



**Mwirichia v Muraa (Environment and Land Appeal E054 of 2024)  
[2025] KEELC 4425 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4425 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E054 OF 2024**

**JO MBOYA, J**

**JUNE 5, 2025**

**BETWEEN**

**WILSON KIRIMI MWIRICHIA ..... APPELLANT**

**AND**

**STANLEY GITONGA MURAA ..... RESPONDENT**

**JUDGMENT**

1. The suit [the Original Suit] which was filed before the subordinate court culminating in the present appeal represents a classic abuse of the due process of the court. Quite clearly the original suit ought not to have been filed.
2. The Concept of abuse of the due process of the court was aptly captured in the case of Satya Bharna vs the Director of Public Prosecutions [2018] eKLR where the court [per Mativo J, as he then was] stated that;

“26. It’s settled law that a litigant has no right to pursue pari-pasua two processes which will have the same effect in two courts either at the same time or at different times with a view of obtaining victory in one of the process or in both. Litigation is not a game of chess where players outsmart themselves by dexterity of purpose and traps. On the contrary, litigation is a contest by judicial process where the parties place on the table of justice their different position clearly, plainly and without tricks.

27. It is not open for the applicant herein to institute these Judicial Review proceedings after losing the Petition challenging the same criminal trial. The two processes are in law not available to the applicant. He ought to have appealed against the above-mentioned decision if he was dissatisfied. The Applicant cannot lawfully file this Judicial Review proceedings and seek



similar reliefs relying on substantially the same grounds as the Petition referred to above. The pursuit of the second process, that is this Judicial Review Application constitutes and amounts to abuse of court/legal process.”[17]

28. Multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse.[18] The abuse lies in the multiplicity and manner of the exercise of the right rather than exercise of right per se. The abuse consists in the intention, purpose and aim of person exercising the right, to harass, irritate, and annoy the adversary and interfere with the administration of justice.[19]I find no difficulty in concluding that this Judicial Review Application is based on similar grounds as the Petition referred to above.”

3. Back to the facts of the matter. The Appellant herein [who was the Plaintiff in the original suit] approached the court vide Plaint dated 1<sup>st</sup> of February of 2023; and wherein same [sic] contended that he was the lawful and legitimate owner of LR number Abothuguchi/Mariene/1XX3 [herein referred to as the Suit Property.] Furthermore, the Appellant sought for an order of eviction as against the respondent herein who was the defendant in the same suit.
4. Even though the appellant approached the trial court vide the Plaint under reference and seeking orders of injunction and eviction, the appellant herein concealed and, or failed to disclose that a similar dispute between himself and the respondent had been canvassed vide Githongo SPMCC ELC No. 31 of 2015; and wherein the court had found and held that the suit property lawfully belonged to the current Respondent. Moreover, the appellant also concealed the fact that arising from the judgment and decree, same [Appellant] had been evicted from the suit property.
5. The Respondent herein duly entered appearance and filed a statement of defence and counterclaim dated the 1<sup>st</sup> of April 2023; and wherein same sought the cancellation of the certificate of title that had been procured and obtained by the appellant ex-post the delivery of the judgment in ELC 31 of 2015.
6. The suit before the lower court was heard and disposed of vide judgement rendered on the 26<sup>th</sup> of July 2024; whereupon the learned trial magistrate found and held that the suit by the appellant was barred [prohibited] by the doctrine of res judicata and by extension section 7 of the *Civil Procedure Act*, chapter 21 laws of Kenya. Furthermore, the magistrate also found and held that the suit constituted an abuse of due process of the court.
7. Aggrieved by and dissatisfied with the judgement and decree of the trial court, the appellant approached this court vide Memorandum of Appeal dated the 5<sup>th</sup> of August 2024 and wherein the Appellant has highlighted the following grounds:
  - a. That the learned trial magistrate erred in law and fact in failing to appreciate the law that facts of fraud were not proved sufficiently as per the law.
  - b. That the learned trial magistrate erred in law and facts in holding that the matter was res-judicata while the cause of action was separate and distinct from the previous Githongo ELC NO. 31 OF 2015.
  - c. That the learned trial magistrate erred in law and fact in failing to find that, sale of the land contract was invaded by operation of law as the Advocate drew the contract was not an Advocate within the meaning of Section 9 of the *Advocates Act* Cap 16 Laws of Kenya.



- d. That the learned trial magistrate erred in law and fact in failing to hold that the cause of action in Githongo ELC CASE NO. 31 OF 2015 stopped and another cause begun when a held certificate of title was issued in favour of the appellant.
  - e. That the learned trial magistrate erred in law and fact in failing to hold that res judicata plan can be successfully pleaded only where the court of competent is judicial mind and after arguments and consideration comes to a final decision on a contested matter-in this case a cause of action-fraud.
  - f. That the learned trial magistrate erred in law and fact in failing to find that since there was an issuance of certificate of title to the plaintiff the circumstances under the law to revoke a valid title were not proved to the required standard hence the order to cancel the title would not suffice.
  - g. That the learned trial magistrate decision is against the law and evidence hence arrived at erroneous decision.
  - h. That the learned trial magistrate erred in law and facts in failing to consider the evidence of the appellant in validity of the title.
8. The Appeal came up for direction[s] on the 27<sup>th</sup> February 2025 whereupon the parties confirmed that the record of appeal filed was compliant. Furthermore, the advocates covenanted to dispose of the appeal by way of written submissions. To this end, the court proceeded to and circumscribed the timeline[s] for filing and exchanging written submissions.
  9. The written submissions filed by and on behalf of the parties, form part of the record of the court.
  10. In particular, the Appellant herein has raised and highlighted three [3] salient issues at the foot of his submissions. The issues highlighted by the appellant are namely; the trial erred in finding and holding that the suit before her was prohibited by the doctrine of res judicata; the trial Court failed to appreciate that a new cause of action had accrued after the appellant herein had procured a certificate of title in respect of the suit property and thus the dispute before her [Magistrate] was outside the purview of the doctrine of res judicata; and thirdly, that the learned trial magistrate erred in law in not finding and holding that the sale agreement that birthed the certificate of title in favour of the respondent was illegal, void, and invalid in so far as same [sale agreement] was crafted by an unqualified advocate.
  11. The Respondent filed written submissions and same highlighted two [2] key issues namely; the suit by the applicant replicates the dispute/cause of action that was disposed of vide Githungu SPMCC NO. 31 OF 2015 and hence the suit was res judicata; and the certificate of title that was procured by the appellant on the face of the previous judgement was illegal, unlawful, and thus invalid.
  12. Furthermore, the respondent invited the Honourable court to find and hold that the Judgement by the trial court was well reasoned and well grounded.
  13. Having appraised the pleadings that were filed before the subordinate court, having reviewed the record of appeal; having taken into account the evidence tendered [both oral and documentary] and having considered the written submissions filed on behalf of the parties, I come to the conclusion that the Appeal before beforehand turns on two [2] key issues namely; whether the suit filed before the trial court was barred by the doctrine of res judicata or otherwise; and whether the said original suit constituted an abuse of the due process of the court or otherwise.



14. Before venturing to interrogate and address the pertinent [key] issues that have been highlighted in the preceding paragraphs, it is imperative to state and observe that this being a first appeal this court is tasked with the mandate and jurisdiction to undertake exhaustive review, scrutiny, appraisal and analysis of the entirety of the evidence that was placed before the trial court and thereafter to arrive at an independent conclusion.
15. Suffice it to state that the court is not bound by the factual findings and conclusions that were arrived at by the trial court. For good measure, this court is at liberty to depart from the factual findings and conclusions arrived at by the trial court, where it is shown that the conclusions of the trial court were arrived at on the basis of no evidence; based on a misapprehension of the evidence tendered; perverse to the evidence on record; or better still, where it is demonstrably shown that the trial court has committed an error of principle, which vitiates the Judgment.
16. The jurisdictional remit of the first appellate court while entertaining and adjudicating upon an appeal [first Appeal] has been the subject of various court decisions. Recently, the Court of Appeal in the case of Kenya Urban Roads Authority & another v Belgo Holdings Limited (Civil Appeal E011 of 2021) [2025] KECA 764 (KLR) (9 May 2025) (Judgment) stated thus;

“

“ 37. We have considered the appeal and this being a first appeal, we are under a duty to subject the entire evidence and the judgment to a fresh and exhaustive examination with a view to reaching our own conclusions in the matter. In carrying out this duty, we have to remember that we had no opportunity of seeing and hearing the witnesses who testified during the trial and to make an allowance for the same. We have also to remember that it is a big thing to overturn the findings of a trial court which has had the singular opportunity of reaching its conclusions based on a combination of the evidence adduced and observation by the court of the demeanor of witnesses. In a nutshell, a first appellate court must proceed with caution in deciding whether to interfere with the findings of a trial court, but of course where such findings are not supported by the evidence on record or where they are founded on a misapprehension of the law, the axe must fall on the impugned judgement. This position is anchored in section 78 of the *Civil Procedure Act*, which requires a first appellate court to re-evaluate, reassess and re-analyze the extracts of the record and draw its own conclusions. These provisions have been underscored in numerous decisions of the Superior Courts among them Peters v Sunday Post Limited [1958] EA 424, where the predecessor to this Court expressed itself as follows:

“Apart from the classes of case in which the powers of the Court of Appeal are limited to deciding a question of law an appellate court has jurisdiction to review the record of the evidence in order to determine whether the conclusion originally reached upon that evidence should stand; but this jurisdiction has to be exercised with caution. If there is no evidence to support a particular conclusion (and this really is a question of law) the appellate court will not hesitate so to decide. But if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight.



This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go wrong on a question of fact, but it is a cogent circumstances that a judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to the courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given... Where a question of fact has been tried by a judge without a jury, and there is no question of misdirection of himself, an appellate court which is disposed to come to a different conclusion on the printed evidence, should not do so unless it is satisfied that any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses, could not be sufficient to explain or justify the trial Judge's conclusion.

The appellate court may take the view that, without having seen or heard the witnesses it is not in a position to come to any satisfactory conclusion on the printed evidence. The appellate court, either because the reasons given by the trial Judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court. It is obvious that the value and importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, the individual case in question... It not infrequently happens that a decision either way may seem equally open and when this is so, then the decision of the trial Judge who has enjoyed the advantages not available to the appellate court, becomes of paramount importance and ought not be disturbed.

This is not an abrogation of the powers of a Court of Appeal on questions of fact. The judgement of the trial Judge on the facts may be demonstrated on the printed evidence to be affected by material inconsistencies and inaccuracies, or he may be shown to have failed to appreciate the weight or bearing of circumstances admitted or proved or otherwise to have gone plainly wrong.”

17. Bearing in mind the dicta captured and highlighted by the Court of Appeal in the decision [supra], I am now disposed to revert to and consider the thematic issues, which had been highlighted elsewhere herein before. Suffice it to state that I shall address the issues sequentially.
18. Regarding the first issue, namely; whether the suit before the trial court was prohibited by the doctrine of res judicata and by extension the provisions of section 7 of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, it is worth to recall and reiterate that the appellant herein had been sued by the respondent in a previous suit namely; Githongo SPM ELC NO. 31 OF 2015 and wherein the current respondent sought various reliefs including declaration that same [ respondent] was the lawful proprietor of the suit property. Furthermore, the respondent also sought an order for eviction as against the appellant.
19. Suffice it to state that the Appellant herein duly entered appearance and filed a statement of defence and counterclaim and wherein same [appellant] sought various reliefs including an order of permanent injunction to restrain the respondent from evicting the appellant and his family members from the suit property and cancellation of the respondent's certificate of title.
20. The said suit [Githongo ELC 31 OF 2015] was heard and disposed of vide judgement rendered on the 4<sup>th</sup> of May 2020; whereupon the trial court found and held that the respondent herein was/is the lawful owner of the suit property. Moreover, the learned trial magistrate proceeded to and issued an eviction order against the appellant herein.



21. It is also worthy to note that subsequent to the delivery of the judgement under the reference, the appellant herein was duly and lawfully evicted from the suit property. This set of facts are [were] well within the knowledge of the appellant. For good measure, the appellant herein went back to the said court and sought to pay the costs vide instalments. [See the application dated 17<sup>th</sup> Jan 2024 at pages 54-56 of the record of appeal.]
22. Despite knowing that the dispute touching on and or concerning ownership to, title and occupation of the suit property had been determined by a court of competent jurisdiction, the appellant stealthily filed the original suit namely ELC E002 of 2023 and sought similar orders like the ones that underpinned his counterclaim in the previous suit.
23. Unrelentingly, the appellant herein was keen to persuade the court to grant him the reliefs sought and more particularly, to declare that he [the appellant] is the lawful owner of the suit property.
24. Be that as it may, it is not lost on this court that the appellant was well aware that a similar court [Magistrate Court] had declared that the suit property belongs to the respondent. Moreover, the appellant was also privy to and knowledgeable of the fact that same had been evicted from the suit property.
25. Other than the foregoing, it is also worthy to recall and underscore that the appellant herein neither appealed nor challenged the judgement that was issued vide Githongo SPM ELC NO. 31 OF 2015. In this regard, the judgement and decree in the said matter remain[s] in existence. Notably, the said judgement is a judgement in rem. [See section 44 of the Evidence Act Chapter 80 Laws of Kenya].
26. Based on the foregoing background facts, the question that does arise and which this court must grapple with is whether the appellant could revert to the Chief's Magistrate court vide ELC E002 of 2023 and seek to procure orders of declaration of ownership; permanent injunction and eviction as pertains to the suit property.
27. To my mind, the issues that underpin and colour the subsequent suit are the same issues that had been previously raised and canvassed before a court of competent jurisdiction. For good measure, these are the very same issues that were canvassed and disposed of vide Githongo SPM ELC NO. 31 OF 2015. Simply put, the previous Court engaged with the issue[s] of ownership of the Suit Property.
28. Moreover, it is not lost on this court that the previous suit was between the same parties herein. The suit property is the same suit property. Quite clearly, the appellant herein cannot by any stretch of imagination seek to perform cosmetic/ surgical facelift on the subsequent suit in an endeavour to escape the snares of the doctrine of res judicata.
29. I beg to underscore that the issues that were being raised and canvassed by the appellant in the subsequent were clearly barred by both limb[s] of the doctrine of res judicata. To this end, the provisions of section 7 of the Civil Procedure Act, Chapter 21, Laws of Kenya, apply.
30. The scope and extent of the doctrine of res judicata has been elaborated in a plethora of judicial pronouncements. In the case of Kenya Commercial Bank Limited v Benjoh Amalgamated Limited [2017] KECA 98 (KLR) the Court of Appeal expounded on the Doctrine of Res Judicata, including the limb of constructive res judicata in the following manner;

“Cognizant of the above principles, the courts called upon to decide suits or issues previously canvassed or which ought to have been raised and canvassed in the previous suits have not shied away from invoking the doctrine as a bar to further suits. As was stated in Henderson v Henderson (1843) 67 ER 313, res judicata applies not only to points upon which the



court was actually required by parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might have brought forward at the time. In the case of *Mburu Kinyua v Gachini Tutu* (1978) KLR 69 Madan, J. Quoting with approval Wilgram V.C. in *Henderson v Henderson* (supra) stated:

“Where a given matter becomes the subject of litigation in, and of adjudication by a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case and will not (except in special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce judgment but to every point which properly belonged to the subject of litigation, and which parties exercising reasonable diligence, might have brought forward at the time” [emphasis added].”

31. Moreover, the ingredients that underpin the doctrine of res judicata and the legal implications of the said doctrine were also re-visited by the Court of Appeal in the case of *Independent Electoral & Boundaries Commission v Maina Kiai & 5 Others* [2017] KECA 477 (KLR) where the court aptly stated that;

“Thus, for the bar of res judicata to be effectively raised and upheld on account of a former suit, the following elements must all 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) That 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 formerly heard and determined the issue was competent to try the subsequent suit or the suit in which the issue is raised.

The learned Judges were fully aware and applied their minds to these elements when, applying this Court’s decision in *Uhuru Highway Development Ltd v Central Bank of Kenya* [1999] eKLR they rendered the elements as;

- “(a) the former judgment or order must be final;
- (b) the judgment or order must be on merits;
  - (c) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and
  - (d) there must be between the first and the second action identity of parties, of subject matter and cause of action.”

The rule or doctrine of res judicata serves the salutary aim of bringing finality to litigation and affords parties closure and respite from the spectre of being vexed, haunted and hounded by issues and suits that have already been determined by a competent court. It is designed



as a pragmatic and common-sensical protection against wastage of time and resources in an endless round of litigation at the behest of intrepid pleaders hoping, by a multiplicity of suits and fora, to obtain at last, outcomes favourable to themselves. Without it, there would be no end to litigation, and the judicial process would be rendered a noisome nuisance and brought to disrepute and calumny. The foundations of res judicata thus rest in the public interest for swift, sure and certain justice.”

32. The Supreme Court of Kenya [the apex Court] has similarly had an occasion to address the Doctrine of Res Judicata and the legal implications attendant thereto. In the case of John Florence Maritime Services Limited & another v Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment) the court stated as hereunder;

“

“59. That courts have to be vigilant against the drafting of pleadings in such manner as to obviate the res judicata principle was judicially remarked in ET v Attorney-General & another, [2012] eKLR, thus:

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 v 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 v 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 courts 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.....”

59. For res judicata to be invoked in a civil matter the following elements must be demonstrated:

- a) There is a former judgment or order which was final;
- b) The judgment or order was on merit;
- c) The judgment or order was rendered by a court having jurisdiction over the subject matter and the parties; and
- d) There must be between the first and the second action identical parties, subject matter and cause of action.

(See Uhuru Highway Developers Limited v Central Bank of Kenya & others [1999] eKLR and See the decision of the Court of Appeal in Nicholas Njeru v Attorney General & 8 others Civil Appeal 110 of 2011 (2013) eKLR).”

33. The mere fact that the Appellant herein dis-ingeniously proceeded to and procured a certificate of title over the suit property in connivance with one of the judicial officers of the court in terms of the order at page 40 of the record of appeal does not take the dispute beforehand outside the purview of the doctrine of res judicata.



34. Before concluding on this issue, there is one perplexing matter that would require serious investigation by the office of the Chief Justice, the Office of Judiciary Ombudsman, and by extension, the Judicial Service Commission [JSC] as pertains to how the judicial officer namely; Hon. JM Njoroge [Chief Magistrate] was able to generate the order issued on the 7<sup>th</sup> Dec 2022 purporting to adopt and enforce a decree which was sic issued on the 26<sup>th</sup> Nov 2010 despite the clear provisions of Section 4(4) of the Limitation of Actions Act, Chapter 22 Laws of Kenya, which stipulates the lifespan of a judgement/decree.
35. I wish to say no more on the issue.
36. Regarding the second issue, namely; whether the filing of the original suit on the face of the judgement which had hitherto been issued by a court of competent of jurisdiction constituted an abuse of due process of the court, it is worthy to re-visit the words of Justice Mativo J [ as he then was] in the case of Satya Bharma vs the Director of Public Prosecutions [Supra].
37. Additionally, it is also important to discern what the concept of abuse of the due process of the court denotes. To this end, I can do no better than to cite and reference the holding of the Court of Appeal in the case of Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others [2009] KECA 453 (KLR) where the Court stated as hereunder;

“To re-inforce the point, abuse of process has been defined in WIKIPEDIA, the free encyclopedia:

“The person who abuses process is interested only in accomplishing some improper purpose that is collateral to the proper object of the process, and that offends justice.”

In *Beinosi v Wyley* 1973 SA 721 [SCA] at page 734F-G a South African case heard by the Appeal Court of South Africa, Mohomad CJ, set out the applicable legal principle as follows: -

“What does constitute an abuse of process of the court is a matter which needs to be determined by the circumstances of each case. There can be no all-encompassing definition of the concept of “abuse of process.” It can be said in general terms, however, that an abuse of process takes place where the proceedings permitted by the rules of court to facilitate the pursuit of the truth are used for purposes extraneous, to that objective.”

Again, the Court of Appeal in Abuja, Nigeria in the case of *Attahiro v Bagudo* 1998 3 NWLL pt 545 page 656, stated that the term abuse of court process has the same meaning as abuse of judicial process. The employment of judicial process is regarded as an abuse when a party uses the judicial process to the irritation and annoyance of his opponent and the efficient and effective administration of justice. It is a term generally applied to a proceeding which is wanting in bona fides and is frivolous, vexatious or oppressive. The term abuse of process has an element of malice in it.

In the Nigerian Case of *Karibu-whyte J Sc in Sarak v Kotoye* (1992) 9 NWLR 9pt 264) 156 at 188-189 (e) the concept of abuse of judicial process was defined: -

“The concept of abuse of judicial process is imprecise, it implies circumstances and situations of infinite variety and conditions. It’s one feature is the improper use of the judicial powers by a party in litigation to interfere with the administration of justice ...”

38. The Court ventured forward and distilled various perspectives or nuances that underpin the concept of abuse of the due process of the court.



39. For coherence, the court highlighted the following;

“

- “(a) Instituting multiplicity of actions on the same subject matter against the same opponent on the same issues or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.
- (b) Instituting different actions between the same parties simultaneously in different courts even though on different grounds.
- (c) Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent’s notice.
- (d) (sic meaning not clear))
- (e) Where there is no [sic] loti of law supporting a Court process or where it is premised on frivolity or recklessness.”

We are of the view that the circumstances of the case before us, falls squarely in illustration (e) above, in that there was no valid law supporting the process followed by the respondent.”

40. The concept of abuse of the due process of the court has also received pronouncement by the Supreme Court of Kenya [ the apex court]. In the case of Rutongot Farm Ltd v Kenya Forest Service & 3 others (Petition 2 of 2016) [2018] KESC 27 (KLR) (19 September 2018) (Ruling) the court observed that;

“

- “27. In Kenya Section of the International Commission of Jurists v Attorney General & 2 Others Criminal Appeal No. 1 of 2012; [2012] eKLR, this Court, on the issue of abuse of the process of the Court, held inter alia:  
“The concept of “abuse of the process of the Court” bears no fixed meaning, but has to do with the motives behind the guilty party’s actions; and with a perceived attempt to manoeuvre the Court’s jurisdiction in a manner incompatible with the goals of justice. The bottom line in a case of abuse of Court process is that, it “appears so hopeless that it plainly and obviously discloses no reasonable cause of action and is so weak to be beyond redemption...” ....Beyond that threshold, lies an unlimited range of conduct by a party that may more clearly point to an instance of abuse of Court process.”

41. Back to the matter at hand. The Appellant herein knew and was knowledgeable of the fact that the dispute pertaining to and concerning ownership of and title to the suit property had been determined vide GITHONGO SPM ELC 31 OF 2015. Furthermore, the appellant knew that the judgement and decree thereunder had neither been appealed against nor impeached.

42. Moreover, the appellant herein was alive to the fact that same [appellant] had been evicted from the suit property on the basis of the same judgment and decree. Nevertheless, the appellant still had the temerity to approach the court of law seeking to procure a separate decision from the one issued in the previous case.

43. To my mind, the appellant herein was imagining that same would overturn the decision of the magistrates’ court by obtaining a separate and distinct decision albeit from the court of coordinate jurisdiction. Quite clearly, the appellant was misguided.



44. Further and in any event, by filing the subsequent suit, the appellant herein was actually playing the game of poker or better still lottery with the due process of the court. Suffice it to state that the appellant was indeed abusing the due process of the court.
45. Such conduct must not be countenanced by a conscientious court of law. In any event, there is no gainsaying that the appellant and by extension his legal counsel are bound by provisions of sections 1A and 1B of the *Civil Procedure Act*, Chapter 21 Laws of Kenya, which commands the Parties and their Legal Counsel to assist the court to achieve its mandate.
46. Going forward, it is my hope and it remains my pious hope that litigants and their legal counsel shall deploy the court process for purposes of having genuine disputes resolved. Certainly, not for collateral purpose[s].

**Final Disposition:**

47. Flowing from the discussion highlighted in the body of the judgement, there is no gainsaying that the learned magistrate correctly appraised and apprehended both the legal and factual issues that were in dispute. Furthermore, it is imperative to observe that the learned magistrate applied his mind to the correct legal principle[s] and appropriately deployed the same in determining the subject dispute.
48. Like the trial magistrate, I come to the same conclusion that the suit beforehand was indeed barred by the doctrine of *res judicata*. Similarly, I find and hold that this suit and by extension the appeal constitute an abuse of the due process of the court.
49. In the premises, the final orders that commend themselves to the court are as hereunder;
  - I. The Appeal be and is hereby dismissed.
  - II. Cost of the Appeal be and are hereby awarded to the Respondent.
  - III. The Judgment of the subordinate court [Chief Magistrate] be and is hereby affirmed.
50. It is so ordered.

**DATED, SIGNED AND DELIVERED AT MERU THIS**

**5<sup>TH</sup> DAY OF JUNE 2025.**

**OGUTTU MBOYA, FCI Arb, CPM [MTI-EA].**

**JUDGE.**

**In the presence of:**

Mutuma – Court Assistant.

Mr. Joshua Mwiti for the Appellant.

Miss. Mugo Holding Brief for Mr. Kiogora Ariithi for the Respondents.

Page 10 of 10

