



**Gatere & 2 others (As Trustees of Kaga Self Help Water Project) v Njue t/a Victorious Gospel Ministry Ebeneza Sanctuary & another; Land Registrar, Nyeri & 2 others (Interested Parties) (Environment and Land Case E006 of 2023) [2025] KEELC 5066 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5066 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND CASE E006 OF 2023**

**JO OLOLA, J  
JULY 4, 2025**

**BETWEEN**

**CORNELIUS M GATERE ..... 1<sup>ST</sup> PLAINTIFF  
EIZABETH WANGUI KARIUNGI ..... 2<sup>ND</sup> PLAINTIFF  
GERALD GICHOGO MUTUGI ..... 3<sup>RD</sup> PLAINTIFF  
AS TRUSTEES OF KAGA SELF HELP WATER PROJECT**

**AND**

**JOHN NJUE T/A VICTORIOUS GOSPEL MINISTRY EBENEZA  
SANCTUARY ..... 1<sup>ST</sup> DEFENDANT  
CHARLES MUCHEMI IKINYA ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**LAND REGISTRAR, NYERI ..... INTERESTED PARTY  
ETHICS AND ANTI-CORRUPTION COMMISSION ..... INTERESTED PARTY  
NATIONAL LANDS COMMISSION ..... INTERESTED PARTY**

**RULING**

1. By the Notice of Motion dated 2<sup>nd</sup> October, 2023, the Plaintiffs suing as the Trustees of Kaga Self Help Water Project pray for an order that pending the hearing and determination of this suit, this Honourable Court be pleased to issue orders of injunction prohibiting the Defendants/Respondents, their servants and agents from inhibiting, alienating, delaying, disposing, trespassing and/or in any manner interfering with the Plaintiff's quiet use, occupation and control of the un-alienated public land known as Naromoru Block 1/Ragati/603 measuring approximately 0.6092 Ha.



2. The application which is supported by two Affidavits sworn by Cornelius M. Gatere (the 1<sup>st</sup> Plaintiff) is premised, inter alia, on the grounds:
  - i. That sometime in the year 1984, as a condition precedent to subdivision of LR No. 9687, which had been registered in the name of Ragati Farmers Cooperative Society Ltd, the Government compelled the Society to surrender all land/plots set aside for public purposes including Naromoru Block 1/Ragati/603 (hereinafter referred to as “suit property”) for public use;
  - ii. That following the surrender of the suit property to the Government, the first green card was opened in the name of the “Government of Kenya “on 20<sup>th</sup> August, 1987;
  - iii. That on 28<sup>th</sup> August, 2000, the Plaintiff/ Applicant sought for the re-allocation of the suit property in order to build a water storage tank and community service points in the residential areas. Before the Plaintiff could be issued with the title to the property, it was discovered that some unscrupulous individuals had tampered with the registration details of the suit property; and
  - iv. That following investigations conducted over the matter, all fraudulently issued titles with regard to the suit land were recalled and the Defendants claim of being the legal, equitable and beneficial owners of the suit property is without any basis.
3. Charles Muchemi Ikinya (the 2<sup>nd</sup> Defendant/Respondent) is opposed to the application. In his Replying Affidavit sworn on 17<sup>th</sup> April, 2024, the 2<sup>nd</sup> Respondent avers that the application and the entire suit is incompetent and an abuse of the court process as it seeks to revive a matter which has already been determined by the court.
4. The 2<sup>nd</sup> Defendant avers that the Plaintiff had filed Nyeri *HCCC No. 1178 of 2003* which sought similar orders and the said suit was withdrawn by consent. He avers that the Plaintiff subsequently sought for the cancellation of his land parcel Nos. Naromoru//Block 1/Ragati/ 876, 877, 878, 879, 880 and 881 but the 2<sup>nd</sup> Respondent filed Nyeri *HCCC No. 38 of 2011* and obtained judgment in his favour thereby reinstating the parcels of land as they were.
5. The 2<sup>nd</sup> Defendant further avers that the Plaintiffs thereafter filed Nyeri Court of Appeal *Civil Application No. 104 of 2020* seeking to appeal out of time but the same was dismissed and hence the matter herein is res judicata.
6. I have carefully perused and considered the Plaintiff’s application together with the responses thereto by the 2<sup>nd</sup> Defendant. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
7. By their application before this court, the three (3) Plaintiffs in their capacity as the trustees of Kaga Self Help Water Project pray for an order of injunction restraining the Defendants from inhibiting, alienating, trespassing or in any manner interfering with the Plaintiff’s quiet use, occupation and control of a parcel of land known as Naromoru Block 1/Ragati/603 measuring approximately 0.6092 Ha. and described as un-alienated public land.
8. It is the Plaintiff’s case that the Defendants were fraudulently issued with titles for the suit property and that their claim of being the legal, equitable and beneficial owners thereof is without any basis in law.
9. The 2<sup>nd</sup> Defendant is opposed to the application. According to the 2<sup>nd</sup> Defendant both the application and the entire suit are incompetent and an abuse of the court process as they seek to revive a matter which has already been determined by the court and is therefore res judicata.



10. As it were, Section 7 of the [Civil Procedure Act](#) provides for the doctrine of res Judicata as follows:
- “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.”
11. Arising from the foregoing, for a matter to qualify as res-judicata, the following elements must be proved:
- 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; and
  - 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.
12. From the material placed before the court, it is evident that the parties herein have had beef with each other over a long period of time. As can be discerned from Annexure ‘C1’ of the 2<sup>nd</sup> Defendant’s Replying Affidavit, more than 20 years ago, the same Plaintiffs herein together with one Isaac Gadango Muchiri had instituted Nairobi *HCCC No. 1178 of 2003* against the 2<sup>nd</sup> Defendant (as the 3<sup>rd</sup> Defendant) together with the then District Land Registrar Nyeri and the Commissioner of Lands.
13. The subject matter of the dispute was the same parcel of land described herein as Naromoru Block 1/Ragati/603 which the Plaintiffs accused the Defendants to have fraudulently transferred to the 2<sup>nd</sup> Defendant herein. On or about 9<sup>th</sup> July, 2010, that suit was withdrawn with no order as to costs.
14. From my reading of the scant information availed by either side of the dispute, it would appear that the withdrawal of the suit came out of the realisation that a year before the said suit was filed, the 2<sup>nd</sup> Defendant herein had caused the parcel of land known as Naromoru Block 1/Ragati/603 to be subdivided into six portions of land which were registered in the 2<sup>nd</sup> Defendant’s name on 7<sup>th</sup> February, 2002. The resultant titles were LR No. Naromoru/Block 1/Ragati/876, 877, 878, 879, 880 and 881.
15. It was also apparent that following the withdrawal of the suit, the Commissioner of Lands in unclear circumstances proceeded to cancel the titles of the six sub divisions and re-allocated the same to one Peterson G. Chiuri and the 1<sup>st</sup> Plaintiff herein in their capacity as trustees of the same Kaga Self Help Water Project through a Gazette Notice Published on 11<sup>th</sup> June, 2010.
16. Aggrieved by the cancellation of his titles, the 2<sup>nd</sup> Defendant herein proceeded on 22<sup>nd</sup> July, 2011 to institute Nyeri *HCCC No. 38 of 2011* against the Plaintiffs herein together with the said Peterson G. Chiuri as trustees of the said Kaga Self Help Water Project. In addition, the 2<sup>nd</sup> Defendant sued the Chief Land Registrar Nyeri and the Commissioner of Lands seeking for orders as follows:
- a. A permanent injunction restraining the Defendants by themselves, their servants agents, assigns or third parties from selling, disposing off, encumbering or otherwise dealing in title number Naromoru/Block 1/Ragati/603 or the resultant 876-881;



- b. A declaration that the cancellation of the sub-divisions and subsequent re-allocation by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in favour of the 1<sup>st</sup> Defendant was un-procedural, unlawful, null and void and is of no legal consequence;
  - c. An order against the 2<sup>nd</sup> Defendant for reinstatement of sub-division of Naromoru/Block 1/Ragati/603 into parcel numbers 876, 877, 878, 879, 880 and 881 and the same revert to the Plaintiff's name;
  - d. General damages;
  - e. Costs of this suit;
  - f. Interest on (a), (c) and (d) above; and
  - g. Any other or further relief which this court may deem fit to grant.”
17. When the second suit came up for hearing before the Honourable Justice J.K. Sergon, the parties recorded a consent order identifying the key issue to be; whether the Commissioner of Lands has authority to cancel title to land. The parties then agreed to dispose off the suit by way of written submissions.
18. Having considered the submissions and in his Judgment rendered on 16<sup>th</sup> July 2012, the Learned Judge did rightfully find that as at the time the notice of cancellation was issued by the District Land Registrar Nyeri on 11<sup>th</sup> June, 2010, LR No. Naromoru/ Block 1/Ragati/603 did not exist as the same had been closed upon sub-division in the year 2002. In addition, and perhaps more critical was the court's finding that neither the Commissioner of Lands nor the Land Registrar had power to cancel the 2<sup>nd</sup> Defendant's title to land as they had purported to do.
19. In the end, the Learned Judge entered judgment for the 2<sup>nd</sup> Defendant (the Plaintiff in the said suit) in the following terms:
- a. A permanent injunction is issued restraining the 1<sup>st</sup> Defendant by themselves, their servants, agents, assigns or third parties from selling disposing of, encumbering or otherwise dealing in title number Naromoru Block 1/Ragati/603 or the resultant sub-division LR No. Naromoru Block 1/Ragati/876-881.
  - b. A declaration is hereby issued that the cancellation of titles to the sub-division and subsequent re-allocation by the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants in favour of the 1<sup>st</sup> Defendant was un-procedural, unlawful, null and void and or no legal consequence;
  - c. Since the Plaintiff's title Nos. LR No. Naromoru Block 1/Ragati/876-881 were not affected by the purported notice of cancellation dated 11<sup>th</sup> June, 2010, the Land Registrar Nyeri is directed to rectify the register (Green Cards) to reflect the Plaintiffs' title in the suit land; and
  - d. Costs of the suit to be met by the Defendants.
20. Some eight (8) years after the Judgment was delivered, the Plaintiffs herein filed a Notice of Motion dated 28<sup>th</sup> September, 2020 before the Court of Appeal at Nyeri seeking extension of time to file an Appeal in respect of the judgment. That application was found to be lacking in merit and was dismissed by the Honourable Justice D. Musinga JA on 17<sup>th</sup> December, 2021.
21. After waiting another two (2) years, the Plaintiffs enjoined other parties and filed this suit against the 2<sup>nd</sup> Defendant and several other parties making the same claim that they have been making since the year 2003.



22. From the material placed before me, it was crystal clear that the suit herein is res-judicata and filed in clear abuse of the court process. As was stated by the Supreme Court in *John Florence Maritime Services Limited & Another v Cabinet Secretary Transport & Infrastructure & 3 Others* [Petition 17 of 2015] (2021) KESC 39 KLR.

“Res Judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights.”

23. The Learned Judges of the Apex Court went on further to state as follows in the above case:

“54. The doctrine of res judicata in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title from resorting to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into a fruit for one party, and a liability for another party, conclusively.”

24. In the circumstances herein, it was evident that the issues sought to be determined herein were the subject of the Judgment pronounced on 16<sup>th</sup> July, 2012. The Plaintiffs herein are bent on vexing the 2<sup>nd</sup> Defendant with a multiplicity of litigation. This court must bring their vexation to an end.

25. Accordingly, this suit is struck out with costs to the 2<sup>nd</sup> Defendant.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4<sup>TH</sup> DAY OF JULY, 2025**

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**J.O. OLOLA**  
**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Kenya Advocate for the Applicant
- c. Ms. Mwikali Advocate for the Respondent

