Ruunci [Suing as the Legal Administrator of the Estate of M'Ikiao M'Thiriombe] ([Suing as the Legal Administrator of the Estate of M'Ikiao M'Thiriombe]) v Land Adjudication & Settlement Officer (Karama Adjudiction Section) & another; Makena & another (Interested Parties) (Petition E004 of 2025) [2025] KEELC 5025 (KLR) (3 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5025 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION E004 OF 2025

JO MBOYA, J

JULY 3, 2025

BETWEEN

STANLEY RUUNCI ..... PETITIONER

[SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF M'IKIAO M'THIRIOMBE]

AND

LAND ADJUDICATION & SETTLEMENT OFFICER (KARAMA ADJUDICTION SECTION) ..... 1ST RESPONDENT

ATTORNEY GENERAL ..... 2ND RESPONDENT

AND

MARY MAKENA ..... INTERESTED PARTY

SEVERINA ATUMWA ..... INTERESTED PARTY

RULING

1. What is before me is the notice of motion application dated 17th of March 2025 brought pursuant to the provisions of Rules 3, 23 & 24 of the Mutunga Rules; Articles 22, 23, 40 & 165 of the *Constitution* 2010] and Sections 26, 27 and 28 of the *Land Adjudication Act*, Cap 284 Laws of Kenya and wherein the Applicant has sought the following reliefs;

    i. That this Application be certified urgent and the same be heard Ex-parte in the first instance.

    ii. That this Honourable court be pleased to stay further proceedings/execution of the decision of the land adjudication and settlement officer Karama adjudication section in respect to land parcel number Karama/364 adjudication section and part of it described as parcel number

Karama 1582 and 1583 adjudication section pending the hearing and determination of this application inter-parties.

iii. That his Honourable court be pleased to say further proceedings/execution of the decision of the land adjudication and settlement officer Karama adjudication section and part of it described as parcel number Karama/1582 and 1583 adjudication section pending the hearing and determination of this petition.

iv. That this Honourable court be pleased to issue an order of temporary injunction restraining the interested parties by themselves, their employees, junior, officers, agents, servants, representatives and or anybody else whomever acting for and or on their behalf from continuing with any dealings in the applicant's land parcel number Karama/364 adjudication section and part of it described as parcel number Karama 1582 and 1583 adjudication section be it adjudication, subdivision, behalf from entering, selling, transferring or any other acts of interference pending the hearing and determination of this application.

v. That this Honourable court be pleased to issue an order of temporary injunction restraining the interested parties by themselves, their employees, junior, officers, agents, representatives or anybody else whomever acting for and on their behalf from continuing with any dealings in the applicant's land parcel number Karama/364 Adjudication section and part of it described as parcel number Karama 1582 and 1583 adjudication section be it adjudication, subdivision, behalf from entering, selling, transferring or any other acts of interference pending the hearing and determination of this application.

vi. That the costs of this Application be paid by the Respondents.

2. The instant application is premised on the various grounds which have been captured at the foot thereof. Furthermore, the application is supported by the affidavit of the applicant, namely; Stanley Ruunci [deponent], sworn on even date and to which the deponent has annexed various documents, including a copy of the order issued on the 26th November 2018 vide Meru ELC JR 19 of 2018.

3. The respondents filed a replying affidavit sworn by Anthony David Mureithi on 5th June 2025 and to which the deponent has annexed assorted proceedings and a copy of the adjudication record pertaining to plot No's 15583 in the name of Seberina Atumwa, namely; the 2nd interested party.

4. The instant application came up for hearing on the 7th April 2025, when the advocates for the respective parties agreed to canvass and dispose of the application by way of written submissions. To this end, the court proceeded to and circumscribed the timelines for the filing and exchange of the written submissions.

5. Suffice it to state that the written submissions filed by the parties form part of the record of the court. In particular, learned counsel for the applicant has contended that plot no Karama/Adjudication Section/364 belonged to and was demarcated in the name of the deceased. However, it was posited that the respondents herein proceeded to and entertained objection proceedings filed by the interested parties, albeit without notice to and or involvement of the Estate of the deceased.

6. Additionally, learned counsel for the applicant has submitted that following the lodgment of the objection proceedings by the interested parties, the 1st respondent proceeded to and sub-divided the suit property, culminating into the creation of plot[s] numbers 1582 and 1583, respectively. Nevertheless, learned counsel posited that the sub-division under reference was undertaken without regard to the due process of the law.

7. Furthermore, it was submitted that the interested parties herein are now disposed to alienate and or sell the sub-divisions and hence the necessity to grant the orders of temporary injunction, so as to preserve the suit properties.

8. The respondent filed written submissions on 5th June 2025 and wherein same has highlighted two [2] salient issues, namely; whether the court is seized of the requisite jurisdiction to entertain the petition and by extension the subject application; and whether the doctrine of exhaustion prohibits the petition before the court.

9. Having reviewed the application beforehand and the response thereto and upon taking into account the written submissions filed by and on behalf of the respective parties, I come to the conclusion that the determination of the subject application and by extension the petition turns on four [4] key issues, namely; whether the petition and the subject application are prohibited by the doctrine of Res Judicata or otherwise; whether the petition and the application constitutes an abuse of the due process of the court or otherwise; whether the court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject petition or otherwise; and whether the applicants have satisfied the threshold for the grant of orders of temporary injunction or otherwise.

10. Regarding the first issue, namely; whether the petition and the subject application are prohibited by the doctrine of res judicata, it is instructive to recall and reiterate that the petitioner herein had previously filed Meru ELC JR No. 19 of 2018, wherein same sought to quash the objection proceedings leading to the creation of the suit properties. To this end, it is important to reference annexure "SR3" attached to the supporting affidavit.

11. Notably, the said annexure relates to leave being granted to the petitioner to file and serve judicial review proceedings within a set timeline. Furthermore, the court also ventured forward and directed that the leave granted was to operate as an order of stay for a period of six [6] months with effect from 26th November 2018.

12. It is important to observe that the petitioner herein indeed proceeded to and filed the substantive Notice of motion of application dated the 14th of December 2018; and which notice of motion application was dismissed by the court on the 21st of October 2021. Thereafter, the petitioner herein filed an application dated 3rd June 2022 seeking to vary and or review the orders of 21st October 2021.

13. Suffice it to state that the application dated 3rd June 2022 was indeed heard and disposed of by this court [differently constituted] on the 7th December 2022, whereupon the application was dismissed. To this end, there is no gainsaying that this court [differently constituted] issued final orders as against the current petitioner.

14. I beg to state that the orders dismissing the judicial review proceedings [ELC JR 19 of 2018] constitute a judgment in favour of the respondents and the interested parties. [See the holding of the Court of Appeal in Njue Ngai v Ephantus Njiru Ngai & another [2016] eKLR and Cooperative Bank Ltd vs Cosmos Mrobo (2018) eKLR, respectively, wherein the court of appeal underscored that a dismissal order constitutes a judgment in favour of the adverse party.

15. In so far as the judicial review proceedings were heard and disposed of, the petitioner herein could only file an appeal as against the decision of the court. However, there is no gainsaying that the issues now being raised and canvassed by the petitioner herein are issues which coloured the judicial review proceedings and thus the current petition is prohibited by the doctrine of res judicata.

16. Suffice it to underscore that the doctrine of res judicata not only prohibits the actual issues that were canvassed and raised by the parties but also such issues that ought to and should have been canvassed

in the previous suit. To my mind, whatever issue that the petitioner is now raising herein ought to have been canvassed vide Meru ELC JR 19 of 2018.

17. In the case of Kenya Commercial Bank Ltd vs Benjoh Amalgamated (2017) eKLR, the Court of Appeal expounded on the import, tenor and legal implications of the doctrine of res judicata and in particular, constructive res judicata.

18. For coherence, the court stated and held thus;

> " 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:
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> > " 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 ligation 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].

19. Flowing from the foregoing, I come to the conclusion that the current petition is barred and prohibited by the doctrine of res judicata. Suffice it to state that the doctrine of res judicata applies to constitution petitions as well as ordinary suits. The bottom line is that there must be finality in litigation. [See the Supreme Court decision in 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) at paragraph 59 thereof.

20. Turning to the 2nd issue, namely; whether the instant petition and the application constitute an abuse of the due process of the court, it is worthy to recall that the petitioner herein had filed the previous judicial review proceedings seeking to quash the objection proceedings numbers 5111 and 1475, respectively which were filed by the interested parties herein.

21. The said judicial review proceedings was confirmed for hearing, but the petitioner and his counsel did not attend court and or prosecute the matter. To this end, the court ventured forward and dismissed the judicial review proceedings. Furthermore, it is common ground that the petitioner filed an application seeking to review the orders dismissing the judicial review proceedings. For good measure, the said application was dismissed vide ruling rendered on 7th December 2022.

22. Even though the petitioner is aware and knowledgeable of the previous proceedings, same [petitioner] has disingenuously concealed the outcome of the judicial review proceedings. The concealment and failure to disclose the outcome of the previous proceedings constitutes an abuse of the due process of the court.

23. On the other hand, it is also common ground that a party cannot be allowed to file multiple proceedings before the same court or various courts of concurrent jurisdiction seeking to challenge the same decision. Such kind of behavior does not find favour with equity and, by extension, the rule of law.

24. The concept of abuse of the due process of court has been amplified in a plethora of decisions. The Supreme Court of Kenya, in the case Rutongot Farm Ltd v Kenya Forest Service & 3 others (Petition 2 of 2016) [2018] KESC 27 (KLR) (19 September 2018) (Ruling) expounded on the concept as hereunder;

> " 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."

25. Moreover, the court of appeal also elaborated on the said concept in the case of Muchanga Investments Ltd V Safaris Unlimited (Africa) Ltd & 2 others [2009] eKLR where the court stated thus;

> " To reinforce the point, abuse of process has been defined in WIKIPEDIA, the free encyclopedia:
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> > " 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."
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> In Beinosi V Wiyley 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:-
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> > " 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."
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> 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.

26. In a nutshell, it is my finding and holding that the filing of the instant petition on the face of the decisions of the court made vide Meru ELC JR No. 19 of 2018 constitutes and amounts to an abuse of the due process of the court.

27. Next is the question of whether this court is seized of the requisite jurisdiction to entertain and adjudicate upon the subject petition. To start with, it is common ground that the suit properties fall within an adjudication section. It is because the suit properties fall within an adjudication section that the petitioner has enjoined the 1st respondent herein. Furthermore, there is no gainsaying that the orders sought at the foot of the petition are intended to impact on and or affect ownership rights of landed properties which fall within the adjudication section. [See prayers (a), (b) (c) and (e) at the foot of the petition dated 17th March 2025.

28. To the extent that the properties in question fall within the adjudication section, it behooved the petitioner to seek for and obtain the requisite consent either in terms of Section 8 of the *Land Consolidation Act*, Chapter 283, Laws of Kenya; or Section 30 of the *Land Adjudication Act*, Chapter 284, Laws of Kenya; [whichever is appropriate].

29. Be that as it may, I have seen the contents of paragraph 10 of the replying affidavit of Anthony David Mureithi, sworn on the 5th of June 2025. For ease of appreciation, paragraph 10 of the said replying affidavit states as hereunder;

> " That I swear this affidavit to confirm that Karama Adjudication Section operates under the *Land Consolidation Act*, Cap 283, Laws of Kenya and it is at the hearing of objection stage before issuance of certificate of finality.

30. From the foregoing deposition, what becomes apparent is that the suit properties are still within the adjudication stage. To this end, no suit [whether an ordinary suit or a petition] can be mounted without the requisite consent of the land adjudication officer.

31. In the case of Ole Pere & another v District Land Adjudication and Settlement Officer, Narok South & 24 others; Pere & another (Interested Parties) (Civil Appeal 79 of 2019) [2025] KECA 113 (KLR) (24 January 2025) (Judgment), the Court of Appeal considered the legal implications of failure to obtain the consent.

32. For good measure, the court stated as hereunder;

> " Having concluded as herein above, we find no reason to determine the merits or otherwise of the appeal, save to underscore that the failure to obtain consent as required by Section 31 (1) of the *Land Adjudication Act* was fatal to the appellants' case because the mandatory requirements of the said Section cannot be cured by filing a constitutional petition as happened in this case".

33. Bearing the foregoing decision in mind, I come to the conclusion that this court is divested of jurisdiction to entertain the subject petition in so far as the requisite consent under section 8 of the *Land Consolidation Act* [Supra] was not obtained in accordance with the law.

34. Where a court is divested of jurisdiction, such a court is obliged to down its tools and to strike out the matter. Suffice it to underscore that any proceedings conducted by a court without jurisdiction and any decision arising therefrom shall be a nullity ab initio. [see Owners of Motor Vessel Lilian "S"

vs Caltex Oil (K) Ltd (1989) eKLR; Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a Newspaper Service [2019] eKLR.

35. Finally, there is the issue of whether the petitioner has met and or satisfied the threshold for the grant of an order of temporary injunction. There is no gainsaying that the petitioner herein was obliged to establish the existence of a prima facie case with probability of success and thereafter prove the likelihood of irreparable loss.

36. Instructively, the suit properties which the petitioner seeks to procure and obtain an order of injunction against belong to and are now demarcated in favour of the interested parties. The bottom line is that the interested parties have accrued proprietary rights to the suit plots and which rights can only be invalidated in accordance with the law.

37. On the other hand, it is not lost on this court that the petition beforehand is fraught with several deficiencies. The sum total of the deficiencies which have been highlighted in the body of the ruling negates the existence of a prima facie case.

38. Other than the foregoing, it is also worthy to recall that for as long as the suit properties have been demarcated in favour of the interested parties, same are entitled to partake of the benefits attendant to such registration/demarcation. However, if an order of an injunction were to issue, then the applicant must demonstrate the existence of exceptional or peculiar circumstances to warrant the issuance of such an order.

39. Before concluding on the issue, it is instructive to reference the holding of the Court of Appeal in the case of Nguruman Limited v Jan Bonde Nielsen & 2 others [2014] KECA 606 (KLR), where the court of appeal stated thus;

> " It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so."

40. To my mind, the petitioner herein has failed to meet and or satisfy the threshold for the grant of the orders for temporary injunction. In this regard, the application under reference is also devoid of merits.

Final Disposition:

41. Flowing from the foregoing analysis, it must have become apparent that the entire petition and by extension the application beforehand, are not only premature and misconceived, but same are also legally untenable.

42. Consequently, and in the premises, the final orders that commend themselves to the court are as hereunder;

    i. The Petition dated 17th March 2025 be and is hereby struck out.

    ii. The Application dated 17th March 2025 be and is hereby struck out.

    iii. Costs of the Petition and the Application be and are hereby awarded to the Respondents only.

    iv. The Cost in terms of clause (iii) shall be agreed upon and in default be taxed by the Deputy Registrar of the court.

43. It is so ordered.

DATED, SIGNED AND DELIVERED AT MERU THIS 3RD DAY OF JULY 2025.

OGUTTU MBOYA, FCIArb; CPM [MTI-EA].

JUDGE

In the presence of:

Mutuma – Court Assistant

Ms. Asuma holding brief for Mr. Mutembei for the Petitioner/Applicant

Ms. Miranda [Senior Litigation Counsel] for the Respondents

No appearance for the interested parties.