



**Cheruiyot & 447 others v Angata Bargoi Farmers Coperative Society & 2 others (Enviromental and Land Originating Summons E017 of 2024) [2025] KEELC 5009 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5009 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E017 OF 2024  
MN MWANYALE, J  
JULY 3, 2025**

**BETWEEN**

**SAMUEL KIPKOROS CHERUIYOT ..... 1<sup>ST</sup> PLAINTIFF**

**PHILIP SINGEI ..... 2<sup>ND</sup> PLAINTIFF**

**JULIUS KIPNGENTO KIRUI & 445 OTHERS & 445 OTHERS & 445 OTHERS  
& 445 OTHERS & 445 OTHERS & 445 OTHERS ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ANGATA BARGOI FARMERS COPERATIVE SOCIETY ..... 1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR, TRANSMARA ..... 2<sup>ND</sup> RESPONDENT**

**THE ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. On 27<sup>th</sup> February 2025, the court delivered its Ruling on a Notice of Preliminary Objection dated 17.01.2025 filed by the 1<sup>st</sup> Respondent in respect of this suit as well as the Notice of Motion dated 25.11.2024, which motion seeks inhibition orders against registration of any transfers, lease, charge or any other instruments in respect of parcel No. L.R No. Transmara/Moyoi/2 measuring about 2561.44 Ha pending determination of the suit.
2. The grounds in support of the Notice of Motion application dated 25.11.2024 being interalia that; -
  - i. The Plaintiffs' claim adverse possession over Transmara/Moyoi/2 having being in open, notorious use of the property; exclusively for a period of more than 12 years.
  - ii. That the Moyoi Area had been declared an Adjudication Section in 1976, and the 1<sup>st</sup> Defendant/Respondent Angata Baragoi Farmers Co-operative Society registered as proprietor thereof on 26.05.2001.



- iii. The Plaintiffs have not been evicted nor taken to court in relation to their occupation of said parcel No. L.R No. Transmara/Moyoi/2 hence this suit for adverse possession.
3. While striking out the said Preliminary Objection I observed that the same was not premised on pure points of law as issue of Resjudicata needed to be ascertained by way of evidence and/or facts.
4. I therefore reserved the issue of Resjudicata to be treated as a response to the application dated 25.11.2024 and on the same date, I issued directions for the parties to file supplementary submissions if they needed to in respect of the application and also issued status quo orders allowing the plaintiffs occupation of the suit property and not to be evicted and the suit property not to be transferred till determination of the application vide this Ruling.
5. In their submissions in respect of the application the Applicants have framed and submitted on
  - i. Whether an order of inhibition should be issued as prayed,
  - ii. Whether the issue of Resjudicata should be allowed,
  - iii. Who bears the costs of the application; in that order.
6. While the Respondents, framed and submitted on their issues for determination in the following order
  - i. whether an order of inhibition should be issued as prayed.
  - ii. Whether the issue of Resjudicata should be allowed.
7. I have deliberately set out how the parties framed their issues for determination, both starting their submissions the issue of the merits of the application, then secondly the issue of Resjudicata, and lastly the issue of costs.
8. The court frames the same issues for determination as framed by the parties albeit in a different order. Noting that the since of Resjudicata is a jurisdictional issue, the same ought to be heard and determined first before the issue of merits of the application, and lastly the issue of costs.

### **Issues for determination**

9. Consequently, the issues for determination in this application will
  - i. Firstly, be whether or not this suit is Resjudicata.
  - ii. Secondly whether the application is merited.
  - iii. Thirdly, what reliefs ought to issue.
  - iv. Fourthly, who bears the costs of the Application.

### **Analysis and Determination**

10. At paragraph 14 and 15 of the Applicants submission, the Applicants concede of the existence of Narok ELC No. 370/2017, and that a judgment therein was pronounced. There is indeed a former suit being Narok ELC No. 370/2017 which is formerly Kisii ELC No. 601/2016 (hereinafter referred to as 'the previous suit') in which a judgment was delivered on 23<sup>rd</sup> September 2020; this issue is agreed by both parties in this application.
11. The parties have divergent views on whether or not despite the existence of the previous suit and judgment thereof, this suit is rendered Resjudicata.



12. It is the Applicants position that the previous suit sought for declarations that certain titles to wit Angata Baragoi/3, 157, 185, 189, 978-988, 991, 992, 993-999, 1000-2049, 1050-1057, 1061, 1068, 1076, 1077 had encroached upon and overlapped land parcel Transmara/Moyoi/2 and hence the judgment was in respect of the overlap of the adjudication process at Moyoi Adjudication Section and not a claim of adverse possession.
13. It is the Applicants further position that their issue herein is purely an adverse possession claim over Transmara/Moyoi/2 hence the issues herein and in the previous suit were different thus this suit is not Resjudicata.
14. The Respondent's position on the hand, is that the suit property in both suits is Transmara/Moyoi/2 and that the judgment in the previous suit determined the issue of the adverse possession claim; hence rendering the suit Resjudicata.
15. I have perused the judgment in the previous suit, paragraph 1 thereof, indicates as follows
  - “By a Plaint dated 2<sup>nd</sup> September 2011 and amended on 6<sup>th</sup> August 2013 the Plaintiff sought for the following orders
    - i. A declaration that the titles in respect of Land parcels No. Angata/Baragoi/3, 157, 185, 189, 978-988, 991, 992, 993-999, 1000-1049,1050-1057, 1061, 1068, 1076, 1077 respectively are encroached upon and overlapped land parcel Transmara/Moyoi/2.
    - ii. A declaration that title in respect of Angata/Baragoi/3, 157, 185, 189, 978-988, 990, 1057, 1061, 1068, 1076 and 1077 were issued in error as the same overlapped on Transmara/Moyoi/2.
    - iii. An order of cancellation, nullification and rectification of the title aforementioned.
    - iv. An order of eviction directed against the defendants and/or their agents from Transmara/Moyoi/2.
    - v. A permanent injunction, restraining the defendants, their agents, or anyone claiming the land parcels from entering, trespassing into, building structures.
    - vi. General damages for trespass and mesne profits.
    - vii. Costs of the suit.
    - viii. Any further relief as the Honourable court may deed fit and just to grant.”
16. Those were the reliefs sought in the previous suit, the Applicants Advocates only mentioned prayer number 1 and left out the other reliefs.
17. The import of paragraph 1 of the judgment in the previous suit is that the previous suit was dated and filed on 2<sup>nd</sup> September 2011 and that the said suit sought for eviction of the defendants, therein.
18. The court after hearing the above suit found in favour of the plaintiff issued prayers 1 and 2 and ordered eviction of the Defendants within 60 days of the judgment, thus settling the issues of ownership and occupation of Transmara/Moyoi/2.



19. In the grounds in support of the application, the Applicant stated that the Defendant was registered on 26<sup>th</sup> May 2001 as proprietor of Transmara/Moyoi/2, and the Applicant further stated that there was no suit for eviction, yet the previous suit filed in 2011, sought for eviction of the Defendants.

1. The Doctrine of Resjudicata is founded on Section 7 of the Civil Procedure Act, and in the Supreme Court of Kenya decision in John Maritime Florence Services Limited and Another Vs. Cabinet Secretary and Transport and Infrastructure 2021 (KESC) 39 where the court held interalia; -

“ 59. For Resjudicata to be invoked in a civil matter the following elements must be demonstrated;

- a. There is a former judgment or order which is 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 second action identical parties, subject matter and cause of action....”

20. The court shall analyse whether the elements of Resjudicata have been proven in this suit;

#### **A. On Identical parties**

21. From the judgment in the previous suit, it is evident that the parties herein and the previous suit, are the same, the plaintiff herein being some of the Defendants in the previous suit, and the 1<sup>st</sup> Defendant herein being the plaintiff in the previous suit.

22. Indeed, addition and/or substitution of parties and/or pleading a new cause of action does not out the doctrine of Resjudicata. In Omondi Vs. National Bank of Kenya, the court held interalia “parties cannot evade the doctrine of Resjudicata by merely adding other parties on and/or a new cause of action in a subsequent suit”. The court thus finds the parties to be same.

#### **B. Are the issues in the suits similar?**

23. The Applicant submit that the issue in this suit is a claim of adverse possession which is different from the claim of overlapping titles of Transmara/Moyoi/2. The Respondent submits that the issues in the two suits are the same.

24. It is the court’s finding that the issue that was substantially in issue in the previous suit was the issue of ownership and occupation of Transmara/Moyoi/2, advanced by the plaintiffs therein by way of the claim seeking cancellation of the overlapping titles over Transmara/Moyoi/2, and eviction of the Defendants, therein.

25. While the issue substantially in issue herein is equally the claim of ownership and occupation of Transmara/Moyoi/2 advanced by way of a claim of adverse possession, by the Plaintiffs/Applicants the court thus finds the issues of ownership and occupation of Transmara/Moyoi/2 are the same in the two suits.



### **C. On Subject Matter**

26. It is common ground between the parties that the subject matter is equally the same, to wit, Transmara/Moyoi/2 in this suit while the subject matter in the previous suit was equally Transmara/Moyoi/2. The court finds that the subject matter is the same.
27. There is thus a former judgment involving the same parties, subject matter and the same issues, as is evident from the analysis in the preceding paragraphs.
28. It is also not in doubt that the judgment in the former suit, was final, subject to the right of appeal, and was delivered on merits by the ELC Court, a court vested with jurisdiction.
29. All the elements of Resjudicata as stated in Section 7 and in the *John Maritime Florence decision*, have been proven and the court thus finds that this suit is therefore Resjudicata and having found so, will not go into the merits of the application.
30. The upshot is that the suit having been found Resjudicata the same is struck out, and the application having been founded on a suit that is Resjudicata is hereby dismissed.
31. Costs of the application and the suit are awarded to 1<sup>st</sup> Respondents, while the status quo orders issued on 27.02.2025 are hereby vacated.

**DATED AT KILGORIS THIS 3<sup>RD</sup> DAY OF JULY, 2025.**

**HON. M.N MWANYALE**

**JUDGE**

In the presence of

CA – Emmanuel/Sylvia/Sandra

Ms. Akinyi h/b for M. Saika for Respondent

Ms. Kirui h/b for Mr. Kipkoech for the Plaintiff/Applicant

