



Republic v District Land Adjudication Officer Makueni District & another; Ndia (Interested Party); Mukilya (Exparte Applicant) (Environment and Land Judicial Review Miscellaneous Application 2 of 2017) [2025] KEELC 1128 (KLR) (6 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION 2 OF 2017**

EO OBAGA, J

MARCH 6, 2025

BETWEEN

REPUBLIC APPLICANT

AND

**DISTRICT LAND ADJUDICATION OFFICER MAKUENI DISTRICT 1ST
RESPONDENT**

**ARBITRATION BOARD NDUU ADJUDICATION SECTION 2ND
RESPONDENT**

AND

TITUS MUNGUTI NDIA INTERESTED PARTY

AND

ONESMUS MUTUA MUKILYA EXPARTE APPLICANT

RULING

1. A Notice to show cause why execution should not issue against the Interested Party was given on 10th January, 2023 in favour of the Ex-parte Applicant. The listed properties for the execution proceedings were Title Nos. Makueni/Nduu/956 and Makueni/Nduu/961 situated in Nduu Adjudication Section within Kilungu Sub- County.
2. Parties agreed to dispose of the matter by way of written submissions.
3. The Interested Party filed his submissions dated 15th July, 2024. On his behalf, Counsel contended that costs were ascertained by the taxing officer and that a certificate of taxation was issued in the sum



of Kshs. 223,518/= on 17th May, 2018 against the Respondents. It was further contended that the Interested Party is not one of the Respondents named in the suit. Counsel argued that the Ex-parte Applicant had not demonstrated that efforts had been made against the Respondents for execution or whether they had been unable to pay the costs at all.

4. It was submitted that the execution against the Interested Party is malicious. Counsel urged the court to dismiss the application with costs.
5. The Ex-parte Applicant filed submissions in support of the Notice to show cause on 11th October, 2024 Counsel identified the sole issue for determination as whether the Interested Party was under an obligation to settle the costs as ordered and ascertained by the Taxing officer.
6. Counsel contended that the Interested Party sought to set aside warrants of attachment that had been issued against him vide his application dated 22/1/2019. Counsel further contended that the said application was heard and dismissed vide this court's ruling dated 20/6/2019 wherein it was ordered that execution against the Interested Party should proceed.
7. It was argued that the Interested Party's objection to the Notice to show cause is on the basis of the same grounds that were already advanced and a ruling subsequently delivered on 20/6/2019. That the said ruling had not been overturned through an appeal or through review. Counsel submitted that the Interested Party's current objection is res judicata. Counsel added that the Interested Party is vexing the court and is frustrating and delaying the Ex-parte Applicant from lawful execution.
8. Counsel for the Ex-parte Applicant pleaded with the court to allow the decree holder to enjoy the fruits of his judgment by dismissing the Interested Party's objection.
9. The Interested Party filed supplemental submissions dated 16th December, 2024 wherein Counsel buttressed his earlier submissions.
10. The sole issue for determination is whether there is sufficient cause that warrants the lifting of the Notice to show cause issued on 10/1/2023 against the Interested Party.
11. To begin with, it is on the record that the Interested Party applied for stay of execution and for setting aside of warrants of attachment vide the Notice of Motion dated 22nd January, 2019. In dismissing the application vide the ruling delivered on 20th June, 2019, the Court noted as follows: -

“... it was incumbent upon the Interested Party/Applicant to oppose the party and party bill of costs upon service by the exparte Applicant bearing in mind that the court had found the Arbitration Board not to have had statutory quorum to determine the dispute that the Interested Party referred to it. He instead chose not to. It therefore follows that the Interested Party/Applicant cannot be heard to say that the execution against him was illegal and misplaced.”

12. In context to the above excerpt of the court's ruling, it is clear that execution proceedings against the Interested Party were given a seal of approval. The Interested Party has not demonstrated that he successfully appealed against the court's finding. Execution proceedings against the Interested Party have neither been set aside nor reviewed and so, the objection to the Notice to show cause herein is plainly a case of res judicata.
13. Res judicata, is embodied in section 7 of the [Civil Procedure Act](#) which provides that:-

“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.”

14. In the Black’s Law Dictionary, 9th Edition at page 1425, the doctrine of res judicata has been defined as follows:

“a thing adjudicated”

1. An issue that has been definitively settled by judicial decision.
2. An affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been but was not raised in the first suit.”

15. In the case of Independent Electoral & Boundaries Commission v Maina Kiai & 5 others [2017] eKLR, the Court of Appeal aptly held as follows: -

“Res judicata is a matter properly to be addressed in limine as it does possess jurisdictional consequence because it constitutes a statutory peremptory preclusion of a certain category of suits. That much is clear from Section 7 of the *Civil Procedure Act*, 2010;

“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 the 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.”

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.”



16. The upshot of the foregoing analysis is that the Interested Party has not sufficiently demonstrated any justification for the setting aside or lifting of the Notice to show cause dated 10th January, 2023. In the circumstances, the Interested Party's objection is dismissed with costs to the Exparte Applicant.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 6TH DAY OF MARCH, 2025.

In the Presence of:

Mr. Mbullo for Interested Party

Mr. Nzioka for Mr. Kolongo for Ex-parte Applicant.

Court assistant- Steve Musyoki

