ltd -vs.- West End Distributors [1969] EA 696, John Musakali -vs.- Speaker of County Government of Bungoma & Others [2015] eKLR and Oraro -vs- Mbaja [2005] KLR 141.
10. The respondent relied on written submissions dated 2/12/2024. It was submitted that the applicant had previously filed an application dated 11/10/2022 in JR Misc. Appl. No. 4 of 2019, Betty Rono -vs.- Almer Farm Ltd, seeking the same prayers as prayers No. (3) and (4) in the instant application, which the court dismissed. Relying on Section 7 of the Civil Procedure Act and Black Laws Dictionary 10th Edition, the respondent submitted that a person may not commence more than one action in respect of the same or a substantially similar cause of action.



11. In this instance, the respondent submitted that the issues covered in the two applications are similar; the prayers in the instant application were covered in the earlier application and parties in both applications are the same, who are litigating under the same title, after a court of competent jurisdiction determined the earlier application. Reliance was placed on *Njangu -vs.- Wambugu & Another* NRB HCCC No. 2340 of 1991, *Siri Ram Kaura -vs- M.J.E. Morgan* [1961] EA 462. The respondent submitted that the applicant was out to keep the respondent in court relitigating the same subject matter with no end.
12. Additionally, the respondent submitted that the application offends Order 37 Civil Procedure Rules, on the categories of litigants who can take out an originating summons, and on what disputes can be commenced by way of an originating summons. As such, the respondent submitted that the application was defective for want of form and also fatally defective.
13. Article 67(2)(e) of *the Constitution* grants the National Land Commission power to investigate and determine historical injustice land complaints and recommend any appropriate redress. Section 15(3) defines such a claim and introduces a limitation period of five years. In the *Chief Land Registrar and Others -vs- Nathan Tirop Koech & Others* [2018] eKLR, the court took the view that under Section 15(3) (b) of the ELC Act, the court is permitted to deal with historical injustice claims, capable of being addressed through the ordinary court system and that nothing was ousting the jurisdiction of the court or barring a person under the *National Land Commission Act* to file or present before a court a claim founded on the historical injustice. See also *Delmonte (K) Ltd -vs.- NLC & Another Kandara Resident Association & Others (IP)* Petition 3 of 2020 [2022] KEELC 2234 (KLR) 28th April 2002 (Judgment) and in *Republic -vs.- NLC & Others, Twei & Others (IP), James Finlay (K) Ltd and Others* JD No. 3 of 2020 ELC JR Case No. 4 and 5(Consolidated) [2023] KEELC 16903 [KLR] (20th April 2023) (Judgment).
14. Under Section 16(9) of the *National Land Commission Act*, the remedies include restitution, compensation where it is impossible to restore the land, resettlement on an alternative land, rehabilitation, affirmative action programs, creation of wayleaves, order for revocation of an official declaration in respect of any public land and reallocation, refund to bonafide third party purchaser and declaration of preservation orders.
15. Section 15(10) of the *National Land Commission Act* provides that upon determination of a historical land injustice claim by the Commission, any authority mandated to act on recommendations shall do so within three (3) years.
16. In the matter of the National Land Commission Advisory Opinion Ref. No. 2 of 2014 [2015] eKLR, the court held that the words “recommendation, investigate, assess, or monitor” have a facilitative role, and contextually presume that there is another body or organ to whom such recommendation, research, investigation shall be sent to, received by and in relation to which the proposal shall be implemented.
17. What the applicant is seeking is the adoption of the award as an order of the court for execution purposes. The applicant has averred on oath that attempts by the respondent to quash, invalidate, and nullify the award have been in vain. The respondent has not refuted the averments made on oath that the award still stands and has not been vacated. Equally, it has not denied non-implementations of the award.
18. The respondent instead attacks the originating summons on account of res judicata, abuse of the court process, want of form and defectiveness. Section 89 of the *Civil Procedure Act* allows parties to commence cases through a miscellaneous application. Order 46 Rule 20 of the Civil Procedure Rules deals with alternative dispute resolutions. It provides that a court is not precluded from adopting and



implementing on its motion or, at the request of the parties, any other appropriate means of dispute resolution for the attainment of the overriding objective envisaged under Sections 1A and 1B of the Act. Sub-rule (2) thereof provides that a court may adopt an alternative dispute resolution and may make such orders as may be necessary to facilitate such means of dispute resolution. Section 20 of the ELC Act grants this court powers to adopt the award.

19. From the foregoing, therefore, I find that the submission by the respondent that the application by the applicant offends Order 37 of the Civil Procedure Rules as defective in want of form and or fatally defective lacks merits. I find the applicant is appropriately before the court.
20. Additionally, under Articles 50(1) and 59(2) of *the Constitution* the court is mandated to promote the use of alternative forms of dispute resolution. See AIC (Maunga) & Others -vs.- Mboye & Another ELC Appeal No. 3 of 2024 [2024] KEELC 6155 [KLR] (26th September 2020) (Judgment, and Kitui & Another (Suing on behalf of the estate of Stephen Kitui -vs.- Kitui & Another ELC Land Case No. 68 of 2021 [2023] KEELC 78 [KLR] (19th January 2023) (Judgment). The mandate includes adopting the outcomes of ADR and the traditional dispute resolution mechanisms as orders or decrees of the court.
21. As to res judicata, an applicant must meet the tests set in IEBC -vs.- Maina Kiai & Others [2017] eKLR. They include:
 1. The suit or issue was directly and substantially in issue in the former suit.
 2. That former suit was between the same parties or parties under whom they or any one of them claims.
 3. Those parties were litigating under the same title.
 4. The issue was heard and finally determined in the former suit.
 5. 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.
22. In this application, other than alleging res judicata, the respondent has not sworn an affidavit and attached pleadings, rulings, and decrees in the former suits, where the issue of the adoption of the award by the National Land Commission Committee as an order or decree of the court was litigated on merits one way or the other, and a final decision made.
23. In Uhuru Highway Development Ltd -vs.- Central Bank of Kenya & Others, the court held that the issue of injunction application had been finally determined thrice by the High Court and twice by the Court of Appeal and would not be resuscitated by another application. The court was emphatic that the doctrine of res judicata applies to applications to ensure there would be an end to litigation just like in a suit.
24. In this application, I find that the objection based on res judicata required evidence going by Oraro -vs- Mbaja (Supra).
25. The preliminary objection based on res judicata, an abuse of the court process, and bad in law, lacks merit. It is dismissed.
26. Regarding the application, the same stands unopposed. There is no replying affidavit to challenge its facts. The application is allowed with costs.
27. Orders accordingly.



**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT
KITALE ON THIS 5TH DAY OF FEBRUARY 2025.**

HON. C.K. NZILI

JUDGE, ELC KITALE.

In the presence of:

Court Assistant - Chemutai

No appearance for the parties

