



**Njagi (Suing as the Personal Representative of the Estate of the Late Samuel Njagi Njamweri) v Mukuthu & another (Environment & Land Case E006 of 2024) [2025] KEELC 3910 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3910 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT EMBU  
ENVIRONMENT & LAND CASE E006 OF 2024**

**AK BOR, J  
MAY 6, 2025**

**BETWEEN**

**MICHAEL GICHOVI NJAGI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE SAMUEL NJAGI NJAMWERI) ..... PLAINTIFF**

**AND**

**JOSEPH NJERU MUKUTHU ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, EMBU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Through the Office of the Attorney General, the 2<sup>nd</sup> defendant, that is, the Land Registrar, Embu raised a preliminary objection to this suit on the grounds that it offends the doctrine of res judicata under Section 7 of the *Civil Procedure Act*. The plaintiff had filed plaint dated 7/3/2024 seeking to revoke the title over the land known as Gaturi/Githimu/8297 (the suit land) registered in the name of the 1<sup>st</sup> defendant on grounds that it was acquired fraudulently. He averred that the suit land belonged to the late Samuel Njagi Njamweri and that he was the legal representative of his estate.
2. The court directed parties to file and exchange written submissions which it has considered. The 2<sup>nd</sup> defendant submitted its preliminary objection met the threshold set out in *Mukisa Biscuit Manufacturing Ltd v West End Distributors (1969) EA 696*. It submitted that the suit land was the subject matter in Embu CMCC No. 62 of 2009 - *Joseph Njeru v Michael Gichovi Njagi* and that the court determined the suit with finality on 20/6/2011. Further, that the doctrine of res judicata exists to protect public interest so that a party should not endlessly be dragged into litigation over the same issue that had been conclusively determined by a court of competent jurisdiction. It contended that the court that decided the former suit was a competent court and that the former suit was finally determined.



3. The plaintiff submitted that the 2<sup>nd</sup> defendant had not stated the case which he alleges determined the issue in dispute. Further, that his defence mentioned Runyenjes CM ELC Case No. 64 of 2013- Felista Gathoni Njeru v Michael Gichovi Njagi and that the decree in that suit related to Gaturi/Githimu/10009 and 10010. He contended that the suit in Runyenjes involved eviction orders in relation to Gaturi/Githimu/10009 and 10010 and the suit land in this case, that is, Gaturi/Nembure/8297 did not feature in that suit, hence the issues in the two suits were substantially different. He further contended that the parties in the suit in Runyenjes were different from the parties in the current suit as the 1<sup>st</sup> defendant, Joseph Njeru Mukuthu was not a party in that suit. He concluded by saying the objection could not stand as the two suits relate to two different subject matters and causes of action, and that the parties in the two were different.
4. The issue for determination is whether the preliminary objection has merit.
5. A preliminary objection should raise a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct but should not be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.
6. Section 7 of the *Civil Procedure Act* Cap 21 also provides that a court should not 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, before 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.
7. In this case, the 2<sup>nd</sup> defendant claims that this suit is res judicata in light of Embu CM ELC Case No. 62 of 2009 between the plaintiff and the 1<sup>st</sup> defendant which was in relation to Gaturi/Githimu/8297. The court has looked at the proceedings and a copy of the judgment in Embu CMCC Case No. 62 of 2009 which are part of the plaintiff's documents and notes that in that suit, Joseph Njeru, the 1<sup>st</sup> defendant had instituted a suit on 23/3/2009 against the plaintiff, Michael Gichovi Njagi seeking to have the caution which the plaintiff lodged against Gaturi/Githimu/8297 lifted and removed. The plaintiff filed a defence and counterclaim and denied the 1<sup>st</sup> defendant's claim and alleged that the 1<sup>st</sup> defendant had obtained the registration of the parcel of suit land through fraud and that he placed a caution on the land to protect and safeguard his interest as a beneficiary having been gifted the land by his father. The plaintiff sought cancellation of the 1<sup>st</sup> defendant's title and to be registered as the proprietor of the land the dismissal of the suit. The court in its judgement found in favour of the 1<sup>st</sup> defendant as well as the dismissal of the plaintiff's claim.
8. The plaintiff has now filed a suit involving the same parties over the same parcel of land, which is Gaturi/Githimu/8297 and raises similar claims of alleged fraudulent acquisition of title by the 1<sup>st</sup> defendant and cancellation of the 1<sup>st</sup> defendant's title. The 2<sup>nd</sup> defendant's preliminary objection has merit. The elements of res judicata, as outlined in Section 7 of the *Civil Procedure Act*, have been satisfied in this case in that the matter in dispute is directly and substantially the same as that in the former suit which involved the same parties and was conclusively determined by a competent court. The argument by the plaintiff that Runyenjes CM ELC Case No. 64 of 2013, involved different parties and parcels of land is immaterial to the objection at hand, premised on the decision in Embu CMCC Case No. 62 of 2009.
9. This suit is res judicata. The preliminary objection is upheld, and the suit is dismissed with costs to the 2<sup>nd</sup> Defendant.

**DELIVERED VIRTUALLY AT EMBU THIS 6<sup>TH</sup> DAY OF MAY 2025.**



**K. BOR**

**JUDGE**

In the presence of: -

Mr. Michael Gicovi Njage- Plaintiff

Mr. Justin Kiongo for the 2<sup>nd</sup> Defendant

Court Assistant- Diana Kemboi

No appearance for the 1<sup>st</sup> Defendant

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