



**Monirei & another (Suing as the Legal Representatives of the Estate of Paul Parkiniti
Monirei - Deceased) v Redrock Investment Limited & 3 others (Environment
& Land Case E015 of 2024) [2025] KEELC 3699 (KLR) (5 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3699 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E015 OF 2024
LC KOMINGOI, J
MAY 5, 2025**

BETWEEN

**VERONICA NASHIPAR MONIREI 1ST PLAINTIFF
JOYCE KARATO MONIREI 2ND PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVES OF THE ESTATE OF PAUL
PARKINITI MONIREI - DECEASED**

AND

**REDROCK INVESTMENT LIMITED 1ST DEFENDANT
THE LAND REGISTRAR, KAJIADO WEST 2ND DEFENDANT
KENNY MULI NGANGA 3RD DEFENDANT
ESTHER WANGUI NGANGA 4TH DEFENDANT**

RULING

1. This is the Ruling in respect of the Notice of Motion dated 5th March 2024 brought under Section 1A, 1B, 63 (c) and (e) of the *Civil Procedure Act*, Order 50 Rule 1, Order 40 rules 1 and 4 of the Civil Procedure Rules, 2010, and all other enabling provisions of the law.
2. It seeks orders;
 - i. Spent
 - ii. Spent
 - iii. Spent



- iv. That a temporary injunction do issue restraining the Defendants/Respondents herein by themselves, servants, agents, employees or any other person authorized by or claiming through them from evicting the Plaintiffs/Applicants, selling, transferring, alienating, subdividing, charging, mortgaging, entering and/or from howsoever dealing or interfering in any manner with the parcel of land known as Kajiado/Olchoro Onyore/3XX6 and all its subdivisions thereof to wit Kajiado/Olchoro Onyore/5XX1-7X pending the hearing and determination of the main suit.
 - v. That a temporary injunction do issue restraining the 2nd Defendant from cancelling, destroying, defacing, or interfering in anyway with the original title deed for all that parcel of land known as Kajiado/Olchoro Onyore/3XX6 in his possession pending the hearing and determination of the main suit.
 - vi. That costs of this Application be provided for.
3. The grounds are on the face of the Application and are set out in paragraphs 1 to 16. The Application is supported by the Affidavit of Veronica Nashipae Monirei, the 1st Plaintiff/Applicant sworn on the 5th March 2024.
 4. In response the 1st Defendant/Respondent, filed a Replying Affidavit dated 22nd April 2024. It also filed a Preliminary Objection dated 22nd April 2024. The grounds are;
 - i. The Plaintiff Pleadings dated 5th March 2024 are res judicata hence offends section 7 of the Civil Procedure Rules as the parties had litigated the same matter in Kajiado ELC No. 43 of the 2019 (formerly Milimani ELC No. 476 of 2013) and there is a ruling on the same issue raised.
 - ii. The Plaintiffs Pleadings are time barred and they go against the provisions of Section 7 of the Limitation of Actions Act. They bring forth a claim of fraud which in tort are time barred after 3 years. Over 30 years have elapsed by the time the suit is filed.
 - iii. The Pleadings filed by the Plaintiff dated 5th March 2024 are fatally and incurably defective in law and ought to be struck out.
 - iv. The suit is embarrassing, scandalous, vexatious, an abuse of this court process, a waste of this Honourable Court's time and ought to be dismissed under Order 2 Rule 15 of the Civil Procedure Rules.
 - v. The 1st Defendant shall therefore move this Court to dismiss the Plaintiff's suit.
 - vi. The Suit be dismissed with costs.
 5. On the 23rd September 2024, the Court directed that the Notice of Motion and the Preliminary Objection be heard together. It also directed that parties do put in written submissions.
 6. I have considered the Notice of Motion, the Affidavit in support, the Response thereto, the Preliminary Objection and the Rival Submissions. The issues for determination are:
 - i. Whether the Preliminary Objection is merited.
 - ii. Whether the Notice of Motion is merited.
 - iii. Who should bear costs?



7. I have considered the Preliminary Objection. It is stated that the suit herein is res judicata as the parties had litigated in Kajiado ELC 43 of 2019 (formerly Milimani 476 of 2013). Further, that the claim is statute barred.
8. The 1st Defendant admits that the Plaintiffs withdrew ELC 43 of 2019. This means that the issues were not heard and a determination given.
9. The doctrine of res judicata rests on the following pillars as espoused in the case of IEBC VS Maina Kiai and 5 others [2017] eKLR;
 - i. A previous suit in which the matter was in issue.
 - ii. The parties were the same or litigating under the same title.
 - iii. A competent court determined the matter in issue on merit and;
 - iv. That the issue has been raised once again in a fresh suit.”It is not in dispute that the issues herein have not been determined on merit.
10. As to the issue of the suit being statute barred, the Plaintiffs claim to have discovered that the 2nd Defendant is in possession of the title deed for the suit property which remains intact and unaltered. The Plaintiffs’ case is that they have been utilising the suit property for a continuous period of over 30 years. I find that the suit is not statute barred. The Plaintiffs ought to be given a chance to ventilate their claim by tendering evidence.
11. For these reasons, I find that the Preliminary Objection is not merited and the same is dismissed.
12. As regards the Notice of Motion dated 5th March 2024, I find that the Plaintiffs are not the registered owners of the suit property. The same is in the name of the 1st Defendant. I am unable to grant the orders sought. The Notice of Motion is hereby dismissed. The costs will abide the outcome of the new suit.

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

L.KOMINGOI

JUDGE

