



Muramba & 58 others v Cannon Assurance Company Limited & 4 others (Environment & Land Case E045 of 2024) [2025] KEELC 3729 (KLR) (8 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3729 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE E045 OF 2024**

YM ANGIMA, J

MAY 8, 2025

BETWEEN

KAINGU MWENI MURAMBA & 58 OTHERS & 58 OTHERS & 58 OTHERS & 58 OTHERS & 58 OTHERS PLAINTIFF

AND

CANNON ASSURANCE COMPANY LIMITED 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

COUNTY SURVEYOR KILIFI COUNTY 4TH DEFENDANT

THE ATTORNEY GENERAL 5TH DEFENDANT

RULING

A. Introduction

1. By a plaint dated 13.05.2024 the plaintiffs sued the defendants seeking the following reliefs;
 - a. An Order that the plaintiffs are entitled to the 10 acres of land.
 - b. An Order directing the 1st defendant to give 10 acres of land to the plaintiffs.
 - c. An order directing the 4th defendant to survey the Plot L.R MN/IIV13 Msumarini Kilifi with view to mapping out the 10 acres to be occupied by the Plaintiffs.
 - d. An order directing the 3rd defendant to issue a Title deed to the plaintiffs with respect to the 10 acres once survey has been done.
 - e. General damages



- f. Costs of the suit
2. The plaintiffs pleaded that even though the 1st defendant was the registered owner of LR No. MN/III/13 Msumarini in Kilifi (the suit property) they had been in occupation of the suit property since time immemorial. It was pleaded that following a dispute with the 1st defendant the National Land Commission (NLC) mediated the dispute which resulted in an amicable solution on 16.12.2015 whereby the 1st defendant was allocate the plaintiffs ¼ acre to each of the persons in occupation in the suit property.
 3. The plaintiffs further pleaded that even though some of the occupants were allocated their portions of ¼ acre, they were left out and have never been allocated their respective portions in accordance with the amicable resolution reached in 2015.

B. 1st defendant's response

4. The 1st defendant filed a defence and counter-claim dated 19.08.2024. By its defence, it asserted absolute ownership of the suit property and denied the plaintiffs' claim in its entirety. It denied having held any meeting for amicable resolution of the dispute and denied having agreed to allocate any portion of the suit property to the plaintiffs as alleged or at all. The 1st defendant further pleaded that the plaintiffs were career squatters and that they had only requested for permission to cultivate the suit property during the rainy seasons.
5. The 1st defendant further pleaded that the plaintiffs were vexatious litigants who had filed about 5 separate suits over the suit property some of which had been concluded whereas one was still pending. The 1st defendant thus prayed for dismissal of the suit and sought legal costs of Kshs.30 million for defending the various suits and Kshs. 50 million as damages for lost opportunity.

C. 1st defendant's application

6. By a notice of motion dated 11.09.2024 expressed to be based upon Sections 1A, 1, 3, 3A and 7 of the *Civil Procedure Act* (Cap 21) Order 2 Rule 15 (1) and Order 51 of the *Civil Procedure Rules*, and all enabling provisions of the law, the 1st defendant sought the following orders;
 - a. That the suit be struck out for being res judicata and an abuse of the court process.
 - b. That in the alternative, the suit be referred to the NLC for exhaustion of available dispute resolution mechanisms.
7. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Betty Kanyagia on 11.09.2024. The 1st defendant relied essentially upon the matters set out in the defence. The 1st defendant denied having been party to any negotiations with the plaintiffs and the NLC for resolution of the dispute and they denied having agreed to allocate each of the plaintiffs ¼ acre out of the suit property as alleged by the plaintiffs. It was further contended that the plaintiffs had filed several suits before other courts over the same subject matter hence the instant suit was both res judicata and an abuse of the court process.

D. Plaintiffs' response

8. The material on record shows that the plaintiffs filed a replying affidavit sworn on 18.11.2024 in response to the application. The plaintiffs denied being squatters and pleaded that the suit property was their ancestral land which they had occupied since time immemorial. They asserted that there



was documentary evidence on record to show the existence of a dispute which was resolved through a meeting with the NLC.

9. The plaintiffs contended that the causes of action in the previous suits were totally different from the one in the instant suit hence the suit was neither res judicata nor an abuse of the court process. It was also their case that some of the suits were merely struck out without a hearing on the merits.

E. Directions on submissions

10. When the application was scheduled for directions it was directed that it shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The material on record shows that the 1st defendant filed submissions dated 27.02.2025 whereas the plaintiffs' were dated 25.04.2025.

F. Issues for determination

11. The court has perused the 1st defendant's notice of motion dated 11.09.2024, the replying affidavit in opposition thereto as well as the further affidavit in support of the application. The court is of the view that the following are the main questions for determination herein;
 - a. Whether the plaintiffs' suit is res judicata or an abuse of the court process.
 - b. Whether the dispute should be referred to the NLC for resolution

G. Analysis and determination

a. Whether the plaintiffs' suit is res judicata or an abuse of the court process

12. The court has considered the material and submissions on record on this issue. The element of res judicata are stipulated in Section 7 of the *Civil Procedure Act*. These requirements were considered in the case of *Independent Electoral and Boundaries Commission vs Maina Kiai & 5 Others* [2017] eKLR whereby it was held, inter alia, that;

“Thus for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must 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. 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 heard and finally determined the issue was competent to try the subsequent suit in which the issue is related.
13. As indicated in the introduction, the plaintiffs' claim is essentially for enforcement of the alleged negotiated settlement which is said to have been reached in 2015 with the assistance of the NLC. The 1st defendant has denied the existence of such a settlement. Whether or not the plaintiffs shall be able to demonstrate the existence of the settlement is a totally different issue which has no bearing on the



question of res judicata unless it is contended that the alleged settlement of 2015 was the subject of all previous suits including the ones filed in 2012.

14. The court is thus far from satisfied that the instant suit is res judicata within the meaning of Section 7 of the *Civil Procedure Act*. The court is also not satisfied that the instant suit is liable to be struck out under Order 2 Rule 15 of the Civil Procedure Rules. It cannot be said with any measure of certainty that the suit discloses no reasonable cause of action or that it is scandalous, frivolous or vexatious. There is no material on record on the basis of which it may be concluded that the suit is otherwise as abuse of the court process.
15. The court takes the view that a party who claims that a particular dispute has been resolved through alternative dispute resolution mechanisms is entitled to approach the court for enforcement of the alleged settlement. It shall, of course, be upon such party to demonstrate the existence of the alleged settlement to the required standard. It would thus be premature for a court to law to strike out such a suit before the concerned party has been given an opportunity to prove its claim.

a. Whether the dispute should be referred to the NLC for resolution

16. The court has considered the material and submissions on record. The 1st defendant's contention was that the plaintiffs have moved the court pre-maturely before exhausting the dispute resolution mechanisms available under the National Land Commissions(NLC) Act. As such, the 1st defendant wanted the court to refer the dispute to the NLC for resolution thought it did not specify under what specific provisions of the Act the NLC would have jurisdiction to entertain the dispute.
17. The court is faced with a very strange situation whereby one party is seeking a referral of the dispute to the NLC for resolution whereas the other party is seeking enforcement of a settlement allegedly reached upon mediation by the NLC. The court takes the view that the plaintiffs should first be accorded the opportunity to demonstrate the existence of a settlement mediated by the NLC failing which the court may consider a referral to NLC. In the premises, the court is of the view that it would be premature to refer the dispute to NLC without first establishing whether or not the dispute was ever handled and resolved by NLC.

H. Conclusion and disposal orders

18. The upshot of the foregoing is that the court finds no merit in the 1st defendant's application to terminate the proceedings or refer the dispute to NLC for resolution. As a result, the court makes the following orders for disposal of the application;
 - a. The notice of motion dated 11.09.2024 is hereby dismissed in its entirety.
 - b. Since this suit property is located in Msumarini within Kilifi County, this suit is hereby transferred to the ELC at Malindi for trial and disposal.
 - c. The suit is hereby fixed for pre-trial directions on 18.06.2025 before the ELC Malindi.
 - d. Costs of the application shall be in the cause.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 8TH DAY OF MAY, 2025.

In the presence of:

Mr. Ondieki for plaintiff



Ms. Ndunga for 1st defendant

No appearance for 2nd defendant

No appearance for AG 3rd-4th defendants

Gillian Court assistant

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Y. M. ANGIMA

JUDGE

