



**Kiage & another v Riano & 5 others (Land Case E033 of 2024)
[2025] KEELC 3734 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3734 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
LAND CASE E033 OF 2024
LC KOMINGOI, J
MAY 5, 2025**

BETWEEN

EZEKIEL ONDABU KIAGE 1ST PLAINTIFF

ANNAH NZILANI ONDABU 2ND PLAINTIFF

AND

AGNES NASIANOI RIANO 1ST DEFENDANT

**KIKUYU KISHIL NYARE & GLORIA SEMPEWUAN KISHIL (SUED AS
LEGAL REPRESENTATIVES OF THE ESTATE OF KISHIL OLE NKARE
SAIRE 2ND DEFENDANT**

THE LAND REGISTRAR, KAJIADO COUNTY 3RD DEFENDANT

THE COUNTY SURVEYOR KAJIADO COUNTY 4TH DEFENDANT

THE HON ATTORNEY GENERAL 5TH DEFENDANT

FRANCIS MUTHOKA T/A KANAANI PROPERTIES 6TH DEFENDANT

RULING

1. This is the Ruling in respect of the Notice of Motion dated 4th April 2024 brought under Sections 1A; 1B; 3;3A and 63 of the *Civil Procedure Act*, Order 39 (1)(iii); 40 Rules 1,2,3 and 4 of the Civil Procedure Rules (CAP 21) and Section 13 of the Land Court Act 2012 and any other enabling provisions of the Laws of Kenya.
2. It seeks orders that;
 - i. Spent
 - ii. Spent



- iii. The 1st, 3rd and 4th Defendants, their agents, servants and or anybody else whatsoever be and is hereby restrained, stopped and/or prevented from further subdivisions, transferring, charging, disposing off, taking possession, demarcating and/or doing any other act to the Parcel of Land known as KJD/Kaputiei/North/22233 and its subdivisions known as KJD/Kaputiei/north/38960 (2.02 Ha), 138669 (4.06 Ha), 138670 (16.19 Ha), 13671 (18.44 Ha) and any further sub divisions pending the hearing and determination of the suit.
 - iv. The 1st Defendant/Respondent be and is hereby arrested and her property attached before judgement for having disobeyed the Court orders, and/or as the Hon. Court may issue such directions as it may deem fit.
 - v. That the Isinya Police Commander to oversee the execution of the orders of this Court forthwith.
 - vi. That the Land Registrar, the 3rd Defendant be ordered to file and produce all the records related to LR number KJD/Kaputiei/North/22233, which includes, consents to subdivide, Green card, Memorandum if transfers and any other records related thereof.
 - vii. The costs of the Motion to follow the event.
3. The grounds are on the face of the application and are set out in paragraphs a to h. The Application is supported by the Affidavit of Ezekiel Ondabu Kiage, the 1st Plaintiff/Applicant sworn on 4th April 2024.
 4. The application is opposed by the 1st Defendant/Respondent who files a notice of Preliminary Objection dated 3rd July 2024 on the grounds that the suit herein is res judicata and ought to be dismissed.
 5. On the 18th September 2024, the Court directed that the Notice of Motion and the Preliminary Objection be canvassed together by way of written submissions.
 6. The Plaintiffs/Applicants' submissions are dated 6th November 2024. Counsel submitted that the Plaintiffs/Applicants were not parties to the proceedings in ELC 674 of 2017. It is also submitted that the Application has met the conditions to warrant the grant of orders of temporary injunction as the Plaintiffs/Applicants have a title to the suit property.
 7. It is further submitted that the issue of res judicata raised by the 1st Defendant is not a pure point of law as spelt out in the Mukisa Biscuit Case. The Plaintiffs/Applicants were not parties to the proceedings in ELC 674 of 2017 and the subject matter in dispute is not the same. He prays that the orders be granted.
 8. The 1st Defendant/Respondent's submissions are dated 29th January 2025. It is submitted that the Decree in ELC 674 of 2017 included a rectification of the register of Title No. Kajiado/Kaputiei-North/22233 by cancellation and/or revocation of any subdivisions and restoration of Agnes Riano as the proprietor. Kishil Ole Nkare Saire was the 1st Defendant in that suit.
 9. It is also submitted that the Plaintiffs' remedy lies in pursuing Mr. Kishil Ole Nkare Saire for selling them nothing. It is submitted that the matter directly and substantially in issue in Kajiado ELC 674 of 2017 was the ownership of Kajiado/Kaputiei-North/22232 and 22233 and the cancellation of all subdivisions thereof that had wrongfully been created and disposed.
 10. It is also submitted that the judgement declared that Kishil Ole Nkare Saire had obtained Kajiado/Kaputiei-North/22233 in an unprocedural manner and proceeded to sell to third parties. It was held that he did not have clean titles to pass and all the subdivisions were cancelled including the subject



of these proceedings. He has put forward the cases of Baber A. Mawji VS United States International University & Another [1976] eKLR; Naftali Ruthi Kinyua VS Patrick Thuita Gachure & Another [2015] eKLR; Carol Silcock VS Kassim Shamji Mohamed [2013] eKLR.

11. Counsel also submitted that the Plaintiffs acquired the suit property pendente lite hence they were bound by the Judgement and Decree in that suit. The Plaintiffs had the opportunity of joining ELC 674 of 2017 but they declined to do so. He prays that the suit be dismissed with costs to the 1st, 3rd, 4th and 5th Defendants.

Analysis and Determination

12. I have considered the grounds of the Preliminary Objection, the Rival submissions, and the authorities cited. The issue for determination is whether the Preliminary Objection is merited.

13. Section 7 of the [Civil Procedure Act](#) 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, 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.”

14. It is the Plaintiffs’ case that they were not parties to ELC 674 of 2017 while the 1st Defendant contends that the Plaintiffs ought to have sought to join that suit. The Plaintiffs bought the suit property - Kajiado/Kaputiei/North/38960 which was a subdivision of 22233 during the pendency of ELC 674 of 2017; Pherus Arori Monda and Agnes Nasiano Riano VS Kishil Ole Nkare Saire & others where Lady Justice C. Ochieng’ held; “I find that the 1st Defendant failed to adhere to the proper legal process to revoke titles in respect to land parcel numbers Kajiado/Kaputiei/North/22232 and 22233 registered in the names of the Plaintiffs as it stands the said revocation is a nullity...As I have held above that the 1st Defendant did not adhere to the proper legal process to obtain the cancellation of the Plaintiffs’ titles which were registered under the Registered [Land Act](#) (now repealed) and since he obtained the titles back to his name in an unprocedural manner and proceeded to sell to third parties. I opine that he did not have clean titles to pass...”
15. I agree with the 1st Defendant’s submission that the Plaintiffs are claiming under Kishil Ole Nkare Saire, who was the 1st Defendant in ELC 674 of 2017. It was held that he had obtained title in an unprocedural manner hence he did not have good title to pass to the Plaintiff. I find that the doctrine of res judicata applies as Kajiado/Kaputiei/North/22233 was the subject in that suit.
16. In this case, the Plaintiffs are claiming under the 1st Defendant in ELC 674 of 2017. In the case of Stephen Wang’ang’a Njoroge VS Stanley Ngugi Njoroge & another [2017] eKLR, the Court quoted with approval the case of Uhuru Highway Development Ltd VS Central Bank & others [CA No. 36 of 1996](#) where the Court of Appeal stated; “In order to rely on the defence of res judicata, there must be a previous suit in which the matter was in issue, the parties must have been the same or litigating under the same title, a competent court must have heard the matter in issue and the issue is raised once again in the fresh suit.”



17. In the case of Naftali Ruthi Kinyua VS Patrick Thuita Gachure & Another [2015] eKLR the Court of Appeal, whilst agreeing with the holdings of Justice C. B. Madan, also approvingly quoted the case of Bellamy VS Sabince IDeG & J 566 where it was held:

“The doctrine of its lis pendens intends to prevent not only the defendant from transferring the suit property when litigation is pending but it is equally binding on those who derive their title through the defendant, whether they had or had no notice of the pending proceedings. Expediency demands that neither to a suit should alienate his interest in the suit property during the pendency of the suit so as to defeat the rights of the other party...”

18. The fact that Kishil Ole Nkare Saire disposed of the suit property herein during the pendency of ELC 674 of 2017 must not pass without consequences.

19. From the foregoing, I find merit in the Preliminary Objection and the same is upheld. The issues raised herein are res judicata. Having held so, I need not go into the merits of the Notice of Motion dated 4th April 2024.

20. In conclusion, the suit herein is dismissed for being res judicata with costs to the 1st Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY 2025.

L.KOMINGOI

JUDGE

In the presence of:

For the Plaintiffs

For the 1st Defendant

For the 2nd to 6th Defendants

Court Assistant: Mutisya

