



**Kiritu & 2 others v Muhuri (Sued as the Legal Representative of the Estate of Charles Muhuri Mureithi) (Environment & Land Case 23 of 2023) [2025] KEELC 4585 (KLR) (11 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4585 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT & LAND CASE 23 OF 2023**

**JM KAMAU, J**

**JUNE 11, 2025**

**BETWEEN**

**DANIEL NJUGUNA KIRITU ..... 1<sup>ST</sup> PLAINTIFF**

**SALOME WANJIRU NJENGA (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOSEPH NGOCHI KIRITU) ..... 2<sup>ND</sup> PLAINTIFF**

**DANIEL NJUGUNA KIRITU (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER KIRITU NGOCHI ALIAS KIRITU NGOCHI MUHIA - DECEASED) ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**CHARITY GATHONI MUHURI (SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF CHARLES MUHURI MUREITHI) ..... DEFENDANT**

**RULING**

1. This suit was filed on 16/5/2023 where the Plaintiff s sought to have the parcel of land known as L.R. No. Nyandarua/Mawingo/Salient/29 registered in the joint names of both Plaintiff s as the legal representatives of the Estate of Joseph Ngochi Kiritu. They prayed that the Land Registrar do dispense with the production of the original Title Deed of the Defendant, Charity Gathoni Muhuri, legal representative of the estate of the late Charles Muhuri Mureithi failing to sign the transfer letters where they prayed that the same be signed by the Court Administrator. In their Affidavit in support served on 16/5/2023, the 1<sup>st</sup> Plaintiff deponed that he was the son of Kiritu Ngochi Muhia who died in 1999 having purchased the aforementioned parcel of land from the late Charles Muhuri Mureithi.
2. The late Kiritu did pay the outstanding loan of Kshs 600/= and 500/= on 11/12/1989 and 20/12/1989 respectively and they went to the S.F.T. offices but that the late Charles Muhuri Mureithi collected the Title Deed in his (Mureithi's) name. But that the Plaintiffs have been on the land since 1984 together



with their siblings and their respective families. That in 1986, the late Kiritu filed against Charles Mureithi Nakuru H.C.C. No 151 of 1996 seeking for the cancellation of the Title Deed but he died before the suit could be heard. The suit was dismissed for lack of prosecution in 2018. Mureithi died in 2006 and on 27/7/2017 his wife filed Nyahururu CMELC No 179 of 2018 seeking for the eviction of the Plaintiffs and their siblings and families. On 25/1/2023 the suit was allowed and the Court directed that they vacate the suit premises within 2 months. In this case the Plaintiff's siblings were not made parties. An appeal against the Decision in Nyahururu CMELC 179 of 2018 was filed by the 1<sup>st</sup> Plaintiff as Nyahururu ELCA No E006 of 2022 and the same was pending hearing as at the time of filing the current suit. The Plaintiff s avers that they have been on the suit land since 1984 and have extensively developed the same.

3. The suit was amended on 11/2/2018 to include a prayer for the alternative determination of the question as to whether the estate of Kiritu Ngochi Muhia alias Peter Kiritu Ngochi has acquired Title over L.R. No. Nyandarua/ Mawingo /Salient/29 by way of adverse possession and if yes whether the land should be registered in the name of the deceased.
4. On 23/10/2023, the Court was informed that the Defendant never entered appearance and the case was fixed for hearing ex-parte. The same proceeded for hearing on 29/11/2023 and was concluded the same day. Judgment was delivered in favour of the Plaintiffs on 8/2/2024 and the suit land was declared to be the Plaintiffs'.
5. An application was filed on 21/2/2024 to set aside the judgment and a ruling on the same was delivered on 6/6/2024 setting aside the ex-parte judgment together with all consequential orders. The Defendant was granted leave to defend the suit. The Defendant was allowed to file and serve his replying Affidavit, written statements, Defence, documents and a trial bundle within 14 days with the Plaintiffs also being granted leave to file a supplementary Affidavit, if any. In the said Replying Affidavit by the Defendant served on the 21/2/2024, she deponed that Kiritu Ngochi Muhia did enter into an agreement with her late husband, Charles Muhuri Mureithi to purchase 5 Acres of land out of the parcel L.R. No. Nyandarua/Mawingo/Salient/29 but who did not meet the agreed terms and that is why her late husband was issued with the Title Deed on 22/3/1990. She said that no transfer to Muhia was ever executed by her late husband. There was no occupation by the Plaintiff's father.
6. Vide a Notice dated the 11/7/2024, the Defendant filed a preliminary objection to the effect that the issue of the ownership of the suit land, Nyandarua/Mawingo/Salient/29 having been determined in Nyahururu CMCC ELC No. 13 of 2023 (formerly ELCA No E005 of 2023) the current suit in Res judicata. This issue then calls for determination. What are the issues in this case. As earlier on indicated above, the Plaintiff seeks for orders of:
  - Adverse possession of Title No. L.R. No. Nya/Mawingo/Salient/29 measuring 7.6 Hectares or thereabout (ownership)
7. In Nyahururu ELC No. 179 of 2018 the Defendant herein sought for the following orders against the first Plaintiff herein;
  - i. Order of eviction against the Defendant and all his siblings residing on L.R. No. Nya/Mawingo/Salient/29.
  - ii. An order of Damages for lack of use of the land from the year 2007 up to date.
8. In the earlier case the orders made were that the Defence and counterclaim be dismissed and order of eviction were issued against the Defendant and all his siblings residing on parcel No. Nyandarua/Mawingo/Salient/29 within 2 months from the date of delivery of the judgment.



9. Likewise, the issue in this case was ownership of plot No. Nyandarua/ Mawingo/Salient/29 and where the order of eviction against the Defendant and his siblings was made the presupposition is that the land belongs to the Plaintiff therein who is in this case the Defendant. In the earlier case, the Honourable Judge noted a number of doubts in the Defendant's case as follows:-
  1. That whereas the sale agreement between Charles Muhuri Mureithi (late husband to the Plaintiff) and the late Kiritu Ngochi "is all that parcel of land known as Plot No 29 Muhingo Scheme in Olkalau salient measuring 5 Acres or thereabout which agreement was produced in Court , the Title to Nyandarua/Mawingo/Salient/29 availed to the Court by the Plaintiff and in the name of the late Charles Muhuri Mureithi issued on 27/3/1990 measuring approximately 7.6 Hectares .....there is nothing to show the agreement of sale, whether verbal or written was for the whole parcel of land....."
  2. ".....it is stated in the sale agreement relied on by the Defendant the purchase price was Kshs 40,000 which shall be paid to the vendor on execution hereof. There was no witness to that agreement save for the Advocate signing it. This Advocate is not a witness to this case and it is not stated why he could not be availed.
  3. The documents of Title were issued to Stanley Muriithi and he was allowed to pay in full.
  4. The Defendant did not give particulars of fraud and the allegation is not proved.
  5. There is no proof that the consent of the Land Control Board was ever given nor that the land was eventually transferred to the buyer at the settlement Fund Trustee's offices and therefore there is no basis laid by the Defendant for orders for specific performance.
  6. The occupation by the Defendant on the suit land Nyandarua/Mawingo/ Salient/29 is not proof of ownership.
  7. The Court was satisfied that if there was an agreement of sale, the same was not completed.
  8. The learned Trial Judge held that the most that the Defendant can do is claim a refund of any monies he may prove as having been paid by his father Kiritu Ngochi to Charles Mureithi (both deceased).
10. Consequently, the issue of ownership of the parcel of land L.R. No. Nyandarua/ Mawingo/Salient/29 was fully determined in favour of the Plaintiff (who is the current Defendant in the instant suit). The same was an issue in Nyahururu CMCC ELC No. 179 of 2018. The same resonates with the current suit. It was to do with the ownership of L.R. No. Nyandarua/Mawingo/Salient/29 only that the roles have now changed.
11. The Plaintiff in CMCC 179 of 2018 Nyahururu ELC now becomes the Defendant in the current suit and the 1<sup>st</sup> Defendant herein becomes the Plaintiff in the former suit.
12. As to Appeal, case No. Nyahururu ELCA 13 of 2023 formerly ELC No. E005 of 2023 Nyahururu, the Defendant herein has been able to produce a copy of the judgment of the same. The 1<sup>st</sup> Plaintiff herein was the Appellant and the Defendant the Respondent. The same was an Appeal against the Decree of CMCC No 179 of 2018, Nyahururu aforementioned the Appellant being Daniel Njuguna Kiritu. The Court held that the Appellant's claim was not proved to the required standard hence it was for dismissal and that since the Appellant did not plead the Defence of limitation against the Respondents neither did he plead adverse possession in his Defence and Counterclaim the trial Court cannot be faulted for dismissing the Appellant's counterclaim. The appeal was likewise dismissed by the Honourable Mr. Justice M. M. Angima.



13. The substantive law on Res Judicata is found in Section 7 of the *Civil Procedure Act* Cap 21 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. The Black’s law Dictionary 10<sup>th</sup> Edition defines “res judicata” as

An issue that has been definitely settled by judicial decision...the three essentials are (1) an earlier decision on the issue, (2) a final Judgment on the merits and (3) the involvement of same parties, or parties in privity with the original parties...”

15. A person may not commence more than one action in respect of the same or a substantially similar cause of action and the Court must attempt to resolve multiple actions involving a party and determine all matters in dispute in an action so as to avoid multiplicity of actions.

16. In order therefore to decide as to whether an issue in a subsequent Suit is res judicata, a Court of law should always look at the Decision claimed to have settled the issues in question and the entire Suit and the instant Suit to ascertain;

- i. what issues were really determined in the previous Suit;
- ii. whether they are the same in the subsequent Suit and were covered by the Decision.
- iii. whether the parties are the same or are litigating under the same Title and that the previous Suit was determined by a Court of competent jurisdiction.

17. In the case of *Christopher Kenyariri vs Salama Beach* (2017) eKLR, the Court clearly stated the ingredients to be satisfied when determining res judicata thus;

...

- a) The suit or issue was directly and substantially in issue in the former suit



- b) Former suit between same parties or parties under whom they or any of them claim
- c) Those parties are litigating under the same Title
- d) The issue was heard and finally determined.
- e) The Court was competent to try the subsequent suit in which the suit is raised.”

18. In *E.T vs Attorney General & Another* (2012) eKLR where it was held that:

“The Courts must always be vigilant to guard litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the Court . The test is whether the Plaintiff in the second suit is trying to bring before the Court in another way and in a form of a new cause of action which has been resolved by a Court of competent jurisdiction. In the case of *Omondi Vs National Bank of Kenya Limited and Others* (2001) EA 177 the Court held that, ‘parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit.’ In that case the Court quoted Kuloba J., in the case of *Njangu vs Wambugu and another Nairobi HCCC No.2340 of 1991* (unreported) where he stated, ‘If parties were allowed to go on litigating forever over the same issue with the same opponent before Court s of competent jurisdiction merely because he gives his case some cosmetic fact lift on every occasion he comes to Court , then I do not see the use of the doctrine of res judicata.....”

19. In the instant suit Explanation No. 4 of Section 7 of the *Civil Procedure Act* Cap 21 is quite applicable.

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.

20. The matters brought in the current suit ought to have been brought in the earlier suit i.e. *Nyahururu CMCC No. ELC 179 of 2018*.

Kuloba J., in the case of *Njangu vs Wambugu and another Nairobi HCCC No.2340 of 1991* (unreported), held that:

‘If parties were allowed to go on litigating forever over the same issue with the same opponent before Court s of competent jurisdiction merely because he gives his case some cosmetic face lift on every occasion he comes to Court , then I do not see the use of the doctrine of res judicata .....”

21. Equally, Hon. Justice G.V. Odunga in *Republic – Vs – Attorney General and Another Exparte James Alfred Koroso*, expressed himself thus on the issue of access to justice: -

“Access to justice cannot be said to have been ensured when persons in whose favour judgments have been decreed by Court s or tribunals of competent jurisdiction cannot enjoy the fruits of their judgments due to road blocks placed on their paths by actions or inactions of others.”

22. A Decision of the Court must be respected as fundamental to any civilised and just judicial system. Judicial determinations must be final, binding and conclusive.



23. There is injustice if a party is required to litigate afresh matters which have already been determined by the Court or ought to have been a subject of determination in an earlier suit.
24. A Decision of the Court, unless set aside or quashed in a manner provided for by the law, must be accepted as incontrovertibly correct. This principle would be substantially undermined if the Court were to revisit a case every time a party is dissatisfied with an Order and goes back for redetermination. Whether a claim is allowed or dismissed by consent, default or after a contested hearing, the need for finality is the same in each instance. There is need for finality. In the plea of res judicata only the actual record, that the issue has been decided upon, is relevant. Even if the reasoning given in the earlier Decision was wrong, the matter cannot be re-opened by way of a similar Suit. If it were not so, there would be no end to litigation.
25. Article 159 (2) (b) of *the Constitution* of Kenya, 2010 provides that justice ought not to be delayed. To take a successful litigant into a circular frolic expedition, when sufficient time had been availed to the Applicant to prepare for and prosecute his case to finality would be to turn the legal process into a theatrical absurdity.
26. I therefore uphold the Defendant's Preliminary Objection herein on the basis that pursuant to sections 7 of the *Civil Procedure Act* Cap 21 this Court lacks jurisdiction to deal with a matter which had already been decided by a competent
27. Court earlier. This suit is therefore not only res judicata but also an abuse of the Court process. The same is hereby dismissed with costs to the Defendant.

**DATED AND DELIVERED AT NYANDARUA THIS 11TH DAY OF JUNE, 2025.**

**MUGO KAMAU**

**JUDGE**

In the presence of: -

Court Assistant –Samson.

Applicant's Counsel -Mr. Gakenia.

Respondents' Counsel - Mr. Maina.

