



**Omar v Kajiado Town Council & another (Environment and Land
Case 884 of 2017) [2025] KEELC 5205 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5205 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 884 OF 2017**

**MD MWANGI, J
JULY 10, 2025**

BETWEEN

NEMO SHARIFF OMAR PLAINTIFF

AND

KAJIADO TOWN COUNCIL 1ST DEFENDANT

OMAR ADAN SAMBUI 2ND DEFENDANT

*(In respect of the notice of motion dated 3rd October 2024 by the 2nd Defendant
seeking that the Plaintiff's suit against him be struck out for being res judicata)*

RULING

Background

1. The application under consideration is the notice of motion dated 3rd October 2024 by the 2nd Defendant praying for the striking out of the Plaintiff's suit against him on the basis that it is re judicata. The application is premised on the grounds on the face of it and on the supporting affidavit of Omar Adan Sambul, the 2nd Defendant/Applicant.
2. The Applicant asserts that the property in question is Kjd/Shapashina/211. There was another suit being ELC 206 of 2017 (Omar Adan Sambul –vs- Nemo Sharif & Jaffer Shariff Omar) before the Chief Magistrate's court which has already been determined; between the same parties, over the same subject matter; the issue in question in this suit too was the same issue before the previous suit and the parties are litigating under the same title.
3. The Applicant has attached the pleadings and the judgment in ELC 206/2017 as annexures to the supporting affidavit. It is apparent that the said case was before the Chief Magistrates Court at Kajiado.



4. In its judgment dated 9th December 2020, the court held that the Plaintiff had established his case on a balance of probabilities and allowed the prayers sought in the plaint dated 14th February 2017 i.e. on order of permanent injunction restraining the Defendants from trespassing, alienating or damaging Plot No. 211, Residential Kajjado Town and an Order of eviction of the Defendants from the said plot, while at the same time noting that the final determination in the aforementioned Environment and Land Court matter touching on Plot No. 212 (meaning this suit) could have an impact on that case. The court stated that in the event that happens (meaning a final determination is rendered in this case), parties will be at liberty to apply for a review of the court's judgment.

Response by the Plaintiff.

5. The Plaintiff responded to the application by the 2nd Defendant by way of a replying affidavit sworn by Nemo Omar Shariff on 20th March 2025. The Plaintiff points out that the suit ELC 206 of 2017 was between different parties claiming rights under different heads of title. The issues in the case and this case are therefore different. In the earlier one, the issue according to the Plaintiff was whose title between his and that of the 2nd Defendant was supreme. The court in the earlier case stated that the outcome of this case may warrant a review of the orders granted in that other case.

Directions by the court.

6. The directions by the court were that the application be canvassed by way of written submissions to be filed within the stipulated timelines. Only the Applicant complied by filing his submissions on 26th May 2025. The court has had occasion to read and consider the said submissions.

Issues for determination.

7. Having carefully considered the application, the response by the Plaintiff and the submissions by the Applicant, the sole issue for determination is whether the 2nd Defendant's application is merited, rather whether the Plaintiff's suit against him is res judicata.

Analysis for determination.

8. In the case of John Florence Maritime Services Limited & ano –vs- Cabinet Secretary for Transport & Infrastructure & 3 others (2021) eKLR, the Supreme Court of Kenya addressed the doctrine of res judicata in details. It stated that;

“We restate the elements that must be proven before a court may arrive at the conclusion that a matter is res judicata. 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 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 the second action identical parties, subject matter and cause of action.
9. The judgment of the Chief Magistrate's Court in ELC 206 of 2017 leaves a lot to be desired. The Plaintiff/Respondent is right in his replying affidavit when he insinuates that the said judgment was



not final. As I earlier pointed out, the learned Magistrate stated that the final determination in this matter could have an impact on the case before him thereby leaving it open for the parties to apply for a review of his judgment upon the determination of this case.

10. A careful reading of the decision of the Magistrate's court discloses that it was neither conclusive nor final. It is also worth pointing out that the parties in the earlier case and the parties in this case are not identical. On that basis, the 2nd Defendant's application fails. I hereby dismiss it but with no orders as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 10TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kiptoo for the Plaintiff

Mr. Itaya for the 2nd Defendant

N/A by the 1st Defendant

Court Assistant: Mpoye

